

VOLUME 1
Titles 1 through 17

1992
REVISED CODE OF WASHINGTON

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Containing all laws of a general and permanent nature through the 1992 regular session, which adjourned sine die March 12, 1992.

REVISED CODE OF WASHINGTON

1992 Edition

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CERTIFICATE

The 1992 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



**RAYMOND W. HAMAN, Chairman,
STATUTE LAW COMMITTEE**



PREFACE

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

Citation to the Revised Code of Washington: The code should be cited as RCW; see RCW 1.04-.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

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

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

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

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

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

Index: Titles 1 through 91 are indexed in the RCW General Index. Separate indexes are provided for the Rules of Court and the State Constitution.

Sections repealed or decodified; Disposition table: Memorials to RCW sections repealed or decodified are no longer carried in place. They are now tabulated in numerical order in the table entitled "Disposition of former RCW sections."

Codification tables: To convert a session law citation to its RCW number (for Laws of 1951 or later) consult the codification tables. A similar table is included to relate the disposition in RCW of sections of Remington's Revised Statutes.

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

(2) Although considerable care has been used in the production of this code, within the limits of available time and facilities it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. As such errors are detected or are believed to exist in particular sections, by those who use this code, it is requested that a note citing the section involved and the nature of the error be mailed to: Code Reviser, Legislative Building, Olympia, WA 98504, so that correction may be made in a subsequent publication.

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Title 1

GENERAL PROVISIONS

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- 1.08 Statute law committee (Code reviser).
- 1.12 Rules of construction.
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- 1.20 General provisions.
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Chapter 1.04 THE CODE

Sections

- 1.04.010 Revised Code of Washington enacted.
- 1.04.013 1950 Supplement enacted.
- 1.04.014 Numbering system adopted—Application.
- 1.04.015 Numbering new sections, chapters—Corrections.
- 1.04.016 Expansion of numbering system—Decimal factor.
- 1.04.020 Code as evidence of the law—Rule of construction—Effect of amendment.
- 1.04.021 Rule of construction—Prima facie law.
- 1.04.030 New laws to be added to code.
- 1.04.040 Code may be cited as "RCW."

Code reviser: Chapter 1.08 RCW.

Legislature to amend or repeal laws by reference to code numbers: RCW 1.08.050.

Salaries for public officials to appear in code: RCW 43.03.047.

Statute law committee: Chapter 1.08 RCW.

1.04.010 Revised Code of Washington enacted. The ninety-one titles with chapters and sections designated as the "Revised Code of Washington" and attested by the secretary of the senate and the chief clerk of the house of representatives of the legislature of the state of Washington, are hereby enacted and designated as the "Revised Code of Washington." Said code is intended to embrace in a revised, consolidated, and codified form and arrangement all the laws of the state of a general and permanent nature. [1951 c 5 § 2; 1950 ex.s. c 16 § 1.]

Creation of new code titles authorized, effect: RCW 1.08.015.

1.04.013 1950 Supplement enacted. The titles, chapters, and sections designated as the "1950 Supplement to the Revised Code of Washington" attested by the secretary of the senate and the chief clerk of the house of representatives of the legislature of the state of Washington, and filed with the secretary of state, are hereby enacted and consolidated into and with the Revised Code of Washington. Said 1950 supplement is intended to embrace (1) in a revised and codified form, all those laws of the state of Washington of a general and permanent nature enacted since January 1, 1949, (2) revision and recodification of certain of the titles, chapters, and sections of the revised code, and (3) applica-

tion of a new system of numbering to all of the sections and certain of the chapters of the revised code, subject to RCW 1.04.014. [1951 c 5 § 1.]

1.04.014 Numbering system adopted—Application. The system of numbering employed in the 1950 supplement is hereby adopted as the general system to be followed in designating sections of the revised code. Specific numbers, in accordance with such system, are authorized to be assigned to sections of the revised code as follows:

Those chapters and sections of the revised code expressly numbered or renumbered in the 1950 supplement are authorized to be numbered or renumbered to the new number respectively shown in the 1950 supplement. All other sections of the revised code now existing are authorized to be renumbered by tens according to the plan generally used in the 1950 supplement, using the number of the title, the new number, if any, of the chapter in which the section occurs, and adding the digit "0" to the terminal end of the number marking the position of the section within the chapter. The secretary of state shall, before publication of any laws enacted at this session of the legislature which are by their terms expressly amendatory of any section or sections contained in the revised code or the 1950 supplement, renumber each section and correlate the numbers of sections so renumbered, in accordance with this provision, so that each such section when published bears or is referred to by its proper new number. The secretary of state, in publishing the session laws of this thirty-second session of the legislature shall use therein the applicable new numbers of the respective sections so renumbered. [1951 c 5 § 3.]

1.04.015 Numbering new sections, chapters—Corrections. New chapters or sections added to the Revised Code of Washington (as supplemented or modified by the 1950 supplement), as the result of laws enacted at this or subsequent sessions of the legislature, shall be numbered in harmony with said general numbering system, and shall bear such respective numbers in accordance therewith as may be assigned by such official or agency as may be expressly authorized by law so to do.

This section shall not prohibit or prevent the correction by any such official or agency, of the number of any section of the revised code found clearly to be incorrectly numbered or incorrectly correlated with other sections as to number. [1951 c 5 § 4.]

1.04.016 Expansion of numbering system—Decimal factor. It is the intent that under said numbering system the section factor of the section number shall be treated as a decimal figure, and where new sections must hereafter in codifying be inserted between sections then already consecutively numbered, the proper number for such new section

shall be created by the insertion of an additional digit at the terminal end of the number of the section immediately preceding the location at which such new section is to be inserted. [1951 c 5 § 5.]

1.04.020 Code as evidence of the law—Rule of construction—Effect of amendment. The contents of the Revised Code of Washington, after striking therefrom sections repealed or superseded by laws of the state of Washington enacted since January 1, 1949, as the revised code is supplemented or modified in the 1950 supplement, shall establish the laws of this state of a general and permanent nature in effect on January 1, 1951; except, that nothing herein shall be construed as changing the meaning of any such laws and, as a rule of construction, in case of any omissions or any inconsistency between any of the provisions of the revised code as so supplemented or modified and the laws existing immediately preceding this enactment, the previously existing laws shall control. Any section of the Revised Code of Washington (as supplemented or modified by the 1950 supplement) expressly amended by the legislature, including the entire context set out, shall, as so amended, constitute the law and the ultimate declaration of legislative intent. [1951 c 5 § 6.]

1.04.021 Rule of construction—Prima facie law. The contents of said code shall establish prima facie the laws of this state of a general and permanent nature in effect on January 1, 1949, but nothing herein shall be construed as changing the meaning of any such laws. In case of any omissions, or any inconsistency between any of the provisions of said code and the laws existing immediately preceding this enactment, the previously existing laws shall control. [1950 ex.s. c 16 § 2.]

1.04.030 New laws to be added to code. All laws of a general and permanent nature enacted after January 1, 1949, shall, from time to time, be incorporated into and become a part of said code. [1950 ex.s. c 16 § 3.]

1.04.040 Code may be cited as "RCW." The code may be cited by the abbreviation "RCW." [1950 ex.s. c 16 § 4.]

Chapter 1.08

STATUTE LAW COMMITTEE (CODE REVISER)

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Administrative procedures, reviser's powers and duties: Chapter 34.05 RCW.

Statute law committee to publish session laws: Chapter 44.20 RCW.

Voter registration, copy of state-wide computer tape provided to statute law committee: RCW 29.04.160.

1.08.001 Statute law committee created—Membership. There is created a permanent statute law committee consisting of twelve lawyer members as follows: A lawyer member of the legislature, ex officio, designated by the speaker of the house of representatives with the concurrence of the president of the senate; the chairman of the senate judiciary committee, ex officio, or a member thereof who belongs to the same political party as the chairman, and one other member thereof who belongs to the other major political party, to be appointed by the chairman; the chairman of the house judiciary committee, ex officio, or a member thereof who belongs to the same political party as the chairman, and one other member thereof who belongs to the other major political party, to be appointed by the chairman; five lawyers admitted to practice in this state, designated by the board of governors of the Washington State Bar Association; a judge of the supreme court or a lawyer who has been admitted to practice in this state, recommended by the chief justice of the supreme court; and a lawyer member at large appointed by the governor. All such designations or appointments, shall except as provided in RCW 1.08.003, be made as above provided prior to April 1, 1959. [1967 ex.s. c 124 § 1; 1959 c 95 § 1; 1955 c 235 § 1; 1953 c 257 § 1; 1951 c 157 § 1.]

Severability—1955 c 235: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1955 c 235 § 10.] For codification of 1955 c 235, see Codification Tables, Volume 0.

1.08.003 Terms of members—Filling vacancies. The terms of the members designated by the State Bar Association, shall be for six years. The term of the member recommended by the chief justice shall be at the pleasure of the supreme court. The term of the governor's appointee shall be four years. The term of the senate and house

judiciary committee members shall be two years, from April 1st following the adjournment of the regular session of the legislature in each odd-numbered year starting in 1955 and to and including the thirty-first day of March in the succeeding odd-numbered year.

The term of any ex officio member, other than senate and house judiciary committee members shall expire upon expiration of tenure of the position by virtue of which he is a member of the committee. Vacancies shall be filled by designation, appointment, or ex officio in the same manner as for the member so vacating, and if a vacancy results other than from expiration of a term, the vacancy shall be filled for the unexpired term.

Of the members to be designated by the Washington State Bar Association, the term of one member shall expire March 31, 1959, the terms of two members shall expire March 31, 1961, the terms of two members shall expire March 31, 1963, and the term of one member shall expire March 31, 1965: PROVIDED, That this 1959 amendment shall not affect the present terms of present members. [1959 c 95 § 2; 1955 c 235 § 2; 1953 c 257 § 2; 1951 c 157 § 2.]

1.08.005 Compensation and expenses of members. For attendance at meetings of the committee or in attending to such other business of the committee as may be authorized thereby, each legislative member of the committee shall receive the per diem and travel allowances provided for such members by RCW 44.04.120, and each other member shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 6; 1969 c 21 § 1; 1951 c 157 § 3.]

Legislative findings—Severability—Effective date—1984 c 287:
See notes following RCW 43.03.220.

1.08.007 Committee meetings—Quorum—Secretary. The committee shall meet at the call of the senate judiciary chairman as soon as feasible after April 1, 1953. The committee shall from time to time elect a chairman from among its members, and adopt rules to govern its procedures. Four members of the committee shall constitute a quorum for the transaction of any business but no proceeding of the committee shall be valid unless carried by the vote of a majority of the members present. The reviser or a member of his staff shall act as secretary of the committee. [1953 c 257 § 3; 1951 c 157 § 4.]

1.08.011 Employment of code reviser and staff—Supervision. The committee shall, as soon as practicable after April 1, 1951, employ on behalf of the state, and from time to time fix the compensation of a competent code reviser, with power to terminate any such employment at any time, subject to contract rights. The committee shall also employ on behalf of the state and fix the compensation of such additional legal and clerical assistance to the code reviser as may reasonably be required under this chapter. The committee shall have general supervision and control over the functions and performance of the reviser. [1951 c 157 § 5.]

1.08.013 Code reviser defined. Code reviser shall mean any lawyer or law publisher employing competent lawyers, each deemed by the committee to be qualified to compile the statutory law of the state of Washington as enacted by the legislature into a code or compilation of laws by title, chapter and section, without substantive change or alteration of purpose or intent. [1951 c 157 § 6.]

1.08.015 Codification and revision of laws—Scope of revision. Subject to such general policies as may be promulgated by the committee and to the general supervision of the committee, the reviser shall:

(1) Codify for consolidation into the Revised Code of Washington all laws of a general and permanent nature heretofore or hereafter enacted by the legislature, and assign permanent numbers as provided by law to all new titles, chapters, and sections so added to the revised code.

(2) Edit and revise such laws for such consolidation, to the extent deemed necessary or desirable by the reviser and without changing the meaning of any such law, in the following respects only:

(a) Make capitalization uniform with that followed generally in the revised code.

(b) Make chapter or section division and subdivision designations uniform with that followed in the revised code.

(c) Substitute for the term "this act," where necessary, the term "section," "part," "code," "chapter," or "title," or reference to specific section or chapter numbers, as the case may require.

(d) Substitute for reference to a section of an "act," the proper code section number reference.

(e) Substitute for "as provided in the preceding section" and other phrases of similar import, the proper code section number references.

(f) Substitute the proper calendar date for "effective date of this act," "date of passage of this act," and other phrases of similar import.

(g) Strike out figures where merely a repetition of written words, and substitute, where deemed advisable for uniformity, written words for figures.

(h) Rearrange any misplaced statutory material, incorporate any omitted statutory material as well as correct manifest errors in spelling, and manifest clerical or typographical errors, or errors by way of additions or omissions.

(i) Correct manifest errors in references, by chapter or section number, to other laws.

(j) Correct manifest errors or omissions in numbering or renumbering sections of the revised code.

(k) Divide long sections into two or more sections, and rearrange the order of sections to conform to such logical arrangement of subject matter as may most generally be followed in the revised code when to do so will not change the meaning or effect of such sections.

(l) Change the wording of section captions, if any, and provide captions to new chapters and sections.

(m) Strike provisions manifestly obsolete.

(3) Create new code titles, chapters, and sections of the Revised Code of Washington, or otherwise revise the title, chapter and sectional organization of the code, all as may be required from time to time, to effectuate the orderly and logical arrangement of the statutes. Such new titles, chap-

ters, and sections, and organizational revisions, shall have the same force and effect as the ninety-one titles originally enacted and designated as the "Revised Code of Washington" pursuant to the code adoption acts codified in chapter 1.04 RCW. [1961 c 246 § 1; 1953 c 257 § 4; 1951 c 157 § 7.]

1.08.016 Code correction—Committee orders. The committee may at any time by order correct any section or portion of the code in any of the respects enumerated in RCW 1.08.015. Orders shall be numbered consecutively and signed by the committee chairman and each order shall be followed by an explanatory note reciting the reason therefor.

Unless otherwise prescribed in the orders, each shall become effective ninety days after

(1) signing of the order; and

(2) filing a summary thereof with the board of governors of the State Bar Association; and

(3) the filing thereof with the secretary of state. [1953 c 257 § 5.]

1.08.017 May omit certain sections of acts. The reviser may omit from the code all titles to acts, enacting and repealing clauses, preambles, declarations of emergency, and validity and construction sections unless, in a particular instance, it may be necessary to retain such to preserve the full intent of the law. The omission of validity or construction sections is not intended to, nor shall it change, or be considered as changing, the effect to be given thereto in construing legislation of which such validity and construction sections were a part. Any section so omitted, other than repealing, emergency, or validity provisions, shall be referred to or set forth as an annotation to the applicable sections of the act as codified. [1955 c 235 § 3; 1951 c 157 § 8.]

1.08.020 Code index. The reviser, as soon as practicable, shall compile and thereafter maintain a comprehensive index and from time to time prepare for publication supplements thereto. [1953 c 257 § 7.]

1.08.021 Historical records. The reviser shall prepare and maintain full historical records showing the enactment, amendment, revision, supersession, and repeal of the various sections of the revised code. [1951 c 157 § 9.]

1.08.023 Annotations. The reviser may prepare and maintain complete annotations of court decisions construing the statutes of this state. [1951 c 157 § 10.]

1.08.024 Inclusion in code of rules of court. The committee may provide for inclusion in the published sets of the code the rules of court promulgated by the supreme court. [1953 c 257 § 8.]

1.08.025 Improvement of statutes. The committee, or the reviser with the approval of the committee, shall from time to time make written recommendations to the legislature concerning deficiencies, conflicts, or obsolete provisions in, and need for reorganization or revision of, the statutes, and shall prepare for submission to the legislature, legislation for the correction or removal of such deficiencies, conflicts or

obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state as the public interest or the administration of the subject may require.

Such or similar projects may also be undertaken at the request of the legislature, legislative interim bodies, and the judicial council and if such undertaking will not impede the other functions of the committee.

All such proposed legislation shall be annotated so as to show the purposes, reasons, and history thereof. [1983 c 52 § 2; 1959 c 95 § 3; 1951 c 157 § 11.]

Law revision commission: Chapter 1.30 RCW.

1.08.026 Examination of code—Hearings—Recommendations to legislature. The committee also shall examine the revised code and from time to time submit to the legislature proposals for enactment of the several titles, chapters and sections thereof, to the end that, as expeditiously as possible, the revised code, and each part thereof, shall constitute conclusive, rather than prima facie evidence of the law. Each such proposal shall be accompanied by explanatory matter. The committee may hold hearings concerning any such proposal or concerning recommendations formulated or to be formulated in accordance with RCW 1.08.025. Proposals or recommendations approved by the committee shall be submitted to the chairman of the house or senate judiciary committee at the commencement of the next succeeding session of the legislature. [1959 c 95 § 4; 1953 c 257 § 9.]

1.08.027 Bill drafting service. The reviser shall be in charge of and shall at all times maintain an expert bill drafting service for the use and benefit of the legislature, its committees and its members. Prior to any session thereof, the legislature shall provide quarters convenient to both houses and shall augment the reviser's staff with such additional legal and clerical assistance as may be needed to carry out the bill drafting functions of the legislature and pay the cost of such additional staff. Such services shall be confidential and nonpartisan and no member of the bill drafting staff shall advocate for or against any legislative measure. [1953 c 257 § 6; 1951 c 157 § 12.]

Initiative measures, review by code reviser: RCW 29.79.015.

1.08.028 Opinions as to validity or constitutionality. Neither the reviser nor any member of his staff shall be required to furnish any written opinion as to the validity or constitutionality of any proposed legislation, which he may be requested to draft or prepare, nor shall any member of the committee be required to pass upon the constitutionality of any matter submitted to it for consideration. [1955 c 235 § 4.]

1.08.031 Information service to legislators. The reviser shall, to the extent reasonably feasible through available facilities and public sources of information, provide objective and factual information in writing to and upon request of any member of the legislature relative to any matter which is or may be the subject of or involved in, legislation. [1951 c 157 § 13.]

1.08.033 Reviser's office location. The department of public institutions shall provide suitable office and storage space and facilities for the reviser and his staff at Olympia, at a location convenient to the legislature and to the state law library. [1955 c 235 § 5; 1951 c 157 § 15.]

Reviser's note: Certain powers and duties of department of public institutions transferred to department of general administration: See RCW 43.19.015.

1.08.037 Publication of code—Specifications—Certificate of compliance. The committee shall from time to time formulate specifications relative to the format, size and style of type, paper stock, number of volumes, method and quality of binding, contents, indexing, and general scope and character of footnotes, and annotations, if any, for any publication for general use of the revised code and supplements thereto. No such publication or the contents thereof, other than such temporary edition as may expressly be authorized by the legislature, shall be received as evidence of the laws of this state unless it complies with such specifications of the committee as are current at the time of publication, including compliance with the section numbering adopted by the reviser under supervision of the statute law committee. If a publication complies with such specifications, the committee shall furnish a certificate of such compliance, executed on behalf of the committee by its chairman, to the publisher, and the certificate shall be reproduced at the beginning of each such volume or supplement.

Upon request of any publisher in good faith interested in publishing said code, the committee shall furnish a copy of its current specifications and shall not during the process of any bona fide publication of said code or supplements modify any such specifications, if such modification would result in added expense or material inconvenience to the publisher, without written concurrence therein by such publisher. [1955 c 235 § 6; 1953 c 257 § 14; 1951 c 157 § 14.]

1.08.038 Publication, sale, and distribution of code and supplements—Reprints. The statute law committee shall publish, sell and distribute, and arrange for the publication, sale and distribution of the Revised Code of Washington and of supplements thereto and of such other materials as in their discretion may be incorporated in or appended to the code. They may republish, reprint or authorize the republishing or reprinting of the code or any portion thereof. [1955 c 235 § 7; 1953 c 257 § 11.]

1.08.039 Publication, sale, and distribution of code and supplements—Contracts or other arrangements. The committee may enter into contracts or otherwise arrange for the publication and/or distribution, provided for in RCW 1.08.038, with or without calling for bids, by the public printer or by private printer, upon specifications formulated under the authority of RCW 1.08.037, and upon such basis as the committee deems to be most expeditious and economical. Any such contract may be upon such terms as the committee deems to be most advantageous to the state and to potential purchasers of such publications. The committee

shall fix terms and prices for such publications. [1955 c 235 § 8; 1953 c 257 § 12.]

1.08.0392 Publication, sale, and distribution of code and supplements—Statute law committee publications account created—Purpose—Disbursements. For the purposes of financing the production and sale of such of its publications as in the judgment of the statute law committee may be advantageously financed by the use of revolving fund moneys, there is hereby created, and the committee is authorized to maintain, a revolving fund to be known as statute law committee publications account. None of the provisions of RCW 43.01.050 shall be applicable to said fund nor to any moneys received or collected by the committee for publications financed by said fund.

All moneys shall be paid from said account by check or voucher in such form and in such manner as shall be prescribed by the committee. [1961 c 246 § 2.]

1.08.040 Certification—Official code—Prima facie evidence. The Revised Code of Washington containing the certificate of the temporary code committee and any supplement or addition thereto or reprint edition thereof, which contains the certificate of the statute law committee referred to in RCW 1.08.037, shall be deemed official, and shall be prima facie evidence of the laws contained therein. [1955 c 5 § 2; 1953 c 257 § 15; 1951 c 157 § 16; 1941 c 149 § 3; Rem. Supp. 1941 § 152-38.]

1.08.050 Amendment, repeal to include code numbers—Assignment of code numbers. The legislature in amending or repealing laws shall include in such act references to the code numbers of the law affected. The reviser shall assign code numbers to such permanent and general laws as are hereafter enacted at any legislative session. [1959 c 95 § 5; 1955 c 5 § 3; 1951 c 157 § 17. Prior: (i) 1941 c 149 § 4; Rem. Supp. 1941 § 152-39. (ii) 1947 c 282 § 1; Rem. Supp. 1947 § 152-40.]

1.08.060 Loans and exchanges of codes and supplements. The committee may loan sets of the code and materials supplemental thereto

(1) for the use of senate committees, a quantity as required by advice from the secretary of the senate, not to exceed twenty-five sets;

(2) for use of the house committees, a quantity as required by advice from the chief clerk of the house, not to exceed thirty-five sets;

(3) to the state law library for library use;

(4) for use of the reviser's office, as required;

(5) for use of recognized news reporting services maintaining permanent offices at the capitol, three sets.

The committee may exchange copies of RCW for codes or compilations of other states. [1982 1st ex.s. c 32 § 6; 1953 c 257 § 10.]

1.08.070 Legislators to receive codes and supplements. Each member of the legislature, who has not received a set of the Revised Code of Washington under the provisions of section 9, chapter 155, Laws of 1951, or section 16, chapter 257, Laws of 1953, or this section, shall

be entitled to receive one set of the code without charge. All persons receiving codes under the provisions of this section or the sections above referred to shall be entitled to receive supplements to the code free of charge, during their term of office as a member or officer of the legislature: PROVIDED, That legislative appropriation has been made for the purpose of supplying such codes and supplements. [1955 c 235 § 9.]

1.08.110 Publication of Washington state register—Rule-making authority. The statute law committee, in addition to the other responsibilities enumerated in this chapter, shall cause to be published the Washington State Register as created in RCW 34.08.020. The statute law committee and/or the code reviser may adopt such rules as are necessary for the effective operation of such service. [1977 ex.s. c 240 § 2.]

Effective date—Severability—1977 ex.s. c 240: See RCW 34.08.905 and 34.08.910.

1.08.120 Substitution of words designating department or secretary of transportation. For purposes of harmonizing and clarifying the provisions of the statute sections published in the revised code of Washington, the code reviser may substitute words designating the department of transportation or the secretary of transportation, as appropriate, whenever necessary to effect the changes in meaning provided for in RCW 47.68.015 and 47.04.015 or any other act of the 1977 legislature. [1977 ex.s. c 151 § 24.]

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Chapter 1.12

RULES OF CONSTRUCTION

Sections

1.12.010	Code to be liberally construed.
1.12.020	Statutes continued, when.
1.12.025	Construction of multiple amendments to statutes— Publication—Decodification of repealed sections.
1.12.026	Construction of statutes—Retrospective application.
1.12.028	Construction of statutes—Internal references as including amendments thereto.
1.12.040	Computation of time.
1.12.050	Number and gender.
1.12.060	Certified mail—Use.
1.12.070	Reports, claims, tax returns, remittances, etc.—Filing.

1.12.010 Code to be liberally construed. The provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction. [1891 c 23 § 1, part; Code 1881 §§ 758, 1686; 1877 p 153 § 763; 1854 p 221 § 504; RRS § 144.]

Reviser's note: (1) This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:"

(2) This section was originally section 504 of the 1854 statute entitled "An act to regulate the practice and proceedings in civil actions." Section 504 of the 1854 statute reads as follows: "The provisions of this act shall be liberally construed and shall not be limited by any rule of strict construction." Identical language appears in Code of 1881 § 1686 relating

to probate, and again in Code of 1881 § 758, being part of "An act to regulate the practice and proceedings in civil actions" except that in the latter instance the 1881 codifier changed the words "this act" to read "this code".

1.12.020 Statutes continued, when. The provisions of a statute, so far as they are substantially the same as those of a statute existing at the time of their enactment, must be construed as continuations thereof. [1891 c 23 § 1, part; Code 1881 §§ 761, 1292, 1681; RRS § 145.]

Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:"

Laws in force continued: State Constitution Art. 27 § 2.

1.12.025 Construction of multiple amendments to statutes—Publication—Decodification of repealed sections. (1) If at any session of the legislature there are enacted two or more acts amending the same section of the session laws or of the official code, each amendment without reference to the others, each act shall be given effect to the extent that the amendments do not conflict in purpose, otherwise the act last filed in the office of the secretary of state in point of time, shall control: PROVIDED, That if one or more special sessions of the same legislature shall follow any regular session, this rule of construction shall apply to the laws enacted at either, both, any, or all of such sessions.

(2) If a section of the session laws or of the official code is amended without reference to another amendment of the same section, the code reviser, in consultation with the statute law committee, may publish the section in the official code with all amendments incorporated therein. The publication of the section under this subsection shall occur only if the statute law committee determines that the amendments do not conflict in purpose or effect. Sections so published constitute prima facie evidence of the law but shall not be construed as changing the meaning of any such law.

The code reviser, in consultation with the statute law committee, may decodify a section of the official code which was repealed without reference to an amendment to the section. The decodification of the section shall occur only if the statute law committee determines that the decodification does not conflict with the purpose of the amendment. Any decision of the code reviser, in consultation with the statute law committee, to incorporate amendments in the same section or to decodify a section which was both repealed and amended in the same session shall be clearly noted in the revised code of Washington.

If any conflict arises in the interpretation of a section published or decodified under this subsection, the session law sections shall control. [1983 c 244 § 1; 1980 c 87 § 2; 1974 ex.s. c 87 § 1; 1969 ex.s. c 240 § 1; 1955 c 162 § 1.]

1.12.026 Construction of statutes—Retrospective application. The provisions of RCW 1.12.025 as now or hereafter amended shall apply retrospectively as well as prospectively. [1969 ex.s. c 240 § 2.]

1.12.028 Construction of statutes—Internal references as including amendments thereto. If a statute refers to another statute of this state, the reference includes any amendments to the referenced statute unless a contrary intent is clearly expressed. [1982 c 16 § 1.]

1.12.040 Computation of time. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a holiday or Sunday, and then it is also excluded. [1887 c 20 § 1; Code 1881 § 743; 1854 p 219 § 486; RRS § 150.]

Reviser's note: This section has been enacted at various times as part of "An act to regulate the practice and proceedings in civil actions." However, *Allen v. Morris*, 87 Wash. 268, 274, 151 Pac. 827 (1915); *State ex rel. Evans v. Superior Court*, 168 Wash. 176, 179, 11 P. (2d) 229 (1932); *State v. Levesque*, 5 Wn. (2d) 631, 635, 106 P. (2d) 309 (1940); and *State ex rel. Early v. Batchelor*, 15 Wn. (2d) 149, 130 P. (2d) 72 (1942), treat this section as being of general application.

Rules of court: CR 6(a), RAP 18.6. Cf. RAP 18.22.

1.12.050 Number and gender. Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the masculine gender may be extended to females also. [1891 c 23 § 1, part; Code 1881 §§ 756, 965, 1920; 1877 p 153 § 761; 1857 p 45 § 1; 1854 p 99 § 135 and p 221 § 502; RRS § 148.]

Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:".

Probate, number and gender: RCW 11.02.005(15), (16).

Wrongful death, number and gender: RCW 4.20.005.

1.12.060 Certified mail—Use. Whenever the use of "registered" mail is authorized by this code, "certified" mail, with return receipt requested, may be used. [1961 c 204 § 1.]

1.12.070 Reports, claims, tax returns, remittances, etc.—Filing. Except as otherwise specifically provided by law hereafter:

(1) Any report, claim, tax return, statement or other document required to be filed with, or any payment made to the state or to any political subdivision thereof, which is (a) transmitted through the United States mail, shall be deemed filed and received by the state or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it; or (b) mailed but not received by the state or political subdivision, or where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing; and in cases of such nonreceipt of a report, tax return, statement, remittance, or other document required by law to be filed, the sender files with the state or political subdivision a duplicate within ten days after written notification is given to the sender by the state or political subdivision of its

nonreceipt of such report, tax return, statement, remittance, or other document.

(2) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States post office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was delivered to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if performed on the next business day. [1967 c 222 § 1.]

Chapter 1.16

GENERAL DEFINITIONS

Sections

1.16.020	"Fiscal biennium."
1.16.030	"Fiscal year"—School districts and other taxing districts.
1.16.040	"Folio."
1.16.050	"Legal holidays."
1.16.060	"Month" or "months."
1.16.065	"Officer."
1.16.080	"Person" defined.

1.16.020 "Fiscal biennium." The fiscal biennium of the state shall commence on the first day of July in each odd-numbered year and end on the thirtieth day of June of the next succeeding odd-numbered year. The fiscal biennium of those cities and towns which utilize a biennial budget shall commence on the first day of January in each odd-numbered year and end on the thirty-first day of December of the next succeeding even-numbered year. [1985 c 175 § 2; 1953 c 184 § 2; 1923 c 86 § 1; RRS § 10927.]

Biennial reports: RCW 43.01.035.

Municipal biennial budgets: Chapters 35.34 and 35A.34 RCW.

1.16.030 "Fiscal year"—School districts and other taxing districts. August 31st shall end the fiscal year of school districts and December 31st of all other taxing districts. [1975-'76 2nd ex.s. c 118 § 21; 1909 c 76 § 13; RRS § 9963.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

1.16.040 "Folio." The term "folio" when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole draft or paper there should not be a complete folio, and when there shall be an excess over the last folio exceeding a quarter, it shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same. [Code 1881 § 2093; 1869 p 373 § 15; RRS § 500.]

1.16.050 "Legal holidays." The following are legal holidays: Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

Employees of the state and its political subdivisions, except employees of school districts and except those nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, shall be entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for herein after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall be recognized as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

Whenever any legal holiday, other than Sunday, falls upon a Sunday, the following Monday shall be the legal holiday.

Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal holiday.

Nothing in this section shall be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordinance or resolution of the local government legislative authority.

The legislature declares that the twelfth day of October shall be recognized as Columbus Day but shall not be considered a legal holiday for any purposes.

The legislature declares that the ninth day of April shall be recognized as former prisoner of war recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twenty-sixth day of January shall be recognized as Washington army and air national guard day but shall not be considered a legal holiday for any purposes.

The legislature declares that the seventh day of August shall be recognized as purple heart recipient recognition day but shall not be considered a legal holiday for any purposes.

[1991 sp.s. c 20 § 1; 1991 c 57 § 2; 1989 c 128 § 1; 1985 c 189 § 1; 1979 c 77 § 1; 1977 ex.s. c 111 § 1; 1975-'76 2nd ex.s. c 24 § 1; 1975 1st ex.s. c 194 § 1; 1973 2nd ex.s. c 1 § 1; 1969 c 11 § 1; 1955 c 20 § 1; 1927 c 51 § 1; RRS § 61. Prior: 1895 c 3 § 1; 1891 c 41 § 1; 1888 p 107 § 1.]

Reviser's note: This section was amended by 1991 c 57 § 2 and by 1991 sp.s. c 20 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Declaration—1991 c 57: "The legislature finds that the Washington army and air national guard comprise almost nine thousand dedicated men and women who serve the state and nation on a voluntary basis. The legislature also finds that the state of Washington benefits from that dedication by immediate access to well-prepared resources in time of natural disasters and public emergency. The national guard has consistently and frequently responded to state and local emergencies with people and equipment to provide enforcement assistance, medical services, and overall support to emergency management services.

The legislature further declares that an annual day of commemoration should be observed in honor of the achievements, sacrifices, and dedication of the men and women of the Washington army and air national guard." [1991 c 57 § 1.]

Court business on legal holidays: RCW 2.28.100, 2.28.110.

School holidays: RCW 28A.150.050.

1.16.060 "Month" or "months." The word "month" or "months," whenever the same occurs in the statutes of this state now in force, or in statutes hereinafter enacted, or in any contract made in this state, shall be taken and construed to mean "calendar months." [1891 c 23 § 1, part; Code 1881 § 759; 1877 p 333 § 1; RRS § 149.]

Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:".

1.16.065 "Officer." Whenever any term indicating an officer is used it shall be construed, when required, to mean any person authorized by law to discharge the duties of such officer. [Code 1881 § 755; 1854 p 221 § 501; RRS § 147.]

Reviser's note: This section was formerly a part of RCW 42.04.010. It first appeared in "An Act to regulate the practice and proceedings in civil actions" (1854 p 221 § 501), as part of chapter LIV, "Construction". It also appeared as Code of 1881 § 755 in chapter LXVII, "Of Construction", as part of the code of civil procedure.

Criminal code, officer defined: RCW 9A.04.110.

1.16.080 "Person" defined. The term "person" may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual. [1891 c 23 § 1, part; Code 1881 § 964; 1857 p 46 § 1; 1854 p 99 § 134; RRS § 146.]

Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:".

Criminal proceedings, person defined: RCW 9A.04.110.

Declaratory judgments, person defined: RCW 7.24.130.

Eminent domain by cities, person defined: RCW 8.12.020.

Notice to alien property custodian, person defined: RCW 4.28.340.

Wrongful death, person defined: RCW 4.20.005.

Chapter 1.20
GENERAL PROVISIONS

Sections

1.20.010	State flag.
1.20.015	Display of national and state flags.
1.20.020	State tree.
1.20.025	State grass.
1.20.030	State flower.
1.20.035	State fruit.
1.20.040	State bird.
1.20.045	State fish.
1.20.050	Standard time—Daylight saving time.
1.20.051	Daylight saving time.
1.20.060	Arbor day.
1.20.070	State song.
1.20.071	State song—Proceeds from sale.
1.20.073	State folk song.
1.20.075	State dance.
1.20.080	State seal.
1.20.090	State gem.
1.20.100	Diverse cultures and languages encouraged—State policy.
1.20.110	State tartan.

Design of state seal: State Constitution Art. 18 § 1.

State boundaries: State Constitution Art. 24 § 1 (Amendment 33).

1.20.010 State flag. The official flag of the state of Washington shall be of dark green silk or bunting and shall bear in its center a reproduction of the seal of the state of Washington embroidered, printed, painted or stamped thereon. The edges of the flag may, or may not, be fringed. If a fringe is used the same shall be of gold or yellow color of the same shade as the seal. The dimensions of the flag may vary.

The secretary of state is authorized to provide the state flag to units of the armed forces, without charge therefor, as in his discretion he deems entitled thereto. The secretary of state is further authorized to sell the state flag to any citizen at a price to be determined by the secretary of state. [1967 ex.s. c 65 § 2; 1925 ex.s. c 85 § 1; 1923 c 174 § 1; RRS § 10964-1, RRS vol. 11, p. 399.]

Reviser's note: Same RRS number was also used for a section dealing with a different subject on page 110 of RRS vol. 11, pocket part.

1.20.015 Display of national and state flags. The flag of the United States and the flag of the state shall be prominently installed, displayed and maintained in schools, court rooms and state buildings. [1955 c 88 § 1.]

Crimes relating to flags: Chapter 9.86 RCW.

Flag exercises in schools: RCW 28A.230.140.

1.20.020 State tree. That certain evergreen tree known and described as the western hemlock (*tsuga heterophylla*) is hereby designated as the official tree of the state of Washington. [1947 c 191 § 1; Rem. Supp. 1947 § 10964-120.]

1.20.025 State grass. *Agropyron spicatum*, the species of natural grass commonly called "bluebunch wheatgrass," is hereby designated as the official grass of the state of Washington. [1989 c 354 § 62.]

Severability—1989 c 354: See note following RCW 15.32.010.

1.20.030 State flower. The native species, *Rhododendron macrophyllum*, is hereby designated as the official flower of the state of Washington. [1959 c 29 § 1; 1949 c 18 § 1; Rem. Supp. 1949 § 10964-200.]

1.20.035 State fruit. The official fruit of the state of Washington is the apple. [1989 c 354 § 63.]

Severability—1989 c 354: See note following RCW 15.32.010.

1.20.040 State bird. The willow goldfinch is hereby designated as the official bird of the state of Washington. [1951 c 249 § 1.]

1.20.045 State fish. The species of trout commonly called "steelhead trout" (*salmo gairdnerii*) is hereby designated as the official fish of the state of Washington. [1969 c 36 § 1.]

1.20.050 Standard time—Daylight saving time. No county, city or other political subdivision of this state shall adopt any provision for the observance of daylight saving time, or any time other than standard, except pursuant to a gubernatorial proclamation declaring an emergency during a period of national war and authorizing such adoption, or unless other than standard time is established on a national basis: PROVIDED, That this section shall not apply to orders made by federal authorities in a local area entirely under federal control. [1953 c 2 § 1 (Initiative Measure No. 181, approved November 4, 1952).]

1.20.051 Daylight saving time. At two o'clock antemeridian Pacific Standard Time of the *last Sunday in April each year the time of the state of Washington shall be advanced one hour, and at two o'clock antemeridian Pacific Standard Time of the last Sunday in October in each year the time of the state of Washington shall, by the retarding of one hour, be returned to Pacific Standard Time. [1963 c 14 § 1; 1961 c 3 § 1 (Initiative Measure No. 210, approved November 8, 1960).]

***Reviser's note:** Federal law sets the day to advance time at the first Sunday in April (100 Stat. 764; 15 U.S.C. Sec. 260a).

1.20.060 Arbor day. The second Wednesday in April of each year is designated as Arbor day. [1957 c 220 § 1.]

1.20.070 State song. The song, music and lyrics, "Washington My Home", composed by Helen Davis, is hereby designated as the official song of the state of Washington. [1959 c 281 § 1.]

1.20.071 State song—Proceeds from sale. All proceeds from the sale of the official song of the state as designated in RCW 1.20.070 shall be placed in the general fund. [1973 1st ex.s. c 59 § 1; 1959 c 281 § 2.]

Effective date—1973 1st ex.s. c 59: See note following RCW 43.79.420.

1.20.073 State folk song. The legislature recognizes that winter recreational activities are part of the folk tradition

of the state of Washington. Winter recreational activities serve to turn the darkness of a northwest winter into the dawn of renewed vitality. As the winter snows dissolve into the torrents of spring, the Columbia river is nourished. The Columbia river is the pride of the northwest and the unifying geographic element of the state. In order to celebrate the river which ties the winter recreation playground of snow-capped mountains and the Yakima, Snake, and the Klickitat rivers to the ocean so blue, the legislature declares that the official state folk song is "Roll On Columbia, Roll On," composed by Woody Guthrie. [1987 c 526 § 4.]

1.20.075 State dance. The square dance is designated as the official dance of the state of Washington. [1979 ex.s. c 10 § 1.]

1.20.080 State seal. The seal of the state of Washington shall be, a seal encircled with the words: "The Seal of the State of Washington," with the vignette of General George Washington as the central figure, and beneath the vignette the figures "1889" and shall be composed as appears in the illustration below:



[1967 ex.s. c 65 § 1.]

1.20.090 State gem. Petrified wood is hereby designated as the official gem of the state of Washington. [1975 c 8 § 1.]

1.20.100 Diverse cultures and languages encouraged—State policy. The legislature finds that:

(1) Diverse ethnic and linguistic communities have contributed to the social and economic prosperity of Washington state;

(2) It is the welcomed responsibility and opportunity of this state to respect and facilitate the efforts of all cultural, ethnic, and linguistic segments of the population to become full participants in Washington communities;

(3) This state's economic well-being depends heavily on foreign trade and international exchange and more than one out of six jobs is directly linked to foreign trade and international exchange;

(4) If Washington is to prosper in foreign trade and international exchange, it must have citizens that are multilingual and multicultural;

(5) While recognizing the value of a multilingual background, the state also encourages all citizens to become proficient in English to facilitate full participation of all groups into society and to promote cross-communication between multilingual groups; and

(6) The multilingual nature of communication that currently exists in this state should be promoted to build trust and understanding among all of its citizens.

Therefore, it shall be the policy of the state of Washington to welcome and encourage the presence of diverse cultures and the use of diverse languages in business, government, and private affairs in this state. [1989 c 236 § 1.]

Construction—1989 c 236: "Nothing in section 1 of this act creates any right or cause of action or adds to any existing right or cause of action nor may it be relied upon to compel the establishment of any program or special entitlement." [1989 c 236 § 2.]

1.20.110 State tartan. The Washington state tartan is hereby designated. The tartan shall have a pattern of colors, called a sett, that is made up of a green background with stripes of blue, white, yellow, red, and black. The secretary of state shall register the tartan with the Scottish Tartan Society, Comrie, Perthshire, Scotland. [1991 c 62 § 1.]

Chapter 1.30

LAW REVISION COMMISSION

Sections

1.30.010	Legislative declaration.
1.30.020	Commission created—Membership.
1.30.030	Members' terms—Expiration—Vacancies.
1.30.040	Duties of commission.
1.30.050	Chairman—Adoption of rules.
1.30.060	Coordination of commission activities.

Personnel of commission exempt from state civil service law: RCW 41.06.083.

1.30.010 Legislative declaration. The legislature finds and declares that to secure the better administration of justice it is in the public interest to establish a law revision commission and thereby to: (1) Provide facilities and procedures to undertake the scholarly investigation of the law; (2) recommend to the legislature elimination of antiquated and inequitable rules of law and removal of other defects or anachronisms in the law; and (3) encourage the clarification and simplification of the law in Washington and to promote its better adaption to modern conditions. [1982 c 183 § 1.]

1.30.020 Commission created—Membership. There is created the Washington law revision commission consisting of thirteen members as follows:

(1) Two senators, ex officio, to be designated by the president of the senate, and not members of the same political party;

(2) Two representatives, ex officio, to be designated by the speaker of the house of representatives, and not members of the same political party;

(3) Three deans of accredited law schools of this state, ex officio, or their designees from members of their respective law faculties;

(4) Four lawyers admitted to practice in this state, designated by the board of governors of the Washington state bar association;

(5) Two nonlawyer members with a demonstrated interest in the work of the commission, appointed by the governor. [1982 c 183 § 2.]

1.30.030 Members' terms—Expiration—Vacancies.

The terms of the members designated by the state bar association and the governor shall be for four years. Of the initial members designated by the state bar association, the terms of two members shall expire June 30, 1984, and the terms of two members shall expire June 30, 1986. Of the initial members designated by the governor, the term of one member shall expire June 30, 1984, and the term of one member shall expire June 30, 1986. The terms of the legislative members of the commission shall be two years, from July 1 following the adjournment of the regular session of the legislature in each odd-numbered year starting in 1983 and to and including the thirtieth day of June in the succeeding odd-numbered year. The term of any member designated by a law school dean shall be at the pleasure of the dean.

The term of any ex officio member shall expire upon expiration of tenure of the position by virtue of which he or she is a member of the commission. Vacancies shall be filled in the same manner as for the member so vacating, and if a vacancy results other than from expiration of a term, the vacancy shall be filled for the unexpired term. [1982 c 183 § 3.]

1.30.040 Duties of commission. It shall be the duty of the law revision commission:

(1) To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law, surveying alternative remedies, and recommending needed reforms.

(2) To receive and consider proposed changes in the law recommended by the American law institute, the commissioners for the promotion of uniformity of legislation in the United States, any bar association, or other learned bodies.

(3) To receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(4) To recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions.

(5) To recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the supreme court of the state or the supreme court of the United States.

(6) To promote utilization of sound principles of legal drafting to achieve clarity and precision in legal documents and in the statutory law and administrative rules and regulations. [1987 c 505 § 2; 1982 c 183 § 4.]

1.30.050 Chairman—Adoption of rules. The commission shall from time to time elect a chairman from among its members and adopt rules to govern its procedures. [1982 c 183 § 5.]

1.30.060 Coordination of commission activities. The commission shall confer and coordinate its activities with any committees of the legislature, the state bar association, the uniform law commission, the statute law committee, or the judicial council so as to most efficiently accomplish its functions. [1982 c 183 § 9.]

Judicial council: Chapter 2.52 RCW.

State bar association: Chapter 2.48 RCW.

Statute law committee: Chapter 1.08 RCW.

Uniform legislation commission: Chapter 43.56 RCW.

Chapter 1.40

STATE MEDAL OF MERIT

Sections

1.40.010	State medal of merit established.
1.40.020	Nominating committee created—Composition—Meeting—Rules.
1.40.030	Delegation of authority to make award.
1.40.040	Posthumous award.
1.40.050	Certain persons prohibited from receiving award.
1.40.060	Appearance of medal—Inscription.

1.40.010 State medal of merit established. There is established a decoration of the state medal of merit with accompanying ribbons and appurtenances for award by the governor, in the name of the state, to any person who has been distinguished by exceptionally meritorious conduct in performing outstanding services to the people and state of Washington, upon the nomination of the governor's state medal of merit committee. [1986 c 92 § 1.]

1.40.020 Nominating committee created—Composition—Meeting—Rules. There is created the state medal of merit committee for nominating candidates for the award of the state medal of merit. The committee membership consists of the governor, president of the senate, speaker of the house of representatives, and the chief justice of the supreme court, or their designees. The secretary of state shall serve as a nonvoting ex officio member, and shall serve as secretary to the committee. The committee shall meet annually to consider candidates for nomination. The committee shall adopt rules establishing the qualifications for the state medal of merit, the protocol governing the decoration, and the appurtenances necessary to the implementation of this chapter. [1986 c 92 § 2.]

1.40.030 Delegation of authority to make award. The governor may delegate the awarding of the state medal of merit to the president of the senate, speaker of the house of representatives, or the chief justice of the supreme court. [1986 c 92 § 3.]

1.40.040 Posthumous award. The state medal of merit may be awarded posthumously to be presented to such representative of the deceased as may be deemed appropriate

by the governor or the designees specified in RCW 1.40.030.
[1986 c 92 § 4.]

1.40.050 Certain persons prohibited from receiving award. The state medal of merit shall not be awarded to any elected official while in office or to any candidate for an elected office. [1986 c 92 § 5.]

1.40.060 Appearance of medal—Inscription. The decoration of the state medal of merit shall be of bronze and shall consist of the seal of the state of Washington, surrounded by a raised laurel wreath and suspended from a ring attached by a dark green ribbon. The reverse of the decoration within the raised laurel wreath shall be inscribed with the words: "For exceptionally meritorious conduct in performing outstanding services to the people and state of Washington." [1986 c 92 § 6.]

Title 2

COURTS OF RECORD

Chapters

- 2.04 Supreme court.
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- 2.68 Judicial information system.

Family court: Chapter 26.12 RCW.

Judiciary and judicial power: State Constitution Art. 4.

Professional service corporations, application to attorneys: Chapter 18.100 RCW.

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Chapter 2.04 SUPREME COURT

Sections

- 2.04.010 Jurisdiction.
- 2.04.020 Court of record—General powers.
- 2.04.030 Supreme court and court of appeals—When open.
- 2.04.031 Court facilities.
- 2.04.040 Effect of adjournments.
- 2.04.050 Style of process.
- 2.04.070 Number of judges.
- 2.04.071 Election—Term of office.
- 2.04.080 Oath of office.
- 2.04.092 Salary of justices.
- 2.04.100 Vacancy, how filled.
- 2.04.110 Justices, judges to wear gowns.
- 2.04.150 Apportionment of business—En banc hearings.
- 2.04.180 Rules of practice and forms of process in supreme court.
- 2.04.190 Rules of pleading, practice, and procedure generally.
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- 2.04.240 Judge pro tempore—Declaration of policy—Oath of office.
- 2.04.250 Judge pro tempore—Remuneration.

Commissioner of the supreme court: Rules of court: SAR 15.

Judiciary and judicial power: State Constitution Art. 4.

Publication of opinions: Chapter 2.32 RCW.

2.04.010. Jurisdiction. The supreme court shall have original jurisdiction in habeas corpus and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or before the supreme court, or before any superior court of the state, or any judge thereof. [1890 p 322 § 6; RRS § 1.]

Rules of court: Cf. RAP 4.2, 4.3, 18.22; Titles 2 and 16 RAP.

Jurisdiction of supreme court: State Constitution Art. 4 § 4.

2.04.020 Court of record—General powers. The supreme court shall be a court of record, and shall be vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law, and the Constitution and laws of this state. [1890 p 323 § 10; RRS § 2.]

Courts of record: State Constitution Art. 4 § 11.

Judicial power, where vested: State Constitution Art. 4 § 1.

2.04.030 Supreme court and court of appeals—When open. The supreme court and the court of appeals shall always be open for the transaction of business except on Saturdays, Sundays, and legal holidays designated by the legislature. [1971 ex.s. c 107 § 1; 1909 p 36 § 7; RRS § 4. Prior: 1890 p 322 § 4, part.]

Rules of court: SAR-Rule 4.

"Legal holidays": RCW 1.16.050.

2.04.031 Court facilities. If proper rooms in which to hold the court, and for the accommodation of the officers thereof, are not provided by the state, together with attendants, furniture, fuel, lights, record books and stationery, suitable and sufficient for the transaction of business, the court, or any three justices thereof, may direct the clerk of the supreme court to provide the same; and the expense thereof, certified by any three justices to be correct, shall be paid out of the state treasury out of any funds therein not otherwise appropriated. Such moneys shall be subject to the order of the clerk of the supreme court, and be by him disbursed on proper vouchers, and accounted for by him in annual settlements with the governor. [1973 c 106 § 1; 1955 c 38 § 1; 1890 p 322 § 4; RRS § 3.]

2.04.040 Effect of adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. [1890 p 323 § 7; RRS § 5.]

Rules of court: SAR-Rule 5.

2.04.050 Style of process. Its process shall run in the name of the "State of Washington," bear test in the name of the chief justice, be signed by the clerk of the court, dated when issued, sealed with the seal of the court, and made returnable according to law, or such rule or orders as may be prescribed by the court. [1890 p 323 § 11; RRS § 6.]

Rules of court: SAR-Rule 2.

2.04.070 Number of judges. The supreme court, from and after February 26, 1909, shall consist of nine judges. [1909 c 24 § 1; RRS § 11036. FORMER PARTS OF SECTION: 1911 c 119 § 1; 1909 c 24 § 2; RRS § 11039; now codified in RCW 2.04.071. Prior: (i) 1905 c 5 § 1; 1890 p 321 § 1; RRS § 11035. (ii) 1893 c 5 § 1; RRS 11037. (iii) 1905 c 5 § 3; RRS § 11038.]

2.04.071 Election—Term of office. At the next general election, and at each biennial general election thereafter, there shall be elected three justices of the supreme court, to hold for the full term of six years, and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election. [1971 c 81 § 1; 1911 c 119 § 1; 1909 c 24 § 2; RRS § 11039. Formerly RCW 2.04.070, part.]

Election and terms, supreme court judges: State Constitution Art. 4 § 3.

Eligibility of judges: State Constitution Art. 4 § 17.

Forfeiture of office for absence: State Constitution Art. 4 § 8.

Impeachment: State Constitution Art. 5.

Judge may not practice law: State Constitution Art. 4 § 19.

Judges ineligible to other office: State Constitution Art. 4 § 15.

2.04.080 Oath of office. The several justices of the supreme court, before entering upon the duties of their office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully and impartially discharge the duties of

the office of judge of the supreme court of the State of Washington to the best of my ability." Which oath or affirmation may be administered by any person authorized to administer oaths, a certificate whereof shall be affixed thereto by the person administering the oath. And the oath or affirmation so certified shall be filed in the office of the secretary of state. [1971 c 81 § 2; 1890 p 324 § 14; RRS § 11043.]

Oath of judges: State Constitution Art. 4 § 28.

2.04.092 Salary of justices. The annual salary of justices of the supreme court shall be established by the Washington citizens' commission on salaries for elected officials. No salary warrant may be issued to a justice of the supreme court until the justice files with the state treasurer an affidavit that no matter referred to the justice for opinion or decision has been uncompleted or undecided for more than six months. [1986 c 155 § 4; 1984 c 258 § 401.]

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Salaries of judicial officers: State Constitution Art. 4 §§ 13, 14; Art. 28 § 1; Art. 30 § 1.

Washington citizens' commission on salaries for elected officials: RCW 43.03.305.

2.04.100 Vacancy, how filled. If a vacancy occurs in the office of a justice of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a justice to fill the vacancy, which election shall take place at the next succeeding general election, and the justice so elected shall hold the office for the remainder of the unexpired term. [1971 c 81 § 3; 1955 c 38 § 2. Prior: 1937 c 15 § 1; 1893 c 5 § 2; 1890 p 321 § 3; RRS § 11044.]

2.04.110 Justices, judges to wear gowns. Each of the justices of the supreme court, judges of the court of appeals, and the judges of the superior courts shall in open court during the presentation of causes, before them, appear in and wear gowns, made of black silk, of the usual style of judicial gowns. [1971 c 81 § 4; 1909 c 206 § 1; RRS § 11054. Formerly RCW 2.04.110, 2.08.130.]

2.04.150 Apportionment of business—En banc hearings. The chief justice shall from time to time apportion the business to the departments, and may, in his discretion, before a decision is pronounced, order any cause pending before the court to be heard and determined by the court en banc. When a cause has been allotted to one of the departments and a decision pronounced therein, the chief justice, together with any two associate judges, may order such cause to be heard and decided by the court en banc. Any four judges may, either before or after decision by a department, order a cause to be heard en banc. [1909 c 24 § 4, part; RRS § 9.]

Rules of court: SAR 4.

2.04.180 Rules of practice and forms of process in supreme court. The supreme court may from time to time institute such rules of practice and prescribe such forms of process to be used in such court and in the court en banc and each of its departments, and for the keeping of the dockets, records and proceedings, and for the regulation of such court, including the court en banc and in departments, as may be deemed most conducive to the due administration of justice. [1909 c 24 § 8; 1890 p 323 § 12; RRS § 13.]

Rules of court: Cf. Title 1 RAP and RAP 18.10.

2.04.190 Rules of pleading, practice, and procedure generally. The supreme court shall have the power to prescribe, from time to time, the forms of writs and all other process, the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and obtaining evidence; of drawing up, entering and enrolling orders and judgments; and generally to regulate and prescribe by rule the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the supreme court, superior courts, and district courts of the state. In prescribing such rules the supreme court shall have regard to the simplification of the system of pleading, practice and procedure in said courts to promote the speedy determination of litigation on the merits. [1987 c 202 § 101; 1925 ex.s. c 118 § 1; RRS § 13-1.]

Rules of court: Cf. Title 1 RAP.

Intent—1987 c 202: "The legislature intends to:

- (1) Make the statutes of the state consistent with rules adopted by the supreme court governing district courts; and
- (2) Delete or modify archaic, outdated, and superseded language and nomenclature in statutes related to the district courts." [1987 c 202 § 1.]

Court of Appeals—Rules of administration and procedure: RCW 2.06.030.

2.04.200 Effect of rules upon statutes. When and as the rules of courts herein authorized shall be promulgated all laws in conflict therewith shall be and become of no further force or effect. [1925 ex.s. c 118 § 2; RRS § 13-2.]

Rules of court: Cf. CR 81(b), RAP 1.1(g).

2.04.210 Supplementary superior court rules. RCW 2.04.190 through 2.04.210 shall not be construed to deprive the superior courts of power to establish rules for their government supplementary to and not in conflict with the rules prescribed by the supreme court. [1925 ex.s. c 118 § 3; RRS § 13-3.]

Rules of court: Cf. CR 83(a); Cf. RAP 1.1.

Rules for government of superior courts: RCW 2.08.230, 2.16.040.

2.04.215 Adoption of rules for settlement conferences in civil cases. By January 1, 1982, the supreme court shall adopt rules for settlement conferences in civil cases in such superior courts and the court of appeals which are amenable to the settlement conference process. [1981 c 331 § 5.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Adoption of rules for discovery in civil cases in courts of limited jurisdiction: RCW 3.02.050.

2.04.220 Effect of supreme court judgments. The judgments and decrees of the supreme court shall be final and conclusive upon all the parties properly before the court. [1890 p 323 § 8; RRS § 14.]

Rules of court: SAR-Rule 3.

2.04.230 Report to governor. The judges of the supreme court shall, on or before the first day of January in each year, report in writing to the governor such defects and omissions in the laws as they may believe to exist. [1890 p 324 § 16; RRS § 11042.]

Annual report to governor: State Constitution Art. 4 § 25.

Court of Appeals—Reporting defects or omissions in the laws: RCW 2.06.110.

2.04.240 Judge pro tempore—Declaration of policy—Oath of office. (1) DECLARATION OF POLICY. Whenever necessary for the prompt and orderly administration of justice, as authorized and empowered by Article IV, section 2(a), Amendment 38, of the state Constitution, a majority of the supreme court may appoint any regularly elected and qualified judge of the court of appeals or the superior court or any retired judge of a court of record in this state to serve as judge pro tempore of the supreme court.

(2) Before entering upon his duties as judge pro tempore of the supreme court, the appointee shall take and subscribe an oath of office as provided for in Article IV, section 28 of the state Constitution. [1982 c 72 § 1; 1963 c 40 § 1.]

Rules of court: SAR 21.

2.04.250 Judge pro tempore—Remuneration. (1) A judge of the court of appeals or of the superior court serving as a judge pro tempore of the supreme court as provided in RCW 2.04.240, as now or hereafter amended, shall receive, in addition to his regular salary, reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended.

(2) A retired judge of a court of record in this state serving as a judge pro tempore of the supreme court as provided in RCW 2.04.240 shall receive, in addition to any retirement pay he may be receiving, the following compensation and expenses:

(a) Reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended.

(b) During the period of his service as a judge pro tempore, an amount equal to the salary of a regularly elected judge of the court in which he last served for such period diminished by the amount of retirement pay accrued to him for such period.

(3) Whenever a superior court judge is appointed to serve as judge pro tempore of the supreme court and a visiting judge is assigned to replace him, subsistence, lodging, and travel expenses incurred by such visiting judge as a result of such assignment shall be paid in accordance

with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended, upon application of such judge from the appropriation of the supreme court.

(4) The provisions of RCW 2.04.240 and 2.04.250 shall not be construed as impairing or enlarging any right or privilege acquired in any retirement or pension system by any judge or his dependents. [1982 c 72 § 2; 1981 c 186 § 1; 1963 c 40 § 2.]

Chapter 2.06 COURT OF APPEALS

Sections

2.06.010	Court of appeals established—Definitions.
2.06.020	Divisions—Locations—Judges enumerated—Districts.
2.06.022	Effective date for Snohomish county judicial position—Initial term.
2.06.030	General powers and authority—Transfers of cases—Appellate jurisdiction, exceptions—Appeals.
2.06.040	Panels—Decisions, publication as opinions, when—Sessions—Rules.
2.06.045	When open for transaction of business.
2.06.050	Qualifications of judges.
2.06.062	Salary of judges.
2.06.070	Original appointments—Election of judges—Terms of office.
2.06.075	Appointments to positions created by 1977 ex.s. c 49 § 1—Election—Terms of office.
2.06.080	Vacancy, how filled.
2.06.085	Oath of judges.
2.06.090	Practice of law, seeking nonjudicial elective office prohibited.
2.06.100	Retirement.
2.06.110	Reporting defects or omissions in the laws.
2.06.150	Judge pro tempore—Appointment—Oath of office.
2.06.160	Judge pro tempore—Remuneration.

Commission to supervise publication of reports: RCW 2.32.160.

Commissioners of the court of appeals: **Rules of court:** CAR 16.

Court of Appeals reports: RCW 2.32.160, 40.04.030, 40.04.100 and 40.04.110.

Judicial council, membership on: RCW 2.52.010.

2.06.010 Court of appeals established—Definitions.

There is hereby established a court of appeals as a court of record. For the purpose of RCW 2.06.010 through 2.06.100 the following terms shall have the following meanings:

- (1) "Rules" means rules of the supreme court.
- (2) "Chief justice" means chief justice of the supreme court.
- (3) "Court" means court of appeals.
- (4) "Judge" means judge of the court of appeals.
- (5) "Division" means a division of the court of appeals.
- (6) "District" means a geographic subdivision of a division from which judges of the court of appeals are elected.
- (7) "General election" means the biennial election at which members of the house of representatives are elected. [1969 ex.s. c 221 § 1.]

2.06.020 Divisions—Locations—Judges enumerated—Districts. The court shall have three divisions, one of which shall be headquartered in Seattle, one of which shall

be headquartered in Spokane, and one of which shall be headquartered in Tacoma:

(1) The first division shall have nine judges from three districts, as follows:

(a) District 1 shall consist of King county and shall have six judges;

(b) District 2 shall consist of Snohomish county and shall have two judges; and

(c) District 3 shall consist of Island, San Juan, Skagit and Whatcom counties and shall have one judge.

(2) The second division shall have four judges from the following districts:

(a) District 1 shall consist of Pierce county and shall have two judges;

(b) District 2 shall consist of Clallam, Grays Harbor, Jefferson, Kitsap, Mason, and Thurston counties and shall have one judge;

(c) District 3 shall consist of Clark, Cowlitz, Lewis, Pacific, Skamania, and Wahkiakum counties and shall have one judge.

(3) The third division shall have four judges from the following districts:

(a) District 1 shall consist of Ferry, Lincoln, Okanogan, Pend Oreille, Spokane and Stevens counties and shall have two judges;

(b) District 2 shall consist of Adams, Asotin, Benton, Columbia, Franklin, Garfield, Grant, Walla Walla, and Whitman counties and shall have one judge;

(c) District 3 shall consist of Chelan, Douglas, Kittitas, Klickitat and Yakima counties and shall have one judge. [1989 c 328 § 10; 1977 ex.s. c 49 § 1; 1969 ex.s. c 221 § 2.]

Rules of court: Cf. RAP 4.1(b).

Intent—1989 c 328: See note following RCW 2.08.061.

Appointments to positions created by the amendment to this section by 1977 ex.s. c 49 § 1: RCW 2.06.075.

2.06.022 Effective date for Snohomish county judicial position—Initial term. The new judicial position for the first division, district 2, Snohomish county created pursuant to the 1989 amendment to RCW 2.06.020 shall become effective January 1, 1990, and shall be filled by gubernatorial appointment.

The person appointed by the governor shall hold office until the general election to be held in November 1990. At the general election, the judge appointed shall be entitled to run for a term of six years or until the second Monday in January 1997, and until a successor is elected and qualified. Thereafter, the judge shall be elected for a term of six years and until a successor is elected and qualified, commencing with the second Monday in January succeeding the election. [1989 c 328 § 11.]

Intent—1989 c 328: See note following RCW 2.08.061.

2.06.030 General powers and authority—Transfers of cases—Appellate jurisdiction, exceptions—Appeals. The administration and procedures of the court shall be as provided by rules of the supreme court. The court shall be vested with all power and authority, not inconsistent with said rules, necessary to carry into complete execution all of its judgments, decrees and determinations in all matters

within its jurisdiction, according to the rules and principles of the common law and the Constitution and laws of this state.

For the prompt and orderly administration of justice, the supreme court may (1) transfer to the appropriate division of the court for decision a case or appeal pending before the supreme court; or (2) transfer to the supreme court for decision a case or appeal pending in a division of the court.

Subject to the provisions of this section, the court shall have exclusive appellate jurisdiction in all cases except:

(a) cases of quo warranto, prohibition, injunction or mandamus directed to state officials;

(b) criminal cases where the death penalty has been decreed;

(c) cases where the validity of all or any portion of a statute, ordinance, tax, impost, assessment or toll is drawn into question on the grounds of repugnancy to the Constitution of the United States or of the state of Washington, or to a statute or treaty of the United States, and the superior court has held against its validity;

(d) cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination; and

(e) cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decisions of the supreme court; all of which shall be appealed directly to the supreme court: PROVIDED, That whenever a majority of the court before which an appeal is pending, but before a hearing thereon, is in doubt as to whether such appeal is within the categories set forth in subsection (d) or (e) of this section, the cause shall be certified to the supreme court for such determination.

The appellate jurisdiction of the court of appeals does not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars.

The court shall have appellate jurisdiction over review of final decisions of administrative agencies certified by the superior court pursuant to RCW 34.05.518.

Appeals from the court to the supreme court shall be only at the discretion of the supreme court upon the filing of a petition for review. No case, appeal or petition for a writ filed in the supreme court or the court shall be dismissed for the reason that it was not filed in the proper court, but it shall be transferred to the proper court. [1980 c 76 § 3; 1979 c 102 § 1; 1969 ex.s. c 221 § 3.]

Rules of court: Cf. Titles 1 and 4 RAP, RAP 18.22.

Severability—1979 c 102: See note following RCW 3.66.020.

2.06.040 Panels—Decisions, publication as opinions, when—Sessions—Rules. The court shall sit in panels of three judges and decisions shall be rendered by not less than a majority of the panel. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decisions shall be stated. All decisions of the court having precedential value shall be published as opinions of the court. Each panel shall determine whether a decision of the court has sufficient precedential value to be published as an opinion of the court. Decisions determined

not to have precedential value shall not be published. Panels in the first division shall be comprised of such judges as the chief judge thereof shall from time to time direct. Judges of the respective divisions may sit in other divisions and causes may be transferred between divisions, as directed by written order of the chief justice. The court may hold sessions in cities as may be designated by rule.

No judge of the court shall be entitled to per diem or mileage for services performed at either his legal residence or the headquarters of the division of the court of which he is a member.

The court may establish rules supplementary to and not in conflict with rules of the supreme court. [1987 c 43 § 1; 1984 c 258 § 91; 1971 c 41 § 1; 1969 ex.s. c 221 § 4.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

2.06.045 When open for transaction of business. See RCW 2.04.030.

2.06.050 Qualifications of judges. A judge of the court shall be:

(1) Admitted to the practice of law in the courts of this state not less than five years prior to taking office.

(2) A resident for not less than one year at the time of appointment or initial election in the district for which his position was created. [1969 ex.s. c 221 § 5.]

2.06.062 Salary of judges. The annual salary of the judges of the court of appeals shall be established by the Washington citizens' commission on salaries for elected officials. No salary warrant may be issued to any judge until the judge files with the state treasurer an affidavit that no matter referred to the judge for opinion or decision has been uncompleted for more than six months. [1986 c 155 § 5; 1984 c 258 § 402.]

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Washington citizens' commission on salaries for elected officials: RCW 43.03.305.

2.06.070 Original appointments—Election of judges—Terms of office. Upon the taking effect of RCW 2.06.010 through 2.06.100, the governor shall appoint the judges of the court of appeals for each district in the numbers provided in RCW 2.06.020, who shall hold office until the second Monday in January of the year following the first state general election following the effective date of this act. In making the original appointments the governor shall take into consideration such factors as: Personal character; intellect; ability; diversity of background of experience in the practice of the law; diversity of political philosophy; diversity of educational experience; and diversity of affiliation with social and economic groups, for the purpose of establishing a balanced appellate court with the highest quality of personnel. At the first state general election after the effective date of this act there shall be elected from each district the number of judges provided for in RCW 2.06.020. Upon taking office the judges of each division elected shall

come together at the direction of the chief justice and be divided by lot into three equal groups; those of the first group shall hold office until the second Monday in January of 1973, those of the second group shall hold office until the second Monday in January of 1975, and those of the third group shall hold office until the second Monday in January of 1977, and until their successors are elected and qualified. Thereafter, judges shall be elected for the full term of six years and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election: PROVIDED, HOWEVER, That if the governor shall make appointments to the appellate court from membership of the superior court, the governor shall, in making appointments filling vacancies created in the superior courts by such action, take into consideration such factors as: Personal character; intellect; ability; diversity of background of experience in the practice of the law; diversity of political philosophy; diversity of educational experience; and diversity of affiliation with social and economic groups, for the purpose of maintaining a balanced superior court with the highest quality of personnel. [1969 ex.s. c 221 § 7.]

Effective date—1969 ex.s. c 221: The effective date of this act [1969 ex.s. c 221] is May 8, 1969, see preface to 1969 session laws.

2.06.075 Appointments to positions created by 1977 ex.s. c 49 § 1—Election—Terms of office. The new judicial positions created pursuant to *section 1 of this 1977 amendatory act shall become effective January 1, 1978 and shall be filled by gubernatorial appointment as follows:

- (1) Two shall be appointed to the first division, District 1, King county;
- (2) One shall be appointed to the second division, District 1, Pierce county; and
- (3) One shall be appointed to the third division, District 1, Ferry, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties.

The persons appointed by the governor shall hold office until the general election to be held in November 1978. Upon taking office the two newly appointed judges in Division 1 shall determine by lot the length of term they will be entitled to run for in the general election of 1977. One term will be for one year or until the second Monday in January 1980, and the other for three years or until the second Monday in January 1982, and until their successors are elected and qualified. Thereafter judges shall be elected for a term of six years and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election. At the general election to be held in November 1978, the judges appointed in Division 2 and Division 3 shall be entitled to run for a term of six years or until the second Monday in January 1985, and until their successors are elected and qualified. Thereafter judges shall be elected for a term of six years and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election. [1977 ex.s. c 49 § 3.]

***Reviser's note:** "section 1 of this 1977 amendatory act" consisted of an amendment to RCW 2.06.020 by 1977 ex.s. c 49 § 1.

2.06.080 Vacancy, how filled. If a vacancy occurs in the office of a judge of the court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election and the judge so elected shall hold the office for the remainder of the unexpired term. [1969 ex.s. c 221 § 8.]

2.06.085 Oath of judges. The several judges of the court of appeals, before entering upon the duties of their office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully and impartially discharge the duties of the office of judge of the court of appeals of the State of Washington to the best of my ability." Which oath or affirmation may be administered by any person authorized to administer oaths, a certificate whereof shall be affixed thereto by the person administering the oath. And the oath or affirmation so certified shall be filed in the office of the secretary of state. [1971 c 81 § 182.]

2.06.090 Practice of law, seeking nonjudicial elective office prohibited. No judge, while in office, shall engage in the practice of law. No judge shall run for elective office other than a judicial office during the term for which he was elected. [1969 ex.s. c 221 § 9.]

2.06.100 Retirement. Judges shall retire at the age, and under the conditions and with the same retirement benefits as specified by law for the retirement of justices of the supreme court. [1969 ex.s. c 221 § 10.]

2.06.110 Reporting defects or omissions in the laws. Court of appeals judges shall, on or before the first day of November in each year, report in writing to the justices of the supreme court, such defects and omissions in the laws as their experience may suggest. [1971 ex.s. c 107 § 6.]

2.06.150 Judge pro tempore—Appointment—Oath of office. (1) Whenever necessary for the prompt and orderly administration of justice, the chief justice of the supreme court of the state of Washington may appoint any regularly elected and qualified judge of the superior court or any retired judge of a court of record in this state to serve as judge pro tempore of the court of appeals: PROVIDED, HOWEVER, That no judge pro tempore appointed to serve on the court of appeals may serve more than ninety days in any one year.

(2) Before entering upon his duties as judge pro tempore of the court of appeals, the appointee shall take and subscribe an oath of office as provided for in Article IV, section 28 of the state Constitution. [1977 ex.s. c 49 § 2; 1973 c 114 § 1.]

2.06.160 Judge pro tempore—Remuneration. (1) A judge of a court of record serving as a judge pro tempore of the court of appeals, as provided in RCW 2.06.150, shall receive, in addition to his regular salary, reimbursement for

subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended.

(2) A retired judge of a court of record in this state serving as a judge pro tempore of the court of appeals, as provided in RCW 2.06.150, shall receive, in addition to any retirement pay he may be receiving, the following compensation and expenses:

(a) Reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended; and

(b) During the period of his service as judge pro tempore, he shall receive as compensation sixty percent of one-two hundred and fiftieth of the annual salary of a court of appeals judge for each day of service: PROVIDED, HOWEVER, That the total amount of combined compensation received as salary and retirement by any judge in any calendar year shall not exceed the yearly salary of a full time judge.

(3) Whenever a judge of a court of record is appointed to serve as judge pro tempore of the court of appeals and a visiting judge is assigned to replace him, subsistence, lodging, and travel expenses incurred by such visiting judge as a result of such assignment shall be paid in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended, upon application of such judge from the appropriation of the court of appeals.

(4) The provisions of RCW 2.06.150 and 2.06.160 shall not be construed as impairing or enlarging any right or privilege acquired in any retirement or pension system by any judge or his dependents. [1981 c 186 § 2; 1973 c 114 § 2.]

Chapter 2.08 SUPERIOR COURTS

Sections

2.08.010	Original jurisdiction.
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Basic juvenile court act: Chapter 13.04 RCW.

Court commissioners: State Constitution Art. 4 § 23.

Family court: Chapter 26.12 RCW.

Judiciary and judicial power: State Constitution Art. 4.

2.08.010 Original jurisdiction. The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce and for annulment of marriage, and for such special cases and proceedings as are not otherwise provided for; and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court, and shall have the power of naturalization and to issue papers therefor. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued on legal holidays and nonjudicial days. [1955 c 38 § 3; 1890 p 342 § 5; RRS § 15.]

Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 28).

2.08.020 Appellate jurisdiction. The superior courts shall have such appellate jurisdiction in cases arising in courts of limited jurisdiction in their respective counties as may be prescribed by law. [1987 c 202 § 102; 1890 p 343 § 6; RRS § 17.]

Rules of court: See Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).

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

Appeals from

district courts: Criminal, chapter 10.10 RCW; civil, chapter 12.36 RCW. municipal courts: Chapter 35.20 RCW.

Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 28).

2.08.030 Courts of record—Sessions. The superior courts are courts of record, and shall be always open, except on nonjudicial days. They shall hold their sessions at the

county seats of the several counties, respectively, and at such other places within the county as are designated by the judge or judges thereof with the approval of the chief justice of the supreme court of this state and of the governing body of the county. They shall hold regular and special sessions in the several counties of this state at such times as may be prescribed by the judge or judges thereof. [1971 ex.s. c 60 § 1; 1890 p 343 § 7; RRS § 18.]

Rules of court: Cf. CR 77(d), (f).

Courts of record: State Constitution Art. 4 § 11.

Open when: State Constitution Art. 4 § 6 (Amendment 28).

2.08.040 Effect of adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. [1890 p 343 § 8; RRS § 26.]

Rules of court: Cf. CR 77(g).

2.08.050 Seal of courts. The seals of the superior courts of the several counties of the state shall be, until otherwise provided by law, the vignette of General George Washington, with the words "Seal of the Superior Court of County, State of Washington," surrounding the vignette. [1890 p 345 § 17; RRS § 38.]

2.08.060 Judges—Election. There shall be in each of the counties a superior court. Judges of the superior court shall be elected at the general election in November, 1952, and every four years thereafter. [1951 c 125 § 2; 1949 c 237 §§ 1-5, part; 1945 c 20 § 1, part; 1933 ex.s. c 63 §§ 1-3, part; 1927 c 135 § 1, part; Rem. Supp. 1949 §§ 11045-1f-1i, part; Rem. Supp. 1945 §§ 11045-1d & 1e, part; RRS §§ 11045-1, 1a, 1b, 1c, part. Prior: 1925 ex.s. c 66 §§ 1-3, part; 1925 ex.s. c 132 §§ 1-4, part; 1917 c 97 §§ 1-5, part; 1913 c 17 §§ 1-4, part; 1911 c 40 §§ 1-3, part; 1911 c 62 §§ 1-3, part; 1911 c 76 §§ 1-3, part; 1911 c 129 §§ 1-3, part; 1911 c 131 §§ 1-2, part; 1909 c 10 §§ 1-3, part; 1909 c 12 §§ 1-3, part; 1909 c 52 §§ 1-3, part; 1909 c 94 §§ 1-3, part; 1907 c 79 §§ 1-3, part; 1907 c 106 § 1, part; 1907 c 178 §§ 1-2, part; 1905 c 9 §§ 1-3, part; 1905 c 36 §§ 1-4, part; 1903 c 50 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1-3, part; 1890 p 341 § 1, part.]

Election, terms, etc., superior judges: State Constitution Art. 4 § 5.

Eligibility of judges: State Constitution Art. 4 § 17.

Impeachment: State Constitution Art. 5.

Judges ineligible to other office: State Constitution Art. 4 § 15.

Judges may not practice law: State Constitution Art. 4 § 19.

Removal from office: State Constitution Art. 4 § 9.

2.08.061 Judges—King, Spokane, and Pierce counties. There shall be in the county of King no more than fifty-eight judges of the superior court; in the county of Spokane ten judges of the superior court; and in the county of Pierce nineteen judges of the superior court. The King county legislative authority may phase in the additional twelve judges, as authorized by the 1992 amendments to this section, over a period of time not to extend beyond July 1, 1996. No more than two of the additional twelve judges may take office prior to July 1, 1993. [1992 c 189 § 1; 1989 c 328 § 2; 1987 c 323 § 1; 1985 c 357 § 1; 1980 c 183

§ 1; 1979 ex.s. c 202 § 1; 1977 ex.s. c 311 § 1; 1973 1st ex.s. c 27 § 1; 1971 ex.s. c 83 § 5; 1969 ex.s. c 213 § 1; 1967 ex.s. c 84 § 1; 1963 c 48 § 1; 1961 c 67 § 1; 1955 c 176 § 1; 1951 c 125 § 3. Prior: 1949 c 237 §§ 1, 3; 1933 ex.s. c 63 § 1; 1927 c 135 § 1, part; 1925 ex.s. c 66 § 1; 1911 c 76 § 1; 1909 c 52 § 1; 1909 c 12 § 1; 1909 c 10 § 1; 1907 c 106 § 1; 1907 c 79 § 1, part; 1905 c 9 § 1; 1895 c 89 § 1, part; 1891 c 68 § 2; 1890 p 341 § 1, part; Rem. Supp. 1949 §§ 11045-1f, 11045-1h; RRS §§ 11045-1, 11045-1a, part.]

Effective dates—1992 c 189: "(1) Sections 1, 3, and 5 of this act shall take effect July 1, 1992.

(2) The remainder of this act shall take effect July 1, 1993." [1992 c 189 § 7.]

Additional judicial positions subject to approval and agreement—1992 c 189: "The additional judicial positions created by sections 1, 2, 3, 4, and 5 of this act shall be effective only if each county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute." [1992 c 189 § 8.] "Sections 1, 2, 3, 4, and 5 of this act" are the 1992 c 189 amendments to RCW 2.08.061, 2.08.062, 2.08.063, 2.08.064, 2.08.065, and 2.32.180.

Intent—1989 c 328: "The legislature recognizes the dramatic increase in cases filed in superior court over the last six years in King, Pierce, and Snohomish counties. This increase has created a need for more superior court judges in those counties.

The increased caseload at the superior court level has also caused a similar increase in the case and petition filings in the court of appeals. Currently, the additional caseload is being handled by pro tempore judges and excessive caseloads for permanent judges. The addition of a permanent full-time judge will allow the court to more efficiently process the growing caseload.

By the creation of these additional positions, it is the intent of the legislature to promote the careful judicial review of cases by an elected judiciary." [1989 c 328 § 1.]

Additional judicial positions subject to approval and agreement—1989 c 328: "The additional judicial positions created by sections 2 and 3 of this act in Pierce and Snohomish counties shall be effective only if the county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [1989 c 328 § 5.] "Sections 2 and 3 of this act" are the 1989 c 328 amendments to RCW 2.08.061 and 2.08.064.

Effective dates for additional judicial positions—1989 c 328 §§ 2 and 3: "(1) Three additional judicial positions created by section 2 of this 1989 act shall be effective January 1, 1990.

(2) One additional judicial position created by section 3 of this act shall be effective July 1, 1990; the second position shall be effective not later than June 30, 1991." [1989 c 328 § 7.] "Section 2 of this act" is the 1989 c 328 amendment to RCW 2.08.061. "Section 3 of this act" is the 1989 c 328 amendment to RCW 2.08.064.

Effective dates—Additional judicial positions in King, Chelan, and Douglas counties subject to approval and agreement—1989 c 328; 1987 c 323: "Sections 1 and 2 of this act shall take effect January 1, 1988. The additional judicial positions created by sections 1 and 2 of this act in King county and Chelan and Douglas counties shall be effective only if each county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities. The legislative authorities of Chelan and Douglas counties may in their discretion phase in any additional judicial positions over a period of time not to extend beyond January 1, 1990. The legislative authority of King county may in its discretion phase in any additional judicial positions over a period of time not to extend beyond January 1, 1991." [1989 c 328 § 6; 1987 c 323 § 5.] "Sections 1 and 2 of this act" are the amendments to RCW 2.08.061 and 2.08.062 by 1987 c 323.

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1985 c 357: "(1) Sections 1 and 2 of this act shall take effect January 1, 1987. The additional judicial positions created by sections 1 and 2 of this act in Pierce and Clark counties shall be effective only if, prior to January 1, 1987, each county through its duly constituted legislative authority documents its approval of the additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities.

(2) Section 3 of this act shall take effect January 1, 1986. The additional judicial position created by section 3 of this act in Snohomish county shall be effective only if, prior to January 1, 1986, the county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [1985 c 357 § 4.] Sections 1, 2, and 3 of this act are the amendments to RCW 2.08.061, 2.08.062, and 2.08.064 by 1985 c 357.

Effective date—1977 ex.s. c 311: "This 1977 amendatory act shall take effect November 1, 1977." [1977 ex.s. c 311 § 6.] This applies to the amendments to RCW 2.08.061, 2.08.062, 2.08.064, and 2.08.065 by 1977 ex.s. c 311.

2.08.062 Judges—Chelan, Douglas, Clark, Grays Harbor, Kitsap, Kittitas, and Lewis counties. (Effective until July 1, 1993.) There shall be in the counties of Chelan and Douglas jointly, three judges of the superior court; in the county of Clark six judges of the superior court; in the county of Grays Harbor two judges of the superior court; in the county of Kitsap seven judges of the superior court; in the county of Kittitas one judge of the superior court; in the county of Lewis two judges of the superior court. [1990 c 186 § 1; 1987 c 323 § 2; 1985 c 357 § 2; 1979 ex.s. c 202 § 2; 1977 ex.s. c 311 § 2; 1975-'76 2nd ex.s. c 79 § 1; 1971 ex.s. c 83 § 4; 1967 ex.s. c 84 § 2; 1963 c 48 § 2; 1951 c 125 § 4. Prior: 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1911 c 131 § 1; 1907 c 79 § 1, part; 1907 c 178 § 1, part; 1905 c 36 § 1, part; 1895 c 89 § 1, part; 1891 c 68 § 3, part; 1890 p 341 § 1, part; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Effective dates—Additional judicial positions in Kitsap and Thurston counties subject to approval and agreement—1990 c 186: "(1)(a) One additional judicial position created by section 1 of this act and the additional judicial position created by section 2 of this act shall be effective July 1, 1990.

(b) The second additional judicial position created by section 1 of this act shall be effective not later than, and at the discretion of the legislative authority may be phased in at any time before, January 1, 1994.

(2) The additional judicial positions created by sections 1 and 2 of this act in Kitsap and Thurston counties shall be effective only if the county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [1990 c 186 § 4.] Sections 1 and 2 of this act are the 1990 c 186 amendments to RCW 2.08.062 and 2.08.065.

Effective dates—Additional judicial positions in King, Chelan, and Douglas counties subject to approval and agreement—1987 c 323: See note following RCW 2.08.061.

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1985 c 357: See note following RCW 2.08.061.

Adjustment in judicial services: See note following RCW 2.08.065.

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.062 Judges—Chelan, Douglas, Clark, Grays Harbor, Kitsap, Kittitas, and Lewis counties. (Effective July 1, 1993.) There shall be in the counties of Chelan and Douglas jointly, three judges of the superior court; in the county of Clark six judges of the superior court; in the county of Grays Harbor three judges of the superior court; in the county of Kitsap seven judges of the superior court; in the county of Kittitas one judge of the superior court; in the county of Lewis two judges of the superior court. [1992 c 189 § 2; 1990 c 186 § 1; 1987 c 323 § 2; 1985 c 357 § 2; 1979 ex.s. c 202 § 2; 1977 ex.s. c 311 § 2; 1975-'76 2nd ex.s. c 79 § 1; 1971 ex.s. c 83 § 4; 1967 ex.s. c 84 § 2; 1963 c 48 § 2; 1951 c 125 § 4. Prior: 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1911 c 131 § 1; 1907 c 79 § 1, part; 1907 c 178 § 1, part; 1905 c 36 § 1, part; 1895 c 89 § 1, part; 1891 c 68 § 3, part; 1890 p 341 § 1, part; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Effective dates—Additional judicial positions subject to approval and agreement—1992 c 189: See notes following RCW 2.08.061.

Effective dates—Additional judicial positions in Kitsap and Thurston counties subject to approval and agreement—1990 c 186: "(1)(a) One additional judicial position created by section 1 of this act and the additional judicial position created by section 2 of this act shall be effective July 1, 1990.

(b) The second additional judicial position created by section 1 of this act shall be effective not later than, and at the discretion of the legislative authority may be phased in at any time before, January 1, 1994.

(2) The additional judicial positions created by sections 1 and 2 of this act in Kitsap and Thurston counties shall be effective only if the county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [1990 c 186 § 4.] Sections 1 and 2 of this act are the 1990 c 186 amendments to RCW 2.08.062 and 2.08.065.

Effective dates—Additional judicial positions in King, Chelan, and Douglas counties subject to approval and agreement—1987 c 323: See note following RCW 2.08.061.

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1985 c 357: See note following RCW 2.08.061.

Adjustment in judicial services: See note following RCW 2.08.065.

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.063 Judges—Lincoln, Skagit, Walla Walla, Whitman, Yakima, Adams, and Whatcom counties. There shall be in the county of Lincoln one judge of the superior court; in the county of Skagit, three judges of the superior court; in the county of Walla Walla, two judges of the superior court; in the county of Whitman, one judge of the superior court; in the county of Yakima six judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, three judges of the superior court. [1992 c 189 § 3; 1988 c 66 § 1; 1975 1st ex.s. c 49 § 1; 1973 1st ex.s. c 27 § 2; 1971 ex.s. c 83 § 1; 1963 c 48 § 3; 1955 c 19 § 1; 1951 c 125 § 5. Prior: 1949 c 237 §§ 2, 4; 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1917 c 97 § 5, part; 1911 c 62 § 1; 1911 c 129 § 2, part; 1907 c 79 § 1, part; 1895 c 89 § 1, part; 1891 c 68 § 3, part; 1890 p 341 § 1, part; Rem. Supp. 1949 §§ 11045-1j, 11045-1i; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Effective dates—Additional judicial positions subject to approval and agreement—1992 c 189: See notes following RCW 2.08.061.

Effect—Additional judicial position in Yakima county subject to approval and agreement—1988 c 66: "The additional judicial position created by section 1 of this act in Yakima county shall be effective only if the county through its legislative authority documents its approval by January 1, 1990, of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [1988 c 66 § 2.] "Section 1 of this act" is the 1988 c 66 amendment to RCW 2.08.063.

2.08.064 Judges—Benton, Franklin, Clallam, Jefferson, Snohomish, Asotin, Columbia, Garfield, Cowlitz, Klickitat, and Skamania counties. (Effective until July 1, 1993.) There shall be in the counties of Benton and Franklin jointly, five judges of the superior court; in the county of Clallam, two judges of the superior court; in the county of Jefferson, one judge of the superior court; in the county of Snohomish, eleven judges of the superior court; in the counties of Asotin, Columbia and Garfield jointly, one judge of the superior court; in the county of Cowlitz, three judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court. [1989 c 328 § 3; 1985 c 357 § 3; 1982 c 139 § 2; 1981 c 65 § 1; 1979 ex.s. c 202 § 3; 1977 ex.s. c 311 § 3; 1974 ex.s. c 192 § 1; 1971 ex.s. c 83 § 3; 1969 ex.s. c 213 § 2; 1967 ex.s. c 84 § 3; 1963 c 35 § 1; 1961 c 67 § 2; 1955 c 19 § 2; 1951 c 125 § 6. Prior: 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1925 ex.s. c 132 § 1; 1917 c 97 §§ 1-3; 1911 c 40 § 1; 1911 c 129 §§ 1, 2, part; 1907 c 79 § 1, part; 1905 c 36 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1, 3, part; 1890 p 341 § 1, part; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Intent—Additional judicial positions subject to approval and agreement—Effective dates for additional judicial positions—1989 c 328: See notes following RCW 2.08.061.

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1989 c 328; 1985 c 357: See note following RCW 2.08.061.

Additional judicial positions in Clallam and Jefferson counties subject to approval and agreement—1982 c 139: "The additional judicial positions created by section 2 of this 1982 act in Clallam and Jefferson counties shall be effective only if, prior to April 1, 1982, each county through its duly constituted legislative authority documents its approval of the additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute." [1982 c 139 § 3.] Section 2 of this 1982 act is the amendment to RCW 2.08.064 by 1982 c 139.

Additional judicial positions in Ferry, Stevens, and Pend Oreille district subject to approval and agreement—1982 c 139; 1981 c 65: "The additional judicial position created by this 1981 act in the joint Ferry, Stevens, and Pend Oreille judicial district shall be effective only if each county in the judicial district through its duly constituted legislative authority documents its approval of the additional position and its agreement that it and the other counties comprising the judicial district will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute. As among the counties, the amount of the judge's salary to be paid by each county shall be in accordance with RCW 2.08.110 unless otherwise agreed upon by the counties involved." [1982 c 139 § 1; 1981 c 65 § 3.]

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.064 Judges—Benton, Franklin, Clallam, Jefferson, Snohomish, Asotin, Columbia, Garfield, Cowlitz, Klickitat, and Skamania counties. (Effective July 1, 1993.) There shall be in the counties of Benton and Franklin jointly, five judges of the superior court; in the

county of Clallam, two judges of the superior court; in the county of Jefferson, one judge of the superior court; in the county of Snohomish, thirteen judges of the superior court; in the counties of Asotin, Columbia and Garfield jointly, one judge of the superior court; in the county of Cowlitz, three judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court. [1992 c 189 § 4; 1989 c 328 § 3; 1985 c 357 § 3; 1982 c 139 § 2; 1981 c 65 § 1; 1979 ex.s. c 202 § 3; 1977 ex.s. c 311 § 3; 1974 ex.s. c 192 § 1; 1971 ex.s. c 83 § 3; 1969 ex.s. c 213 § 2; 1967 ex.s. c 84 § 3; 1963 c 35 § 1; 1961 c 67 § 2; 1955 c 19 § 2; 1951 c 125 § 6. Prior: 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1925 ex.s. c 132 § 1; 1917 c 97 §§ 1-3; 1911 c 40 § 1; 1911 c 129 §§ 1, 2, part; 1907 c 79 § 1, part; 1905 c 36 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1, 3, part; 1890 p 341 § 1, part; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Effective dates—Additional judicial positions subject to approval and agreement—1992 c 189: See notes following RCW 2.08.061.

Intent—Additional judicial positions subject to approval and agreement—Effective dates for additional judicial positions—1989 c 328: See notes following RCW 2.08.061.

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1989 c 328; 1985 c 357: See note following RCW 2.08.061.

Additional judicial positions in Clallam and Jefferson counties subject to approval and agreement—1982 c 139: "The additional judicial positions created by section 2 of this 1982 act in Clallam and Jefferson counties shall be effective only if, prior to April 1, 1982, each county through its duly constituted legislative authority documents its approval of the additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute." [1982 c 139 § 3.] Section 2 of this 1982 act is the amendment to RCW 2.08.064 by 1982 c 139.

Additional judicial positions in Ferry, Stevens, and Pend Oreille district subject to approval and agreement—1982 c 139; 1981 c 65: "The additional judicial position created by this 1981 act in the joint Ferry, Stevens, and Pend Oreille judicial district shall be effective only if each county in the judicial district through its duly constituted legislative authority documents its approval of the additional position and its agreement that it and the other counties comprising the judicial district will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute. As among the counties, the amount of the judge's salary to be paid by each county shall be in accordance with RCW 2.08.110 unless otherwise agreed upon by the counties involved." [1982 c 139 § 1; 1981 c 65 § 3.]

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.065 Judges—Grant, Ferry, Okanogan, Mason, Thurston, Pacific, Wahkiakum, Pend Oreille, Stevens, San Juan, and Island counties. There shall be in the county of Grant, two judges of the superior court; in the county of Okanogan, one judge of the superior court; in the county of Mason, two judges of the superior court; in the county of Thurston, six judges of the superior court; in the counties of Pacific and Wahkiakum jointly, one judge of the superior court; in the counties of Ferry, Pend Oreille, and Stevens jointly, two judges of the superior court; and in the counties of San Juan and Island jointly, two judges of the superior court. [1992 c 189 § 5; 1990 c 186 § 2; 1986 c 76 § 1; 1981 c 65 § 2; 1979 ex.s. c 202 § 4; 1977 ex.s. c 311 § 4; 1973 1st ex.s. c 27 § 3; 1971 ex.s. c 83 § 2; 1969 ex.s. c 213 § 3; 1955 c 159 § 1; 1951 c 125 § 7. Prior: 1927 c 135 § 1, part; 1917 c 97 §§ 4, 5, part; 1913 c 17 § 1; 1911 c 131 § 2; 1907 c 79 § 1, part; 1907 c 178 § 1, part; 1903

c 50 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1, 3, part; 1890 p 341 § 1, part; RRS § 11045-1, part.]

Effective dates—Additional judicial positions subject to approval and agreement—1992 c 189: See notes following RCW 2.08.061.

Effective dates—Additional judicial positions in Kitsap and Thurston counties subject to approval and agreement—1990 c 186: See note following RCW 2.08.062.

Effective date—Appointment of additional judicial position—1986 c 76: "(1) Pursuant to RCW 2.08.069, the governor shall appoint a person to fill the judicial position created by section 1 of this act in Mason county. The five judges of the superior court serving in the Thurston/Mason judicial district on January 1, 1987, shall be assigned to the new Thurston county judicial district.

(2) This act shall take effect January 1, 1987. The additional judicial position created by section 1 of this act in Mason county shall be effective only if, before January 1, 1987, Thurston and Mason counties, through their duly constituted legislative authorities, document their approval of the additional position and their agreement that they will pay out of county funds, without reimbursement from the state, the expenses resulting from section 1 of this act." [1986 c 76 § 2.] Section 1 of this act is the 1986 c 76 amendment to RCW 2.08.065.

Additional judicial positions subject to approval and agreement: See note following RCW 2.08.064.

Adjustment in judicial services provided for Douglas, Grant, and Chelan counties: "The superior court judge serving in position two, as designated by the county auditors of Grant and Douglas counties for the 1976 general election, in the counties of Grant and Douglas prior to the effective date of this 1979 act, shall thereafter serve jointly in the counties of Douglas and Chelan, along with the judge previously serving only in Chelan county. The additional superior court judge position created by this 1979 act shall be for Grant county alone, which shall retain the judge in position one previously serving jointly in the counties of Grant and Douglas." [1979 ex.s. c 202 § 5.]

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.069 Judges—Filling vacancies resulting from creation of additional judgeships. Unless otherwise provided, upon the taking effect of any act providing for additional judges of the superior court and thereby creating a vacancy, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term. [1955 c 38 § 4; 1951 c 125 § 8.]

Vacancy, how filled: RCW 2.08.120.

2.08.070 Terms of office. The judges of the superior court elected under the provisions of RCW 2.08.060 through 2.08.065 shall hold their offices for the term of four years from and after the second Monday in January next succeeding their election, and until their successors are elected and qualified. [1927 c 135 § 2; RRS § 11045-2.]

Election, terms, etc., superior judges: State Constitution Art. 4 § 5.

Forfeiture of office for absence: State Constitution Art. 4 § 8.

Removal of judges: State Constitution Art. 4 § 9.

2.08.080 Oath of office. Every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the state of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state. Such oath or affirmation to be in form substantially the same as prescribed

for justices of the supreme court. [1971 c 81 § 5; 1890 p 344 § 15; RRS § 11051.]

Oath of judges: State Constitution Art. 4 § 28.

2.08.092 Salary of judges. The annual salary of the judges of the superior court shall be established by the Washington citizens' commission on salaries for elected officials. [1986 c 155 § 6; 1984 c 258 § 403.]

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Salaries of judicial officers: State Constitution Art. 4 § 13, 14; Art. 28 § 1; Art. 30 § 1.

Washington citizens' commission on salaries for elected officials: RCW 43.03.305.

2.08.100 Payment of county's portion—Limitation. The county auditor of each county shall draw his warrant on the treasurer of such county on the first Monday of each month for the amount of salary due for the previous month from such county to the judge of the superior court thereof, and said warrant shall be paid by said treasurer out of the salary fund of said county: PROVIDED, That no such warrant shall be issued until the judge who is to receive the same shall have made an affidavit, in the manner provided by law, that no cause in his court remains pending and undecided contrary to the provisions of RCW 2.08.240 and of section 20, Article 4, Constitution of the state of Washington. [1939 c 189 § 1; 1893 c 30 § 1; 1890 p 329 § 2; RRS § 10967.]

Distribution of work of courts—Duty of judges to comply with chief justice's direction—Salary withheld: RCW 2.56.040.

2.08.110 Apportionment between counties in joint judicial district. Where there is only one judge of the superior court for two or more counties, the auditors thereof, acting together, shall apportion among or between such counties, according to the assessed valuation of their taxable property, the amount of such judge's salary that each county shall pay. [1890 p 329 § 3; RRS § 10968.]

2.08.115 Judge serving district comprising more than one county—Reimbursement for travel expenses. Whenever a judge of the superior court shall serve a district comprising more than one county, such judge shall be reimbursed for travel expenses in connection with business of the court in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for travel from his residence to the other county or counties in his district and return. [1975-'76 2nd ex.s. c 34 § 1.]

Severability—1975-'76 2nd ex.s. c 34: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1976 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 34 § 182.]

Effective date—1975-'76 2nd ex.s. c 34: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1976." [1975-'76 2nd ex.s. c 34 § 183.]

2.08.120 Vacancy, how filled. If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term. [1955 c 38 § 5. Prior: 1890 p 342 § 4; 1937 c 15 § 2; RRS § 11049.]

Superior court—Election of judges, terms of, etc.: State Constitution Art. 4 § 5.

Vacancies resulting from additional judgeships: RCW 2.08.069.

2.08.140 Visiting judge at direction of governor. Whenever a judge of the superior court of any county in this state, or a majority of such judges in any county in which there is more than one judge of said court, shall request the governor of the state to direct a judge of the superior court of any other county to hold a session of the superior court of any such county as is first herein above mentioned, the governor shall thereupon request and direct a judge of the superior court of some other county, making such selection as the governor shall deem to be most consistent with the state of judicial business in other counties, to hold a session of the superior court in the county the judge shall have requested the governor as aforesaid. Such request and direction by the governor shall be made in writing, and shall specify the county in which he directs the superior judge to whom the same is addressed to hold such session of the superior court, and the period during which he is to hold such session. Thereupon it shall be the duty of the superior judge so requested, and he is hereby empowered to hold a session of the superior court of the county specified by the governor, at the seat of judicial business thereof, during the period specified by the governor, and in such quarters as the county commissioners of said county may provide for the holding of such session. [1893 c 43 § 1; RRS § 27. Prior: 1890 p 343 § 10.]

Duty to hold court in other county or district: RCW 2.56.040.

2.08.150 Visiting judge at request of judge or judges. Whenever a like request shall be addressed by the judge, or by a majority of the judges (if there be more than one) of the superior court of any county to the superior judge of any other county, he is hereby empowered, if he deem it consistent with the state of judicial business in the county or counties whereof he is a superior judge (and in such case it shall be his duty to comply with such request), to hold a session of the superior court of the county the judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session by the board of county commissioners, and during such period as shall have been specified in the request, or such shorter period as he may deem necessary by the state of judicial business in the county or counties whereof he is a superior judge. [1893 c 43 § 2; RRS § 28. Prior: 1890 p 343 § 10.]

2.08.160 Sessions where more than one judge sits—Effect of decrees, orders, etc. In any county where there shall be more than one superior judge, or in which a superior judge of another county may be holding a session of the

superior court, as provided in RCW 2.08.140 through 2.08.170, there may be as many sessions of the superior court at the same time as there are judges thereof, or assigned to duty therein by the governor, or responding to a request made as provided in RCW 2.08.150. In such cases the business of the court shall be so distributed and assigned by law, or in the absence of legislation therefor, by such rules and orders of the court as shall best promote and secure the convenient and expeditious transaction thereof. Judgments, decrees, orders and proceedings of any session of the superior court held by one or more of the judges of said court, or by any judge of the superior court of another county pursuant to the provisions of RCW 2.08.140 through 2.08.170, shall be equally effectual as if all the judges of such court presided at such session. [1893 c 43 § 3; RRS § 29. Prior: 1890 p 341 § 2.]

2.08.170 Expenses of visiting judge. Any judge of the superior court of any county in this state who shall hold a session of the superior court of any other county, in pursuance of the provisions of RCW 2.08.140 through 2.08.170 shall be entitled to receive from the county in which he shall hold such sessions reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended. The county clerk of such county shall, upon the presentation to him by such judge of a statement of such expenses, verified by his affidavit, issue to such judge a certificate that he is entitled to the amount thereof; and upon presentation of such certificate to the auditor of such county he shall draw a warrant on the current expense fund of such county for the amount in favor of such judge. [1981 c 186 § 3; 1893 c 43 § 4; RRS § 30. Prior: 1890 p 329 § 4.]

Holding court in another county or district—Reimbursement for expenses: RCW 2.56.070.

2.08.180 Judge pro tempore—Appointment—Oath—Compensation. A case in the superior court of any county may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case; and his action in the trial of such cause shall have the same effect as if he were a judge of such court. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.

A judge pro tempore shall, before entering upon his duties in any cause, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein is plaintiff and defendant, according to the best of my ability."

A judge pro tempore who is a practicing attorney and who is not a retired justice of the supreme court or judge of a superior court of the state of Washington, or who is not an

active judge of an inferior court of the state of Washington, shall receive a compensation of one-two hundred and fiftieth of the annual salary of a superior court judge for each day engaged in said trial, to be paid in the same manner as the salary of the superior judge. A judge who is an active judge of an inferior court of the state of Washington shall receive no compensation as judge pro tempore. A justice or judge who has retired from the supreme court, court of appeals, or superior court of the state of Washington shall receive compensation as judge pro tempore in the amount of sixty percent of the amount payable to a judge pro tempore under this section. [1987 c 73 § 1; 1971 c 81 § 6; 1967 c 149 § 1; 1890 p 343 § 11; RRS § 40.]

Contingent effective date—1987 c 73: "This act shall take effect January 1, 1988, if the proposed amendment to Article IV, section 7 of the state Constitution, allowing retiring judges to hear pending cases, is validly submitted to and is approved and ratified by the voters at a general election held in November, 1987. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1987 c 73 § 2.] Amendment 80 of the state Constitution, amending Article IV, section 7, was approved by the voters November 3, 1987.

Judges pro tempore: State Constitution Art. 4 § 7.

2.08.190 Powers of judge in counties of his district. Any judge of the superior court of the state of Washington shall have power, in any county within his district: (1) To sign all necessary orders and papers in probate matters pending in any other county in his district; (2) to issue restraining orders, and to sign the necessary orders of continuance in actions or proceedings pending in any other county in his district; (3) to decide and rule upon all motions, demurrers, issues of fact or other matters that may have been submitted to him in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county: PROVIDED, That nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties. [1901 c 57 § 1; RRS § 41.]

2.08.200 Decisions and rulings in matters heard outside judge's district. Any judge of the superior court of the state of Washington who shall have heard any cause, either upon motion, demurrer, issue of fact, or other matter in any county out of his district, may decide, rule upon, and determine the same in any county in this state, which decision, ruling and determination shall be in writing and shall be filed immediately with the clerk of the county where such cause is pending. [1901 c 57 § 2; RRS § 42.]

Rules of court: Statute modified or superseded by CR 7(c).

2.08.210 Extent of court's process—Venue. The process of the superior courts shall extend to all parts of the state: PROVIDED, That all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon, real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions is situated. [1890 p 343 § 9; RRS § 32.]

Rules of court: Cf. CR 4(f).

Extent of process: State Constitution Art. 4 § 6 (Amendment 28).

Venue: Chapter 4.12 RCW.

2.08.220 Process, to whom directed. Unless otherwise provided by statute, all process issuing out of the court shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law. [1891 c 45 § 5; RRS § 35.]

2.08.230 Uniform rules to be established. The judges of the superior courts shall, from time to time, establish uniform rules for the government of the superior courts. [1890 p 344 § 13; RRS § 36.]

Rule-making power, supreme court: RCW 2.04.180 through 2.04.210.

Superior court rules: State Constitution Art. 4 § 24.

Supplementary superior court rules: RCW 2.04.210.

Uniform court rules: RCW 2.16.040.

2.08.240 Limit of time for decision. Every case submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof: PROVIDED, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such rehearing, and upon wilful failure of any such judge so to do, he shall be deemed to have forfeited his office. [1890 p 344 § 12; RRS § 39.]

Decisions, when to be made: State Constitution Art. 4 § 20.

Payment of county's portion—Limitation: RCW 2.08.100.

2.08.250 Report to judges of supreme court. Superior judges shall, on or before the first day of November in each year, report in writing to the judges of the supreme court, such defects and omissions in the laws as their experience may suggest. [1890 p 344 § 14; RRS § 11050.]

Annual report to supreme court: State Constitution Art. 4 § 25.

Chapter 2.10

JUDICIAL RETIREMENT SYSTEM

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 2.10.220 Transfer to system—Prior service credit.
 2.10.230 Cessation of benefits upon appointment or election to court.

2.10.010 Short title. This chapter shall be known and cited as the Washington Judicial Retirement System Act. [1971 ex.s. c 267 § 1.]

2.10.020 Purpose. The purpose of this chapter is to effect a system of retirement from active service. [1971 ex.s. c 267 § 2.]

2.10.030 Definitions. (1) "Retirement system" means the "Washington judicial retirement system" provided herein.

(2) "Judge" means a person elected or appointed to serve as judge of a court of record as provided in chapters 2.04, 2.06, and 2.08 RCW. Said word shall not include a person serving as a judge pro tempore.

(3) "Retirement board" means the "Washington judicial retirement board" established herein.

(4) "Surviving spouse" means the surviving widow or widower of a judge. The word shall not include the divorced spouse of a judge.

(5) "Retirement fund" means the "Washington judicial retirement fund" established herein.

(6) "Beneficiary" means any person in receipt of a retirement allowance, disability allowance or any other benefit described herein.

(7) "Monthly salary" means the monthly salary of the position held by the judge.

(8) "Service" means all periods of time served as a judge, as herein defined. Any calendar month at the beginning or end of a term in which ten or more days are served shall be counted as a full month of service: PROVIDED, That no more than one month's service may be granted for any one calendar month. Only months of service will be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Years of service shall be determined by dividing the total months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

(9) "Final average salary" means (a) for a judge in service in the same court for a minimum of twelve consecutive months preceding the date of retirement, the salary attached to the position held by the judge immediately prior to retirement; (b) for any other judge, the average monthly salary paid over the highest twenty-four month period in the last ten years of service.

(10) "Retirement allowance" for the purpose of applying cost of living increases or decreases shall include retirement allowances, disability allowances and survivorship benefit.

(11) "Index" shall mean for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959 equal one hundred) — compiled by the bureau of labor statistics, United States department of labor.

(12) "Accumulated contributions" means the total amount deducted from the judge's monthly salary pursuant to RCW 2.10.090, together with the regular interest thereon from July 1, 1988, as determined by the director of the

department of retirement systems. [1988 c 109 § 1; 1971 ex.s. c 267 § 3.]

Effective date—1988 c 109: "This act shall take effect July 1, 1988." [1988 c 109 § 27.]

2.10.040 System created—Coverage—Exclusions. The Washington judicial retirement system is hereby created for judges appointed or elected under the provisions of chapters 2.04, 2.06, and 2.08 RCW. All judges first appointed or elected to the courts covered by these chapters on or after August 9, 1971, and prior to July 1, 1988, shall be members of this system: PROVIDED, That following February 23, 1984, and until July 1, 1988, any newly elected or appointed judge holding credit toward retirement benefits under chapter 41.40 RCW shall be allowed thirty days from the effective date of election or appointment to such judgeship to make an irrevocable choice filed in writing with the department of retirement systems to continue coverage under that chapter and to be permanently excluded from coverage under this chapter for the current or any future term as a judge. All judges first appointed or elected to the courts covered by these chapters on or after July 1, 1988, shall not be members of this system, but may become members of the public employees' retirement system under chapter 41.40 RCW on the same basis as other elected officials as provided in RCW 41.40.023(3).

Any member of the retirement system who is serving as a judge as of July 1, 1988, has the option on or before December 31, 1989, of becoming a member of the retirement system created in chapter 41.40 RCW, subject to the conditions imposed by RCW 41.40.095. The option may be exercised by making an irrevocable choice filed in writing with the department of retirement systems to be permanently excluded from this system for all service as a judge. In the case of a former member of the retirement system who is not serving as a judge on July 1, 1988, the written election must be filed within one year after reentering service as a judge. [1988 c 109 § 2; 1984 c 37 § 1; 1971 ex.s. c 267 § 4.]

Effective date—1988 c 109: See note following RCW 2.10.030.
Transfers to system, prior service credit: RCW 2.10.220.

2.10.052 Retirement board abolished—Transfer of powers, duties, and functions. The Washington judicial retirement board established by this chapter is abolished. All powers, duties, and functions of the board are transferred to the director of retirement systems. [1982 c 163 § 1.]

Severability—1982 c 163: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 163 § 24.]

Effective date—1982 c 163: "This act shall take effect June 30, 1982." [1982 c 163 § 25.]

2.10.070 Retirement board—Duties. The retirement board shall perform the following duties:

- (1) Keep in convenient form such data as shall be deemed necessary for actuarial evaluation purposes;
- (2) As of July 1 of every even-numbered year have an actuarial evaluation made as to the mortality and service experience of the beneficiaries under this chapter and the

various accounts created for the purpose of showing the financial status of the retirement fund;

(3) Adopt for the retirement system the mortality tables and such other tables as shall be deemed necessary;

(4) Keep a record of its proceedings, which shall be open to inspection by the public;

(5) Serve without compensation but shall be reimbursed for expense incident to service as individual members thereof;

(6) From time to time adopt such rules and regulations not inconsistent with this chapter for the administration of this chapter and for the transaction of the business of the board.

No member of the board shall be liable for the negligence, default or failure of any employee or of any member of the board to perform the duties of his office and no member of the board shall be considered or held to be an insurer of the funds or assets of the retirement system, but shall be liable only for his own personal default or individual failure to perform his duties as such member and to exercise reasonable diligence in providing for safeguarding of the funds and assets of the system. [1971 ex.s. c 267 § 7.]

2.10.080 Funds and securities. (1) The state treasurer shall be the custodian of all funds and securities of the retirement system. Disbursements from this fund shall be made by the state treasurer upon receipt of duly authorized vouchers.

(2) The state treasurer is hereby authorized and directed to deposit any portion of the funds of the retirement system not needed for immediate use in the same manner and subject to all the provisions of law with respect to the deposit of state funds by such treasurer. All investment income earned by such portion of the retirement system's funds as may be deposited by the state treasurer in pursuance of authority herewith given shall be collected by him or her and placed to the credit of the retirement fund, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160 and to the state treasurer's service fund pursuant to RCW 43.08.190.

(3) The state investment board established by RCW 43.33A.020 has full power to invest or reinvest the funds of this system in those classes of investments authorized by RCW 43.84.150.

(4) For the purpose of providing amounts to be used to defray the cost of administration, the judicial retirement board shall ascertain at the beginning of each biennium and request from the legislature an appropriation sufficient to cover estimated expenses for the said biennium. [1991 sp.s. c 13 § 114; 1981 c 3 § 22; 1973 1st ex.s. c 103 § 1; 1971 ex.s. c 267 § 8.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Intent of amendment—1981 c 3: "The amendment of RCW 2.10.080, 2.12.070, 41.26.060, 41.26.070, and 41.40.080 by this 1980 act is intended solely to provide for the investment of state funds and is not intended to alter the administration of the affected retirement systems by the department of retirement systems under chapter 41.50 RCW." [1981 c 3 § 44.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1973 1st ex.s. c 103: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 103 § 20.]

2.10.090 Funding. The total liability, as determined by the actuary, of this system shall be funded as follows:

(1) Every judge shall have deducted from his monthly salary an amount equal to seven and one-half percent of said salary.

(2) The state as employer shall contribute an equal amount on a quarterly basis.

(3) The state shall in addition guarantee the solvency of said fund and the legislature shall make biennial appropriations from the general fund of amounts sufficient to guarantee the making of retirement payments as herein provided for if the money in the judicial retirement fund shall become insufficient for that purpose, but such biennial appropriation may be conditioned that sums appropriated may not be expended unless the money in the judicial retirement fund shall become insufficient to meet the retirement payments. [1971 ex.s. c 267 § 9.]

Members' retirement contributions—Pick up by employer: RCW 41.04.445.

2.10.100 Retirement for service or age. Retirement of a member for service shall be made by the retirement board as follows:

(1) Any judge who, on August 9, 1971 or within one year thereafter, shall have completed as a judge the years of actual service required under chapter 2.12 RCW and who shall elect to become a member of this system, shall in all respects be deemed qualified to retire under this retirement system upon his written request.

(2) Any member who has completed fifteen or more years of service may be retired upon his written request but shall not be eligible to receive a retirement allowance until the member attains the age of sixty years.

(3) Any member who attains the age of seventy-five years shall be retired at the end of the calendar year in which he attains such age.

(4) Any judge who involuntarily leaves service at any time after having served an aggregate of twelve years shall be eligible to a partial retirement allowance computed according to RCW 2.10.110 and shall receive this allowance upon the attainment of the age of sixty years and fifteen years after the beginning of his judicial service. [1988 c 109 § 3; 1971 ex.s. c 267 § 10.]

Effective date—1988 c 109: See note following RCW 2.10.030.

2.10.110 Service retirement allowance. A member upon retirement for service shall receive a monthly retirement allowance computed according to his completed years of service, as follows: Ten years, but less than fifteen years, three percent of his final average salary for each year of service; fifteen years and over, three and one-half percent of his final average salary for each year of service: PROVIDED, That in no case shall any retired member receive more than seventy-five percent of his final salary except as increased as a result of the cost of living increases as provided by this chapter. [1971 ex.s. c 267 § 11.]

2.10.120 Retirement for disability—Procedure. (1) Any judge who has served as a judge for a period of ten or more years, and who shall believe he has become physically or otherwise permanently incapacitated for the full and efficient performance of the duties of his office, may file with the retirement board an application in writing, asking for retirement. Upon receipt of such application the retirement board shall appoint one or more physicians of skill and repute, duly licensed to practice their professions in the state of Washington, who shall, within fifteen days thereafter, for such compensation as may be fixed by the board, to be paid out of the fund herein created, examine said judge and report in writing to the board their findings in the matter. If the physicians appointed by the board find the judge to be so disabled and the retirement board concurs in this finding the judge shall be retired.

(2) The retirement for disability of a judge, who has served as a judge for a period of ten or more years, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (House Joint Resolution No. 37, approved by the voters November 4, 1980), with the concurrence of the retirement board, shall be considered a retirement under subsection (1) of this section. [1982 c 18 § 1; 1971 ex.s. c 267 § 12.]

Reviser's note: House Joint Resolution No. 37, approved by the voters November 4, 1980, became Amendment 71 to the state Constitution.

2.10.130 Retirement for disability allowance. Upon a judge being retired for disability as provided in RCW 2.10.120, he shall receive from the fund an amount equal to one-half of his final average salary. [1971 ex.s. c 267 § 13.]

2.10.140 Survivor's benefits. (1) A surviving spouse of any judge holding such office, or if he dies after having retired and who, at the time of his death, has served ten or more years in the aggregate, shall receive a monthly allowance equal to fifty percent of the retirement allowance the retired judge was receiving, or fifty percent of the retirement allowance the active judge would have received had he been retired on the date of his death, but in no event less than twenty-five percent of the final average salary that the deceased judge was receiving: PROVIDED, That said surviving spouse had been married to the judge for a minimum of two years at time of death.

(2) A judge holding office on July 1, 1988, may make an irrevocable choice to relinquish the survivor benefits provided by this section in exchange for the survivor benefits provided by RCW 2.10.144 and 2.10.146 by indicating the choice in a written declaration submitted to the department of retirement systems by December 31, 1988.

(3) The surviving spouse of any judge who died in office after January 1, 1986, but before July 1, 1988, may elect to receive the survivor benefit provided in RCW 2.10.144(1). [1988 c 109 § 7; 1984 c 37 § 2; 1971 ex.s. c 267 § 14.]

Application—1988 c 109 § 7(1): "The amendment to RCW 2.10.140(1) in section 7(1), chapter 109, Laws of 1988 shall apply on a retroactive basis to the surviving spouse of any judge who retired before July 1, 1988, if the surviving spouse had not remarried before July 1, 1988." [1989 c 139 § 1.]

Effective date—1988 c 109: See note following RCW 2.10.030

Application—1984 c 37 § 2: "Section 2 of this 1984 act applies in respect to each surviving spouse who first applies for benefits under RCW 2.10.140 after January 1, 1984." [1984 c 37 § 3.]

2.10.144 Payment of accumulated contributions or retirement allowance upon death—Election. (1) If a judge dies before the date of retirement, the amount of the accumulated contributions standing to the judge's credit at the time of death shall be paid to such person or persons, having an insurable interest in the judge's life, as the judge has nominated by written designation duly executed and filed with the department of retirement systems. If there is no such designated person or persons still living at the time of the judge's death, or if the judge fails to file a new beneficiary designation subsequent to marriage, remarriage, dissolution of marriage, divorce, or reestablishment of membership following termination by withdrawal or retirement, the judge's credited accumulated contributions shall be paid to the surviving spouse as if in fact the spouse had been nominated by written designation or, if there is no such surviving spouse, then to the judge's legal representatives.

(2) Upon the death in service of any judge who is qualified but has not applied for a service retirement allowance or has completed ten years of service at the time of death, the designated beneficiary, or the surviving spouse as provided in subsection (1) of this section, may elect to waive the payment provided by subsection (1) of this section. Upon such an election, a joint and one hundred percent survivor option under RCW 2.10.146 shall automatically be given effect as if selected for the benefit of the surviving spouse or dependent who is the designated beneficiary, except that if the judge is not then qualified for a service retirement allowance, the option II benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased judge would have first qualified for a service retirement allowance. However, subsection (1) of this section, unless elected, shall not apply to any judge who has applied for a service retirement and thereafter dies between the date of separation from service and the judge's effective retirement date, where the judge has selected a survivorship option under RCW 2.10.146(1)(b). In those cases, the beneficiary named in the judge's final application for service retirement may elect to receive either a cash refund or monthly payments according to the option selected by the judge. [1990 c 249 § 13; 1988 c 109 § 8.]

Findings—1990 c 249: See note following RCW 2.10.146.

Effective date—1988 c 109: See note following RCW 2.10.030.

2.10.146 Election of option for payment of retirement or disability allowance. (1) Upon making application for a service retirement allowance under RCW 2.10.100 or a disability allowance under RCW 2.10.120, a judge who is eligible therefor shall make an election as to the manner in which such service retirement shall be paid from among the following designated options, calculated so as to be actuarially equivalent to each other:

(a) Standard allowance. A member selecting this option shall receive a retirement allowance, which shall be computed as provided in RCW 2.10.110. The retirement allowance shall be payable throughout the judge's life. However, if the

judge dies before the total of the retirement allowance paid to the judge equals the amount of the judge's accumulated contributions at the time of retirement, then the balance shall be paid to such person or persons having an insurable interest in the judge's life, as the judge has nominated by written designation duly executed and filed with the department of retirement systems or, if there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse or, if there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(b) The department shall adopt rules that allow a judge to select a retirement option that pays the judge a reduced retirement allowance and upon death, such portion of the judge's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person who has an insurable interest in the judge's life. Such person shall be nominated by the judge by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2) A judge, if married, must provide the written consent of his or her spouse to the option selected under this section. If a judge is married and both the judge and the judge's spouse do not give written consent to an option under this section, the department will pay the judge a joint and fifty percent survivor benefit and record the judge's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section. [1990 c 249 § 2; 1988 c 109 § 9.]

Findings—1990 c 249: "The legislature finds that:

(1) It would be advantageous for some retirees to have survivorship options available other than the options currently listed in statute. Allowing the department of retirement systems to adopt several different survivor options will assist retirees in their financial planning; and

(2) Disabled members of the retirement systems listed in RCW 41.50.030, except for members of the law enforcement officers' and fire fighters' retirement system plan 1, must forfeit any right to leave a benefit to their survivors if they wish to go on disability retirement. This results in some disabled workers holding onto their jobs in order to provide for their dependents. The provisions of this act allow members to go on disability retirement while still providing for their survivors." [1990 c 249 § 1.] For codification of 1990 c 249, see Codification Tables, Volume 0.

Effective date—1988 c 109: See note following RCW 2.10.030.

2.10.155 Suspension of retirement allowance upon employment—Exceptions—Reinstatement—Pro tempore service. (1) No judge shall be eligible to receive the judge's monthly service or disability retirement allowance if the retired judge is employed:

(a) For more than eight hundred ten hours in a calendar year as a pro tempore judge; or

(b) In an eligible position as defined in RCW 41.40.010 or 41.32.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030.

(2) Subsection (1) of this section notwithstanding, a previously elected judge of the superior court who retired before June 7, 1990, leaving a pending case in which the judge had made discretionary rulings may hear the pending

case as a judge pro tempore without having his or her retirement allowance suspended.

(3) If a retired judge's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retired judge's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(4) The department shall adopt rules implementing this section. [1990 c 274 § 14; 1988 c 109 § 10.]

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Application—Reservation—1990 c 274 §§ 11, 12, 14, and 15: See note following RCW 41.40.690.

Effective date—1988 c 109: See note following RCW 2.10.030.

2.10.165 Refund of certain contributions. If a judge who was a member of this system left the system before July 1, 1988, and neither the judge nor the judge's surviving spouse: (1) Was eligible at that time to receive a benefit under this chapter; or (2) has received an amount under a sundry claims appropriation from the state legislature intended as a refund of the judge's contributions paid under RCW 2.10.090(1); then the judge or the judge's surviving spouse may apply to the department for and receive a refund of such contributions. [1991 c 159 § 1.]

2.10.170 Cost of living adjustment. Effective July 1, 1972, and of each succeeding year, every retirement allowance which has been in effect for one year or more shall be adjusted to that dollar amount which bears the ratio to its original dollar amount which the retirement board finds to exist between the index for the previous calendar year and the index for the calendar year prior to the date the retirement allowance became payable: PROVIDED, That the amount of increase or decrease in any one year shall not exceed three percent of the then payable retirement allowance: AND PROVIDED FURTHER, That this cost of living adjustment shall not reduce any pension below that amount which was payable at time of retirement. [1971 ex.s. c 267 § 17.]

2.10.180 Benefits exempt from taxation and judicial process—Exceptions—Deductions for group insurance premiums. (1) Except as provided in subsections (2), (3), and (4) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, or any other process of law whatsoever.

(2) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(3) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(4) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [1991 c 365 § 18; 1989 c 360 § 22; 1987 c 326 § 17; 1982 1st ex.s. c 52 § 1; 1979 ex.s. c 205 § 1; 1971 ex.s. c 267 § 18.]

Severability—1991 c 365: See note following RCW 41.50.500.

Effective date—1987 c 326: See RCW 41.50.901.

Effective dates—1982 1st ex.s. c 52: "(1) Sections 9 and 34 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

(2) The remainder of this act shall take effect July 1, 1982." [1982 1st ex.s. c 52 § 37.] For codification of 1982 1st ex.s. c 52, see Codification Tables, Volume 0.

2.10.190 Hearing prior to judicial review—Required—Notice. Any person aggrieved by any final decision of the retirement board must, before petitioning for judicial review, file with the director of the retirement system by mail or personally within sixty days from the day such decision was communicated to such person, a notice for a hearing before the retirement board. The notice of hearing shall set forth in full detail the grounds upon which such person considers such decision unjust or unlawful and shall include every issue to be considered by the retirement board, and it must contain a detailed statement of facts upon which such person relies in support thereof. Such persons shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those records of the retirement system. [1971 ex.s. c 267 § 19.]

2.10.200 Hearing prior to judicial review—Conduct. A hearing shall be held by the department of retirement systems, or an authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearings shall be de novo and shall conform to the provisions of chapter 34.05 RCW. The retirement system may appear in all such proceedings and introduce testimony in support of the decision. Judicial review of any final decision by the director is governed by the provisions of chapter 34.05 RCW. [1989 c 175 § 37; 1971 ex.s. c 267 § 20.]

Effective date—1989 c 175: See note following RCW 34.05.010.

2.10.210 Hearing prior to judicial review—No bond required. No bond of any kind shall be required of a

claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the retirement board affecting such claimant's right to retirement or disability benefits. [1971 ex.s. c 267 § 21.]

2.10.220 Transfer to system—Prior service credit.

(1) Any member of the Washington public employees' retirement system who is eligible to participate in the judicial retirement system may, by written request filed with the retirement boards of the two systems respectively, transfer such membership to the judicial retirement system. Upon the receipt of such request, the board of the Washington public employees' retirement system shall transfer to the board of the Washington judicial retirement system (a) all employee's contributions and interest thereon belonging to such member in the employees' savings fund and all employer's contributions credited or attributed to such member in the benefit account fund and (b) a record of service credited to such member. One-half of such service shall be computed and not more than nine years shall be credited to such member as though such service was performed as a member of the judicial retirement system. Upon such transfer being made the state treasurer shall deposit such moneys in the judicial retirement fund. In the event that any such member should terminate judicial service prior to his entitlement to retirement benefits under any of the provisions of this chapter, he shall upon request therefor be repaid from the judicial retirement fund an amount equal to the amount of his employee's contributions to the Washington public employees' retirement system and interest plus interest thereon from the date of the transfer of such moneys.

(2) Any member of the judicial retirement system who was formerly a member of the Washington public employees' retirement system with membership service credit of not less than six years but who has terminated his membership therein under the provisions of chapter 41.40 RCW, may reinstate his membership in the Washington public employees' retirement system, for the sole purpose of qualifying for a transfer of membership in the judicial retirement system in accordance with subsection (1) above by making full restoration of all withdrawn funds to the employees' savings fund prior to July 1, 1980. Upon reinstatement in accordance with this subsection, the provisions of subsection (1) and the provisions of RCW 41.40.023(3) shall then be applicable to the reinstated member in the same manner and to the same extent as they are to the present members of the Washington public employees' retirement system who are eligible to participate in the judicial retirement system.

(3) Any member of the judicial retirement system who has served as a judge for one or more years and who has rendered service for the state of Washington, or any political subdivision thereof, prior to October 1, 1947, or the time of the admission of the employer into the Washington public employees' retirement system, may—upon his payment into the judicial retirement fund of a sum equal to five percent of his compensation earned for such prior public service—request and shall be entitled to have one-half of such service computed and not more than six years immediately credited to such member as though such service had been performed as a member of the judicial retirement system, provided that

any such prior service so credited shall not be claimed for any pension system other than a judicial retirement system. [1980 c 7 § 1; 1971 ex.s. c 267 § 22.]

Transfers to system by those covered under chapter 2.12 RCW: RCW 2.10.040.

2.10.230 Cessation of benefits upon appointment or election to court. Any person receiving retirement benefits from this system who is appointed or elected to a court under chapter 2.04, 2.06, or 2.08 RCW shall upon the first day of entering such office become a member of this system and his or her retirement benefits shall cease. Pro tempore service as a judge of a court of record shall not constitute appointment as that term is used in this section. Upon leaving such office, a person shall have his or her benefits recomputed or restored, as determined in this chapter: PROVIDED, That no such person shall receive a benefit less than that which was being paid at the time his or her benefit ceased. [1988 c 109 § 4.]

Effective date—1988 c 109: See note following RCW 2.10.030.

Chapter 2.12

RETIREMENT OF JUDGES—RETIREMENT SYSTEM

Sections

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Retirement of judges: State Constitution Art. 4 § 3(a) (Amendment 25).

2.12.010 Retirement for service or age. Any judge of the supreme court, court of appeals, or superior court of the state of Washington who heretofore and/or hereafter shall have served as a judge of any such courts for eighteen years in the aggregate or who shall have served ten years in the aggregate and shall have attained the age of seventy years or more may, during or at the expiration of his term of office, in accordance with the provisions of this chapter, be retired and receive the retirement pay herein provided for. In computing such term of service, there shall be counted the time spent by such judge in active service in the armed

forces of the United States of America, under leave of absence from his judicial duties as provided for under chapter 201, Laws of 1941: PROVIDED, HOWEVER, That in computing such credit for such service in the armed forces of the United States of America no allowance shall be made for service beyond the date of the expiration of the term for which such judge was elected. Any judge desiring to retire under the provisions of this section shall file with the director of retirement systems, a notice in duplicate in writing, verified by his affidavit, fixing a date when he desires his retirement to commence, one copy of which the director shall forthwith file with the administrator for the courts. The notice shall state his name, the court or courts of which he has served as judge, the period of service thereon and the dates of such service. [1982 1st ex.s. c 52 § 2; 1973 c 106 § 4; 1971 c 30 § 1; 1943 c 221 § 1; 1937 c 229 § 1; Rem. Supp. 1943 § 11054-1.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Construction—1971 c 30: "The provisions of this 1971 amendatory act shall be construed in accordance with RCW 2.06.100 which provides for the retirement of judges of the court of appeals." [1971 c 30 § 7.]

Severability—1937 c 229: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional." [1937 c 229 § 10; RRS § 11054-10.] This applies to RCW 2.12.010, 2.12.020, 2.12.030 and 2.12.040 through 2.12.070.

2.12.012 Partial pension for less than eighteen years service—When authorized, amount. Any judge of the supreme court, court of appeals, or superior court of this state who shall leave judicial service at any time after having served as a judge of any of such courts for an aggregate of twelve years shall be eligible to a partial retirement pension in a percentage of the pension provided in this chapter as determined by the proportion his years of judicial service bears to eighteen and shall receive the same upon attainment of age seventy, or eighteen years after the commencement of such judicial service, whichever shall occur first. [1971 c 30 § 2; 1961 c 286 § 1.]

Construction—1971 c 30: See note following RCW 2.12.010.

2.12.015 Additional pension for more than eighteen years service—Amount. In the event any judge of the supreme court, court of appeals, or superior court of the state serves more than eighteen years in the aggregate as computed under RCW 2.12.010, he shall receive in addition to any other pension benefits to which he may be entitled under this chapter, an additional pension benefit based upon one-eighteenth of his salary for each year of full service after eighteen years, provided his total pension shall not exceed seventy-five percent of the monthly salary he was receiving as a judge at the time of his retirement. [1971 c 30 § 3; 1961 c 286 § 2.]

Construction—1971 c 30: See note following RCW 2.12.010.

2.12.020 Retirement for disability. (1) Any judge of the supreme court, court of appeals, or superior court of the state of Washington, who heretofore and/or hereafter shall have served as a judge of any such courts for a period of ten

years in the aggregate, and who shall believe he has become physically or otherwise permanently incapacitated for the full and efficient performance of the duties of his office, may file with the director of retirement systems an application in duplicate in writing, asking for retirement, which application shall be signed and verified by the affidavit of the applicant or by someone in his behalf and which shall set forth his name, the office then held, the court or courts of which he has served as judge, the period of service thereon, the dates of such service and the reasons why he believes himself to be, or why they believe him to be incapacitated. Upon filing of such application the director shall forthwith transmit a copy thereof to the governor who shall appoint three physicians of skill and repute, duly licensed to practice their professions in the state of Washington, who shall, within fifteen days thereafter, for such compensation as may be fixed by the governor, to be paid out of the fund hereinafter created, examine said judge and report, in writing, to the governor their findings in the matter. If a majority of such physicians shall report that in their opinion said judge has become permanently incapacitated for the full and efficient performance of the duties of his office, and if the governor shall approve such report, he shall file the report, with his approval endorsed thereon, in the office of the director and a duplicate copy thereof with the administrator for the courts, and from the date of such filing the applicant shall be deemed to have retired from office and be entitled to the benefits of this chapter to the same extent as if he had retired under the provisions of RCW 2.12.010.

(2) The retirement for disability of a judge, who has served as a judge of the supreme court, court of appeals, or superior court of the state of Washington for a period of ten years in the aggregate, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (House Joint Resolution No. 37, approved by the voters November 4, 1980), with the concurrence of the retirement board, shall be considered a retirement under subsection (1) of this section. [1982 1st ex.s. c 52 § 3; 1982 c 18 § 2; 1973 c 106 § 5; 1971 c 30 § 4; 1937 c 229 § 2; RRS § 11054-2.]

Reviser's note: House Joint Resolution No. 37, approved by the voters November 4, 1980, became Amendment 71 to the Constitution of this state.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Construction—1971 c 30: See note following RCW 2.12.010.

2.12.030 Amount and time of payment—Surviving spouse's benefit. Supreme court, court of appeals, or superior court judges of the state who retire from office under the provisions of this chapter other than as provided in RCW 2.12.012 shall be entitled to receive monthly during the period of their natural life, out of the fund hereinafter created, an amount equal to one-half of the monthly salary they were receiving as a judge at the time of their retirement, or at the end of the term immediately prior to their retirement if their retirement is made after expiration of their term. The surviving spouse of any judge who shall have heretofore retired or may hereafter retire, or of a judge who was heretofore or may hereafter be eligible for retirement at the time of death, if the surviving spouse had been married to the judge for three years, if the surviving spouse had been

married to the judge prior to retirement, shall be paid an amount equal to one-half of the retirement pay of the judge, as long as such surviving spouse remains unmarried. The retirement pay shall be paid monthly by the state treasurer on or before the tenth day of each month. The provisions of this section shall apply to the surviving spouse of any judge who dies while holding such office or dies after having retired under the provisions of this chapter and who at the time of death had served ten or more years in the aggregate as a judge of the supreme court, court of appeals, or superior court or any of such courts, or had served an aggregate of twelve years in the supreme court, court of appeals, or superior court if such pension rights are based upon RCW 2.12.012. [1973 1st ex.s. c 154 § 1; 1971 c 30 § 5; 1961 c 286 § 3; 1957 c 243 § 1; 1951 c 79 § 1; 1945 c 19 § 1; 1937 c 229 § 3; RRS § 11054-3.]

Severability—1973 1st ex.s. c 154: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 154 § 130.]

Construction—1971 c 30: See note following RCW 2.12.010.

2.12.035 Retirement pay of certain justices or judges retiring prior to December 1, 1968—Widow's benefits. The retirement pay or pension of any justice of the supreme or judge of any superior court of the state who was in office on August 6, 1965, and who retired prior to December 1, 1968, or who would have been eligible to retire at the time of death prior to December 1, 1968, shall be based, effective December 1, 1968, upon the annual salary which was being prescribed by the statute in effect for the office of justice of the supreme court or for the office of judge of the superior court, respectively, at the time of his retirement or at the end of the term immediately prior to his retirement if his retirement was made after expiration of his term or at the time of his death if he died prior to retirement. The widow's benefit for the widow of any such justice or judge as provided for in RCW 2.12.030 shall be based, effective December 1, 1968, upon such retirement pay. [1971 c 81 § 7; 1969 ex.s. c 202 § 1.]

2.12.037 Adjustment of pension of retired judges or widows. (1) "Index" for the purposes of this section, shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959 equal one hundred) compiled by the Bureau of Labor Statistics, United States Department of Labor;

(2) Effective July 1, 1970, every pension computed and payable under the provisions of RCW 2.12.030 to any retired judge or to his widow which does not exceed four hundred fifty dollars per month shall be adjusted to that dollar amount which bears the ratio of its original dollar amount which is found to exist between the index for 1969 and the index for the calendar year prior to the effective retirement date of the person to whom, or on behalf of whom, such retirement allowance is being paid. [1970 ex.s. c 96 § 1.]

2.12.040 Service after retirement. If any retired judge shall accept an appointment or an election to a judicial office, he shall be entitled to receive the full salary pertain-

ing thereto, and his retirement pay under this chapter shall be suspended during such term of office and his salary then received shall be subject to contribution to the judges' retirement fund as provided in this chapter. [1955 c 38 § 6; 1943 c 37 § 1; 1937 c 229 § 4; Rem. Supp. 1943 § 11054-4.]

2.12.045 Minimum monthly benefit—Post-retirement adjustment—Computation. (1) Notwithstanding any provision of law to the contrary, effective July 1, 1979, no person receiving a monthly benefit pursuant to this chapter shall receive a monthly benefit of less than ten dollars per month for each year of service creditable to the person whose service is the basis of the retirement allowance. Portions of a year shall be treated as fractions of a year and the decimal equivalent shall be multiplied by ten dollars. Where the monthly benefit was adjusted at the time benefit payments to the beneficiary commenced, the minimum benefit provided in this section shall be adjusted in a manner consistent with that adjustment.

(2) Notwithstanding any provision of law to the contrary, effective July 1, 1979, the monthly benefit of each person who either is receiving benefits pursuant to RCW 2.12.020 or 2.12.030 as of December 31, 1978, or commenced receiving a monthly benefit under this chapter as of a date no later than July 1, 1974, shall be permanently increased by a post-retirement adjustment. This adjustment shall be in lieu of any adjustments provided under RCW 2.12.037 as of July 1, 1979, or July 1, 1980, for the affected persons. Such adjustment shall be calculated as follows:

(a) Monthly benefits to which this subsection and subsection (1) of this section are both applicable shall be determined by first applying subsection (1) and then applying this subsection. The department shall determine the total years of creditable service and the total dollar benefit base accrued as of December 31, 1978, except that this determination shall take into account only those persons to whom this subsection applies;

(b) The department shall multiply the total benefits determined in (a) of this subsection by six percent and divide the dollar value thus determined by the total service determined in (a) of this subsection. The resultant figure shall then be a post-retirement increase factor which shall be applied as specified in (c) of this subsection;

(c) Each person to whom this subsection applies shall receive an increase which is the product of the factor determined in (b) of this subsection multiplied by the years of creditable service. [1979 ex.s. c 96 § 4.]

2.12.046 Monthly benefit—Post-retirement adjustment—Computation. Notwithstanding any provision of law to the contrary, effective July 1, 1983, the monthly benefit of each person who either is receiving benefits pursuant to RCW 2.12.020 or 2.12.030 as of December 31, 1982, or commenced receiving a monthly benefit under this chapter as of a date no later than July 1, 1978, shall be permanently increased by a post-retirement adjustment of \$.74 per month for each year of creditable service the judge established with the retirement system. Any fraction of a year of service shall be counted in the computation of the post-retirement adjustment. This adjustment shall be in lieu of any adjust-

ments provided under RCW 2.12.037 as of July 1, 1983, or July 1, 1984, for the affected persons. [1983 1st ex.s. c 56 § 1.]

Effective date—1983 1st ex.s. c 56: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 1st ex.s. c 56 § 7.]

2.12.048 Refund of certain contributions. If a judge who was a member of this system left the system before July 1, 1988, and neither the judge nor the judge's surviving spouse: (1) Was eligible at that time to receive a benefit under this chapter; or (2) has received an amount under a sundry claims appropriation from the state legislature intended as a refund of the judge's contributions paid under RCW 2.12.060; then the judge or the judge's surviving spouse may apply to the department for and receive a refund of such contributions. [1991 c 159 § 2.]

2.12.050 Judges' retirement fund—Created—Contents—Custodian—Records. There is hereby created a fund in the state treasury to be known as "The Judges' Retirement Fund" which shall consist of the moneys appropriated from the general fund in the state treasury, as hereinafter provided; the deductions from salaries of judges, as hereinafter provided, all gifts, donations, bequests and devises made for the benefit of said fund, and the rents, issues and profits thereof, or proceeds of sales of assets thereof. The state treasurer shall be treasurer, ex officio, of this fund. The treasurer shall be custodian of the moneys in said judges' retirement fund. The department of retirement systems shall receive all moneys payable into said fund and make disbursements therefrom as provided in this chapter. The department shall keep written permanent records showing all receipts and disbursements of said fund. [1982 1st ex.s. c 52 § 4; 1977 c 75 § 1; 1977 c 18 § 1; 1967 c 28 § 1; 1959 c 192 § 1; 1937 c 229 § 5; RRS § 11054-5.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

2.12.060 Fund—Constitution—Salary deductions—Aid. For the purpose of providing moneys in said judges' retirement fund, concurrent monthly deductions from judges' salaries and portions thereof payable from the state treasury and withdrawals from the general fund of the state treasury shall be made as follows: Six and one-half percent shall be deducted from the monthly salary of each justice of the supreme court, six and one-half percent shall be deducted from the monthly salary of each judge of the court of appeals, and six and one-half percent of the total salaries of each judge of the superior court shall be deducted from that portion of the salary of such justices or judges payable from the state treasury; and a sum equal to six and one-half percent of the combined salaries of the justices of the supreme court, the judges of the court of appeals, and the judges of the superior court shall be withdrawn from the general fund of the state treasury. In consideration of the contributions made by the judges and justices to the judges' retirement fund, the state hereby undertakes to guarantee the solvency of said fund and the legislature shall make biennial appropriations from the general fund of amounts sufficient

to guarantee the making of retirement payments as herein provided for if the money in the judges' retirement fund shall become insufficient for that purpose, but such biennial appropriation may be conditioned that sums appropriated may not be expended unless the money in the judges' retirement fund shall become insufficient to meet the retirement payments. The deductions and withdrawals herein directed shall be made on or before the tenth day of each month and shall be based on the salaries of the next preceding calendar month. The administrator for the courts shall issue warrants payable to the treasurer to accomplish the deductions and withdrawals herein directed, and shall issue the monthly salary warrants of the judges and justices for the amount of salary payable from the state treasury after such deductions have been made. The treasurer shall cash the warrants made payable to him hereunder and place the proceeds thereof in the judges' retirement fund for disbursement as authorized in this chapter. [1973 c 106 § 6; 1973 c 37 § 1. Prior: 1971 c 81 § 8; 1971 c 30 § 6; 1957 c 243 § 2; 1951 c 79 § 2; 1945 c 19 § 2; 1937 c 229 § 6; Rem. Supp. 1945 § 11054-6.]

Construction—1971 c 30: See note following RCW 2.12.010.

Members' retirement contributions—Pick up by employer: RCW 41.04.445.

2.12.090 Benefits exempt from taxation and judicial process—Exceptions—Deductions for group insurance premiums. (1) Except as provided in subsections (2), (3), and (4) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions of this chapter and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) a notice of payroll deduction issued under chapter 26.23 RCW, (c) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(4) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section. [1991 c 365 § 19; 1989 c 360 § 23; 1987 c 326 § 18; 1982 1st ex.s. c 52 § 32.]

Severability—1991 c 365: See note following RCW 41.50.500.

Effective date—1987 c 326: See RCW 41.50.901.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

2.12.100 Transfer of membership from Washington public employees' retirement system to judges' retirement system—Authorized—Procedure. Any member of the Washington public employees' retirement system who is eligible to participate in the judges' retirement system, may by written request filed with the director and custodian of the two systems respectively, transfer such membership to the judges' retirement system. Upon the receipt of such request, the director of the Washington public employees' retirement system shall transfer to the state treasurer (1) all employees' contributions and interest thereon belonging to such member in the employees' savings fund and all employers' contributions credited or attributed to such member in the benefit account fund and (2) a record of service credited to such member. One-half of such service but not in excess of twelve years shall be computed and credited to such member as though such service was performed as a member of the judges' retirement system. Upon such transfer being made the state treasurer shall deposit such moneys in the judges' retirement fund. In the event that any such member should terminate judicial service prior to his entitlement to retirement benefits under any of the provisions of chapter 2.12 RCW, he shall upon request therefor be repaid from the judges' retirement fund an amount equal to the amount of his employees' contributions to the Washington public employees' retirement system and interest plus interest thereon from the date of the transfer of such moneys: PROVIDED, HOWEVER, That this section shall not apply to any person who is retired as a judge as of February 20, 1970. [1970 ex.s. c 96 § 2.]

2.12.900 Construction—Gender. Whenever words importing the masculine gender are used in the provisions of this chapter they may be extended to females also as provided in RCW 1.12.050 and whenever words importing the feminine gender are used in the provisions of this chapter they may be extended to males. [1971 c 30 § 8.]

Chapter 2.14

RETIREMENT OF JUDGES—SUPPLEMENTAL RETIREMENT

Sections	
2.14.010	Purpose.
2.14.020	Definitions.
2.14.030	Judicial retirement account plan established.
2.14.040	Administration of plan.
2.14.050	Administrator—Discharge of duties.
2.14.060	Judicial retirement principal account—Creation—Transfer of deficiencies—Contributions—Use.
2.14.070	Judicial retirement administrative account—Creation—Use—Excess balance—Deficiencies.
2.14.080	Duties of administrator—Investments and earnings.
2.14.090	Funding of plan—Contributions.
2.14.100	Contributions—Distribution upon member's separation—Exemptions from state and local tax—Exempt from execution.
2.14.110	Payment of contributions upon member's death.

2.14.010 Purpose. (1) The purpose of this chapter is to provide a supplemental retirement benefit to judges who are elected or appointed under chapter 2.04, 2.06, or 2.08 RCW and who are members of the public employees' retirement system for their service as a judge.

(2) This chapter may be known and cited as the judicial retirement account act. [1988 c 109 § 12.]

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Plan" means the judicial retirement account plan.

(2) "Principal account" means the judicial retirement principal account.

(3) "Member" means a judge participating in the judicial retirement account plan.

(4) "Administrative account" means the judicial retirement administrative account.

(5) "Accumulated contributions" means the total amount contributed to a member's account under RCW 2.14.090 (1) and (2), together with any interest and earnings that have been credited to the member's account. [1988 c 109 § 13.]

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.030 Judicial retirement account plan established. The judicial retirement account plan is established for judges appointed or elected under chapter 2.04, 2.06, or 2.08 RCW and who are members of the public employees' retirement system for their service as a judge. [1988 c 109 § 14.]

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.040 Administration of plan. The administrator for the courts, under the direction of the board for judicial administration, shall administer the plan. The administrator shall:

(1) Deposit or invest contributions to the plan consistent with RCW 2.14.080;

(2) Credit investment earnings or interest to individual judicial retirement accounts consistent with RCW 2.14.070;

(3) Keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of any judicial retirement accounts created under this chapter;

(4) File an annual report of the financial condition, transactions, and affairs of the judicial retirement accounts. A copy of the annual report shall be filed with the speaker of the house of representatives, the president of the senate, the governor, and the state auditor; and

(5) Adopt rules necessary to carry out this chapter. [1988 c 109 § 15.]

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.050 Administrator—Discharge of duties. The administrator for the courts shall be deemed to stand in a fiduciary relationship to the members participating in the plan and shall discharge his or her duties in good faith and with that diligence, care, and skill which ordinary prudent persons would exercise under similar circumstances in like positions. [1988 c 109 § 16.]

(1992 Ed.)

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.060 Judicial retirement principal account—Creation—Transfer of deficiencies—Contributions—Use. The judicial retirement principal account is created in the state treasury. Any deficiency in the judicial retirement administrative account caused by an excess of administrative expenses disbursed from that account over earnings of investments of balances credited to that account shall be transferred to that account from the principal account.

The contributions under *section 19 of this act shall be paid into the principal account and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by the administrator for the courts. The principal account shall be used to carry out the purposes of this chapter. [1988 c 109 § 17.]

***Reviser's note:** The reference to section 19 of this act appears to be incorrect. Section 20 of the act, codified as RCW 2.14.090, was apparently intended.

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.070 Judicial retirement administrative account—Creation—Use—Excess balance—Deficiencies. The judicial retirement administrative account is created in the state treasury. All expenses of the administrator for the courts under this chapter, including staffing and administrative expenses, shall be paid out of the administrative account. Any excess balance of this account over administrative expenses disbursed from this account shall be transferred to the principal account. Any deficiency in the administrative account caused by an excess of administrative expenses disbursed from this account over the excess balance of this account shall be transferred to this account from the principal account. [1991 sp.s. c 13 § 70; 1988 c 109 § 18.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.080 Duties of administrator—Investments and earnings. (1) The administrator for the courts shall:

(a) Deposit or invest the contributions under RCW 2.14.090 in a credit union, savings and loan association, bank, or mutual savings bank;

(b) Purchase life insurance, shares of an investment company, or fixed and/or variable annuity contracts from any insurance company or investment company licensed to contract business in this state; or

(c) Invest in any of the class of investments described in RCW 43.84.150.

(2) The state investment board or the committee for deferred compensation, at the request of the administrator for the courts, may invest moneys in the principal account. Moneys invested by the investment board shall be invested in accordance with RCW 43.84.150. Moneys invested by the committee for deferred compensation shall be invested in accordance with RCW 41.04.250. Except as provided in RCW 43.33A.160 or as necessary to pay a pro rata share of expenses incurred by the committee for deferred compensation, one hundred percent of all earnings from these investments, exclusive of investment income pursuant to RCW

43.84.080, shall accrue directly to the principal account. [1991 sp.s. c 13 § 103; 1989 c 139 § 3; 1988 c 109 § 19.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.090 Funding of plan—Contributions. The plan shall be funded as provided in this section.

(1) Two and one-half percent shall be deducted from each member's salary.

(2) The state, as employer, shall contribute an equal amount on a monthly basis.

(3) The contributions shall be collected by the administrator for the courts and deposited in the member's account within the principal account. [1988 c 109 § 20.]

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.100 Contributions—Distribution upon member's separation—Exemptions from state and local tax—Exempt from execution. (1) A member who separates from judicial service for any reason is entitled to receive a lump sum distribution of the member's accumulated contributions. The administrator for the courts may adopt rules establishing other payment options, in addition to lump sum distributions, if the other payment options conform to the requirements of the federal internal revenue code.

(2) The right of a person to receive a payment under this chapter and the moneys in the accounts created under this chapter are exempt from any state, county, municipal, or other local tax and are not subject to execution, garnishment, or any other process of law whatsoever. [1988 c 109 § 21.]

Effective date—1988 c 109: See note following RCW 2.10.030.

2.14.110 Payment of contributions upon member's death. If a member dies, the amount of the accumulated contributions standing to the member's credit at the time of the member's death shall be paid to such person or persons having an insurable interest in the member's life as the member has nominated by written designation duly executed and filed with the office of the administrator for the courts. If there is no such designated person or persons still living at the time of the member's death, the member's accumulated contributions shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation or, if there is no such surviving spouse, then to the member's legal representatives. [1988 c 109 § 22.]

Effective date—1988 c 109: See note following RCW 2.10.030.

Chapter 2.16

ASSOCIATION OF SUPERIOR COURT JUDGES

Sections

2.16.010	Association created.
2.16.020	Officers.
2.16.040	Uniform court rules.
2.16.050	Annual meetings.
2.16.070	Effect of chapter on existing laws.

Administrator for the courts: Chapter 2.56 RCW.

2.16.010 Association created. All the judges of the superior courts of the state of Washington are hereby associated under the name of the association of the superior court judges of the state of Washington. [1933 ex.s. c 58 § 1; RRS § 11051-1.]

2.16.020 Officers. The judges shall elect from their number a president, who shall be called president judge, and a secretary, who shall hold their offices from the date of one annual meeting of the association to the next. [1955 c 38 § 7; 1933 ex.s. c 58 § 2; RRS § 11051-2.]

2.16.040 Uniform court rules. At its annual meetings, pursuant to section 24, Article IV of the state Constitution, the association shall have power to establish uniform rules for the government of the superior courts, which rules may be amended from time to time. [1955 c 38 § 9; 1933 ex.s. c 58 § 4; RRS § 11051-4.]

Rules of court: Cf. CR 83.

Rule-making power, supreme court: RCW 2.04.180 through 2.04.210.

Superior court rules: State Constitution Art. 4 § 24.

Uniform rules to be established: RCW 2.08.230.

2.16.050 Annual meetings. The association shall meet annually in July or August, at which meeting officers shall be chosen for the ensuing year and such other business transacted as may properly come before the association. [1955 c 38 § 10; 1933 ex.s. c 58 § 5; RRS § 11051-5.]

2.16.070 Effect of chapter on existing laws. Except for the provisions of *RCW 2.16.060, this chapter shall not be held to repeal any other existing law relating to the visitation of judges. [1933 ex.s. c 58 § 7; RRS § 11051-7.]

*Reviser's note: RCW 2.16.060 was repealed by 1973 c 106 § 40.

Chapter 2.20

MAGISTRATES

Sections

2.20.010	Magistrate defined.
2.20.020	Who are magistrates.

Municipal judges as magistrates: RCW 35.20.020, 35.20.250.

Preliminary hearings: Chapter 10.16 RCW.

2.20.010 Magistrate defined. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime. [1891 c 53 § 1; RRS § 50.]

2.20.020 Who are magistrates. The following persons are magistrates:

- (1) The justices of the supreme court.
- (2) The judges of the court of appeals.
- (3) The superior judges, and district judges.
- (4) All municipal officers authorized to exercise the powers and perform the duties of district judges. [1987 c 202 § 103; 1971 c 81 § 9; 1891 c 53 § 2; RRS § 51.]

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

Chapter 2.24

COURT COMMISSIONERS AND REFEREES

Sections

2.24.010	Appointment of court commissioners—Qualifications—Term of office.
2.24.020	Oath.
2.24.030	Salary.
2.24.040	Powers—Fees.
2.24.050	Revision by court.
2.24.060	Referees—Definition—Powers.

Court commissioners: State Constitution Art. 4 § 23; RCW 71.05.135 and 71.05.137.

Juvenile court, court commissioner powers: RCW 13.04.021.

2.24.010 Appointment of court commissioners—Qualifications—Term of office. There may be appointed in each county or judicial district, by the judges of the superior court having jurisdiction therein, one or more court commissioners for said county or judicial district. Each such commissioner shall be a citizen of the United States and shall hold the office during the pleasure of the judges making the appointment. [1990 c 191 § 1; 1979 ex.s. c 54 § 1; 1967 ex.s. c 87 § 1; 1961 c 42 § 1; 1909 c 124 § 1; RRS § 83. Prior: 1895 c 83 § 1.]

2.24.020 Oath. Court commissioners appointed hereunder shall, before entering upon the duties of such office, take and subscribe an oath to support the Constitution of the United States, the Constitution of the state of Washington, and to perform the duties of such office fairly and impartially and to the best of his ability. [1909 c 124 § 5; RRS § 88.]

2.24.030 Salary. Each court commissioner appointed hereunder shall be allowed a salary, in addition to the fees herein provided for, in such sum as the board of county commissioners may designate, said salary to be paid at the time and in the manner as the salary of other county officials. [1909 c 124 § 4; RRS § 87. Prior: 1895 c 83 § 3.]

2.24.040 Powers—Fees. Such court commissioner shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

(1) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state.

(2) To grant and enter defaults and enter judgment thereon.

(3) To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.

(4) To act as referee in all matters and actions referred to him or her by the superior court as such, with all the powers now conferred upon referees by law.

(5) To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.

(6) To hear and determine all petitions for the adoption of children, [and] for the dissolution of incorporations.

(7) To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: PROVIDED, That in cases where a jury is demanded, same shall be referred to the superior court for trial.

(8) To hear and determine all complaints for the commitments of minors with all powers conferred upon the superior court in such matters.

(9) To hear and determine ex parte and uncontested civil matters of any nature.

(10) To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of the court commissioner's lawful orders made in any matter before the court commissioner as fully as the judge of the superior court.

(11) To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.

(12) To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he or she may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.

(13) To charge and collect, for his or her own use, the same fees for the official performance of official acts mentioned in subsections (4) and (11) of this section as are provided by law for referees and notaries public. [1991 c 33 § 6; 1979 ex.s. c 54 § 2; 1963 c 188 § 1; 1909 c 124 § 2; RRS § 85. Prior: 1895 c 83 § 2.]

Effective date—1991 c 33: See note following RCW 3.66.020.

Powers of commissioner under juvenile court act: RCW 13.04.030.

2.24.050 Revision by court. All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge. [1988 c 202 § 1; 1971 c 81 § 10; 1909 c 124 § 3; RRS § 86.]

Severability—1988 c 202: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 202 § 97.]

2.24.060 Referees—Definition—Powers. A referee is a person appointed by the court or judicial officer with power—

(1) To try an issue of law or of fact in a civil action or proceeding and report thereon.

(2) To ascertain any other fact in a civil action or proceeding when necessary for the information of the court, and report the fact or to take and report the evidence in an action.

(3) To execute an order, judgment or decree or to exercise any other power or perform any other duty expressly authorized by law. [1891 c 25 § 1; RRS § 82.]

Referee asking or receiving unlawful compensation: RCW 9A.68.020, 9A.68.030.

Supplemental proceedings: Chapter 6.32 RCW.

Trial before referee: Chapter 4.48 RCW.

Chapter 2.28

POWERS OF COURTS AND GENERAL PROVISIONS

Sections

2.28.010	Powers of courts in conduct of judicial proceedings.
2.28.020	Contempt—Punishment.
2.28.030	Judicial officer defined—When disqualified.
2.28.040	May act as attorney, when.
2.28.050	Judge distinguished from court.
2.28.060	Judicial officers—Powers.
2.28.070	Contempt—Judicial officer may punish.
2.28.080	Powers of judges of supreme and superior courts.
2.28.090	Powers of inferior judicial officers.
2.28.100	Legal holidays—No court—Exceptions.
2.28.110	Legal holiday—Sitting deemed adjourned.
2.28.120	Proceedings may be adjourned from time to time.
2.28.130	Proceeding not to fail for want of judge or session of court.
2.28.139	County to furnish court house.
2.28.140	Court rooms.
2.28.141	County commissioners to provide temporary quarters.
2.28.150	Implied powers—Proceeding when mode not prescribed.
2.28.160	Judge pro tempore—Compensation—Reimbursement for subsistence, lodging and travel expenses—Affidavit to court.

Justice without unnecessary delay: State Constitution Art. 1 § 10.

2.28.010 Powers of courts in conduct of judicial proceedings. Every court of justice has power—(1) To preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings before it or its officers. (4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties. [1955 c 38 § 12; 1909 c 124 § 2; RRS § 85.]

Compelling attendance of witnesses: Chapter 5.56 RCW.

Oaths, who may administer: RCW 5.28.010.

2.28.020 Contempt—Punishment. For the effectual exercise of the powers specified in RCW 2.28.010, the court

may punish for contempt in the cases and the manner provided by law. [1891 c 54 § 2; RRS § 53.]

Rules of court: CR 45(f).

Contempts: Chapter 7.21 RCW.

Criminal contempts: Chapter 7.21 RCW, RCW 9.92.040.

Power of judicial officer to punish for contempt: RCW 2.28.060, 2.28.070.

Witnesses, failure to attend as contempt: RCW 5.56.061 through 5.56.080.

2.28.030 Judicial officer defined—When disqualified. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

(1) In an action, suit or proceeding to which he is a party, or in which he is directly interested.

(2) When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.

(3) When he is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.

(4) When he has been attorney in the action, suit or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court.

In the cases specified in subdivisions (3) and (4), the disqualification may be waived by the parties, and except in the supreme court and the court of appeals shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law. [1971 c 81 § 11; 1895 c 39 § 1; 1891 c 54 § 3; RRS § 54.]

2.28.040 May act as attorney, when. A part-time district judge, if permitted by court rule, may act as an attorney in any court other than the one of which he or she is judge, except in an action, suit or proceeding removed therefrom to another court for review. [1987 c 202 § 104; 1891 c 54 § 4; RRS § 55. Cf. Code 1881 § 3293.]

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

Judge may not practice law: State Constitution Art. 4 § 19.

2.28.050 Judge distinguished from court. A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from a court and not otherwise. [1891 c 54 § 5; RRS § 56.]

2.28.060 Judicial officers—Powers. Every judicial officer has power—(1) To preserve and enforce order in his immediate presence and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law. (2) To compel obedience to his lawful orders as provided by law. (3) To compel the attendance of persons to testify in a proceeding pending before him, in the cases and manner provided by law. (4) To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his

powers and the performance of his duties. [1955 c 38 § 13; 1891 c 54 § 6; RRS § 57.]

Compelling attendance of witnesses: Chapter 5.56 RCW.

Oaths, who may administer: RCW 5.28.010.

2.28.070 Contempt—Judicial officer may punish.

For the effectual exercise of the powers specified in RCW 2.28.060, a judicial officer may punish for contempt in the cases and manner provided by law. [1891 c 54 § 7; RRS § 58.]

Rules of court: CR 45(f).

Contempts: Chapter 7.21 RCW.

Criminal contempts: Chapter 7.21 RCW, RCW 9.92.040.

Power of court to punish for contempt: RCW 2.28.020.

Witnesses, failure to attend as contempt: RCW 5.56.061 through 5.56.080.

2.28.080 Powers of judges of supreme and superior courts. The judges of the supreme and superior courts have power in any part of the state to take and certify—

(1) The proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged.

(2) The acknowledgment of satisfaction of a judgment in any court.

(3) An affidavit or deposition to be used in any court of justice or other tribunal of this state.

(4) To exercise any other power and perform any other duty conferred or imposed upon them by statute. [1891 c 54 § 8; RRS § 59.]

Who may take acknowledgments: RCW 64.08.010.

2.28.090 Powers of inferior judicial officers. Every other judicial officer may, within the county, city, district or precinct in which he is chosen—

(1) Exercise the powers mentioned in RCW 2.28.080(1), (2) and (3).

(2) Exercise any other power and perform any other duty conferred or imposed upon him by other statute. [1891 c 54 § 9; RRS § 60.]

2.28.100 Legal holidays—No court—Exceptions.

No court shall be open, nor shall any judicial business be transacted, on a legal holiday, except:

(1) To give, upon their request, instructions to a jury when deliberating on their verdict;

(2) To receive the verdict of a jury;

(3) For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature;

(4) For hearing applications for and issuing writs of habeas corpus, injunction, prohibition and attachment;

(5) For the issuance of any process or subpoena not requiring immediate judicial or court action, and the service thereof.

The governor, in declaring any legal holiday, in his discretion, may provide in his proclamation that such holiday shall not be applicable to the courts of or within the state. [1986 c 219 § 1; 1933 c 54 § 1; 1927 c 51 § 2; RRS § 64. Prior: 1891 c 41 § 2; Code 1881 § 1267.]

Courts to be open except on nonjudicial days: State Constitution Art. 4 § 6 (Amendment 28).

(1992 Ed.)

Legal holidays: RCW 1.16.050.

2.28.110 Legal holiday—Sitting deemed adjourned.

If any legal holiday happens to be a day appointed for the sitting of a court or to which it is adjourned, such sitting shall be deemed appointed for or adjourned to the next day which is not a legal holiday. [1927 c 51 § 3; RRS § 65. Prior: 1891 c 41 § 3.]

2.28.120 Proceedings may be adjourned from time to time. A court or judicial officer has power to adjourn any proceeding before it or him from time to time, as may be necessary, unless otherwise expressly provided by law. [1891 c 54 § 10; RRS § 66.]

2.28.130 Proceeding not to fail for want of judge or session of court. No proceeding in a court of justice in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges, or by the failure of a session of the court. [1891 c 49 § 2; RRS § 67.]

Rules of court: Section superseded by CR 6(c). See comment by court after CR 6(c).

2.28.139 County to furnish court house. The county in which the court is held shall furnish the court house, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance, and other incidental expenses of the court house and court which are not paid by the United States. [Code 1881 § 2111; 1869 p 421 § 10; 1863 p 425 § 11; RRS § 4034.]

2.28.140 Court rooms. If the proper authority neglects to provide any superior court with rooms, furniture, fuel, lights and stationery suitable and sufficient for the transaction of its business and for the jury attending upon it, if there be one, the court may order the sheriff to do so, at the place within the county designated by law for holding such court; and the expense incurred by the sheriff in carrying such order into effect, when ascertained and ordered to be paid by the court, is a charge upon the county. [1955 c 38 § 14; 1891 c 54 § 11; RRS § 68.]

2.28.141 County commissioners to provide temporary quarters. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county. [Code 1881 § 2688; 1854 p 423 § 23; RRS § 4035.]

2.28.150 Implied powers—Proceeding when mode not prescribed. When jurisdiction is, by the Constitution of this state, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws. [1955 c 38 § 15; 1891 c 54 § 12; RRS § 69.]

2.28.160 Judge pro tempore—Compensation—Reimbursement for subsistence, lodging and travel expenses—Affidavit to court. Whenever a judge serves as a judge pro tempore the payments for subsistence, lodging, and compensation pursuant to RCW 2.04.250 and 2.06.160 as now or hereafter amended shall be paid only for time actually spent away from the usual residence and abode of such pro tempore judge and only for time actually devoted to sitting on cases heard by such pro tempore judge and for time actually spent in research and preparation of a written opinion prepared and delivered by such pro tempore judge; which time spent shall be evidenced by an affidavit of such judge to be submitted by him to the court from which he is entitled to receive subsistence, lodging, and compensation for his services pursuant to RCW 2.04.250 and 2.06.160 as now or hereafter amended. [1975-'76 2nd ex.s. c 34 § 2.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Chapter 2.32

COURT CLERKS, REPORTERS, AND BAILIFFS

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2.32.011 Election, compensation—Clerks of superior court. See chapters 36.16 and 36.17 RCW.

2.32.021 Oath and bond of clerk of superior court. See RCW 36.16.040 through 36.16.060.

2.32.031 Office—Clerks of superior court. See RCW 36.23.080.

2.32.050 Powers and duties of court clerks. The clerk of the supreme court, each clerk of the court of appeals, and each clerk of a superior court, has power to take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law; and it is the duty of the clerk of the supreme court, each clerk of the court of appeals, and of each county clerk for each of the courts for which he is clerk—

(1) To keep the seal of the court and affix it in all cases where he is required by law.

(2) To record the proceedings of the court.

(3) To keep the records, files and other books and papers appertaining to the court.

(4) To file all papers delivered to him for that purpose in any action or proceeding in the court as directed by court rule or statute.

(5) To attend the court of which he is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court.

(6) To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments and decrees.

(7) To authenticate by certificate or transcript, as may be required, the records, files or proceedings of the court, or any other paper appertaining thereto and filed with him.

(8) To exercise the powers and perform the duties conferred and imposed upon him elsewhere by statute.

(9) In the performance of his duties to conform to the direction of the court.

(10) To publish notice of the procedures for inspection of the public records of the court. [1981 c 277 § 1; 1971 c 81 § 12; 1891 c 57 § 3; RRS § 77. Prior: Code 1881 §§ 2180, 2182, 2184.]

Rules of court: SAR 16.

2.32.060 Powers and duties of clerk of superior court. See chapter 36.23 RCW.

County clerk is clerk of superior court: State Constitution Art. 4 § 26.

County clerk's trust fund and safekeeping thereof: Chapter 36.48 RCW.

2.32.070 Fees—Supreme court clerk, clerks of court of appeals. The clerk of the supreme court and the clerks of the court of appeals shall collect the following fees for their official services:

Upon filing his or her first paper or record and making an appearance, the appellant or petitioner shall pay to the clerk of said court a docket fee of two hundred fifty dollars.

For copies of opinions, twenty cents per folio: PROVIDED, That counsel of record and criminal defendants shall be supplied a copy without charge.

For certificates showing admission of an attorney to practice law five dollars, except that there shall be no fee for an original certificate to be issued at the time of his or her admission.

For filing a petition for review of a court of appeals decision terminating review, two hundred dollars.

The foregoing fees shall be all the fees connected with the appeal or special proceeding.

No fees shall be required to be advanced by the state or any municipal corporation, or any public officer prosecuting or defending on behalf of such state or municipal corporation. [1992 c 140 § 1; 1987 c 382 § 1; 1981 c 331 § 2; 1971 ex.s. c 107 § 2; 1951 c 51 § 1; 1907 c 56 § 1, part; 1903 c 151 § 1, part; RRS § 497, part. Prior: 1893 c 130 § 1, part; Code 1881 § 2086, part; 1866 pp 94-99, part; 1863 pp 391-399, part; 1861 pp 34-42, part; 1854 pp 368-376, part.]

Effective date—1992 c 140: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1992." [1992 c 140 § 2.]

Court Congestion Reduction Act of 1981—Purpose—1981 c 331: "Recognizing the value of providing the people of the state of Washington with justice delivered in an expeditious fashion, recognizing the need to assure the people of the state of Washington that the quality of our judicial system will not be placed in jeopardy, and recognizing the need to avoid congestion of the courts at all levels of our judicial system, the legislature hereby enacts this Court Congestion Reduction Act of 1981." [1981 c 331 § 1.]

Severability—1981 c 331: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 331 § 16.]

"Folio" defined: RCW 1.16.040.

2.32.071 Fees—Superior court clerks. See RCW 36.18.020.

County law library fees: RCW 27.24.070, 27.24.090.

2.32.075 Fees—Stenographer, court reporter costs. The clerk of the superior court shall pay into the county treasury from each fee collected for the filing of each new civil case in his office, including appeals, the sum of four dollars, which shall be known as stenographer or court reporter costs. [1961 c 304 § 5.]

2.32.090 Clerk not to practice law. Each clerk of a court is prohibited during his continuance in office from acting, or having a partner who acts, as an attorney of the court of which he is clerk. [1891 c 57 § 5; RRS § 81. Prior: Code 1881 § 2183; 1854 p 367 § 10.]

Rules of court: SAR 16(3).

2.32.110 Reporter's duties. He shall prepare such decisions for publication by giving the title of each case, a syllabus of the points decided, a brief statement of the facts bearing on the points decided, the names of the counsel, and a reference to such authorities as are cited from standard reports and textbooks that have a special bearing on the case, and he shall prepare a full and comprehensive index to each volume, and prefix a table of cases reported. [1890 p 320 § 2; RRS § 11059.]

Rules of court: SAR 17.

2.32.120 Publication of reports. The reports must be published under the supervision of the court, and to that end each of the judges must be furnished by the reporter with proof sheets of each volume thirty days before its final publication. [1890 p 320 § 3; RRS § 11060.]

Rules of court: SAR 17.

Publication of supreme court

opinions: State Constitution Art. 4 § 21.

reports by public printer: RCW 43.78.070.

2.32.130 Correction by judges. Within thirty days after such proof sheets are furnished, the judges must return the same to the reporter, with corrections or alterations, and he must make the corrections or alterations accordingly. [1890 p 320 § 4; RRS § 11061.]

Rules of court: SAR 17.

2.32.140 Opinions available to reporter. The reporter may take the original opinions and papers in each case from the clerk's office and retain them in his possession not exceeding sixty days. [1890 p 320 § 5; RRS § 11062.]

2.32.160 Commission to supervise publication of reports. There is hereby created a commission to supervise the publication of the decisions of the supreme court and court of appeals of this state in both the form of advance sheets for temporary use and in permanent form, to be known as the commission on supreme court reports, and to consist of six members, as follows: The chief justice of the supreme court, who shall be chairman of the commission, the reporter of decisions of the supreme court, the state law librarian, a judge of the court of appeals designated by the chief judges, the public printer, and a representative of the Washington state bar who shall be appointed by the president thereof. Members of the commission shall serve as such without additional or any compensation: PROVIDED, That members shall be compensated in accordance with RCW 43.03.240. [1984 c 287 § 7; 1971 c 42 § 1; 1943 c 185 § 1; Rem. Supp. 1943 § 11071-1. Prior: 1917 c 87 § 1; 1905 c 167 §§ 1-4; 1895 c 55 § 1; 1891 c 37 § 1; 1890 p 327 § 1.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

2.32.170 Commission—Powers. The commission is authorized and directed, from time to time: To determine all matters whatsoever, pertaining to the publication (which is defined as including printing, binding, sale and distribution) of such decisions, in both such temporary and permanent forms, including the making of all specifications for material, workmanship, binding, size, number of pages, contents, and arrangement thereof, frequency of publication, and all other matters, whether similar to the foregoing or not, that relate to such publication: PROVIDED, That the specifications shall require that the type to be used shall not be smaller than eleven point on a thirteen point slug; to establish a uniform price at which such decisions, in temporary and permanent form, either separately or together, shall be sold to any purchaser, public or private, including the state, its departments, subdivisions, institutions, and agencies; to establish said price at the amount which is, as nearly as may be, equal to the cost of such publication and the expenses incidental thereto, which price, if it is deemed necessary and proper by the commission in the light of substantially changed costs and expenses, may be adjusted annually, and in no event oftener than semiannually; to enter, in the name

of the commission, into any and all contracts with any persons, firms, and corporations, deemed by the commission necessary and proper to carry into effect the foregoing powers, with authority to include all such terms and conditions as the commission in its discretion shall deem fit; to modify or terminate, with the consent of the other party thereto, any contract existing on June 9, 1943 for the publication of such decisions. [1943 c 185 § 2; Rem. Supp. 1943 § 11071-2. Prior: 1921 c 162 § 1; 1919 c 117 §§ 1-3; 1905 c 167 § 5.]

2.32.180 Superior court reporters—Qualifications—Appointment—Terms—Oath and bonds. (Effective until July 1, 1993.) It shall be and is the duty of each and every superior court judge in counties or judicial districts in the state of Washington having a population of over thirty-five thousand inhabitants to appoint, or said judge may, in any county or judicial district having a population of over twenty-five thousand and less than thirty-five thousand, appoint a stenographic reporter to be attached to the judge's court who shall have had at least three years' experience as a skilled, practical reporter, or who upon examination shall be able to report and transcribe accurately one hundred and seventy-five words per minute of the judge's charge or two hundred words per minute of testimony each for five consecutive minutes; said test of proficiency, in event of inability to meet qualifications as to length of time of experience, to be given by an examining committee composed of one judge of the superior court and two official reporters of the superior court of the state of Washington, appointed by the president judge of the superior court judges association of the state of Washington: PROVIDED, That a stenographic reporter shall not be required to be appointed for the seven additional judges of the superior court authorized for appointment by section 1, chapter 323, Laws of 1987, the additional superior court judge authorized by section 1, chapter 66, Laws of 1988, the additional superior court judges authorized by sections 2 and 3, chapter 328, Laws of 1989, or the additional superior court judges authorized by sections 1 and 2, chapter 186, Laws of 1990. The initial judicial appointee shall serve for a period of six years; the two initial reporter appointees shall serve for a period of four years and two years, respectively, from September 1, 1957; thereafter on expiration of the first terms of service, each newly appointed member of said examining committee to serve for a period of six years. In the event of death or inability of a member to serve, the president judge shall appoint a reporter or judge, as the case may be, to serve for the balance of the unexpired term of the member whose inability to serve caused such vacancy. The examining committee shall grant certificates to qualified applicants. Administrative and procedural rules and regulations shall be promulgated by said examining committee, subject to approval by the said president judge.

The stenographic reporter upon appointment shall thereupon become an officer of the court and shall be designated and known as the official reporter for the court or judicial district for which he or she is appointed: PROVIDED, That in no event shall there be appointed more official reporters in any one county or judicial district than there are superior court judges in such county or judicial district; the

appointments in each county with a population of one million or more shall be made by the majority vote of the judges in said county acting en banc; the appointments in each county with a population of from one hundred twenty-five thousand to less than one million may be made by each individual judge therein or by the judges in said county acting en banc. Each official reporter so appointed shall hold office during the term of office of the judge or judges appointing him or her, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his or her duties shall take an oath to perform faithfully the duties of his or her office, and file a bond in the sum of two thousand dollars for the faithful discharge of his or her duties. Such reporter in each court is hereby declared to be a necessary part of the judicial system of the state of Washington. [1991 c 363 § 2; 1990 c 186 § 3; 1989 c 328 § 4; 1988 c 66 § 3; 1987 c 323 § 4; 1957 c 244 § 1; 1945 c 154 § 1; 1943 c 69 § 1; 1921 c 42 § 1; 1913 c 126 § 1; Rem. Supp. 1945 § 42-1. Formerly RCW 2.32.180, 2.32.190.]

Purpose—1991 c 363: "The purposes of this act are to eliminate the use of formal county classes and substitute the use of the most current county population figures to distinguish counties. In addition, certain old statutes that reference county class, but no longer are followed, are repealed or amended to conform with current practices." [1991 c 363 § 1.]

Captions not law—1991 c 363: "Section headings as used in this act do not constitute any part of the law." [1991 c 363 § 168.]

2.32.180 Superior court reporters—Qualifications—Appointment—Terms—Oath and bonds. (Effective July 1, 1993.) It shall be and is the duty of each and every superior court judge in counties or judicial districts in the state of Washington having a population of over thirty-five thousand inhabitants to appoint, or said judge may, in any county or judicial district having a population of over twenty-five thousand and less than thirty-five thousand, appoint a stenographic reporter to be attached to the judge's court who shall have had at least three years' experience as a skilled, practical reporter, or who upon examination shall be able to report and transcribe accurately one hundred and seventy-five words per minute of the judge's charge or two hundred words per minute of testimony each for five consecutive minutes; said test of proficiency, in event of inability to meet qualifications as to length of time of experience, to be given by an examining committee composed of one judge of the superior court and two official reporters of the superior court of the state of Washington, appointed by the president judge of the superior court judges association of the state of Washington: PROVIDED, That a stenographic reporter shall not be required to be appointed for the seven additional judges of the superior court authorized for appointment by section 1, chapter 323, Laws of 1987, the additional superior court judge authorized by section 1, chapter 66, Laws of 1988, the additional superior court judges authorized by sections 2 and 3, chapter 328, Laws of 1989, the additional superior court judges authorized by sections 1 and 2, chapter 186, Laws of 1990, or the additional superior court judges authorized by sections 1 through 5, chapter 189, Laws of 1992. Appointment of a stenographic reporter is not required for any additional superior court judge authorized after July 1, 1992. The initial judicial appointee shall serve for a period of six years;

the two initial reporter appointees shall serve for a period of four years and two years, respectively, from September 1, 1957; thereafter on expiration of the first terms of service, each newly appointed member of said examining committee to serve for a period of six years. In the event of death or inability of a member to serve, the president judge shall appoint a reporter or judge, as the case may be, to serve for the balance of the unexpired term of the member whose inability to serve caused such vacancy. The examining committee shall grant certificates to qualified applicants. Administrative and procedural rules and regulations shall be promulgated by said examining committee, subject to approval by the said president judge.

The stenographic reporter upon appointment shall thereupon become an officer of the court and shall be designated and known as the official reporter for the court or judicial district for which he or she is appointed: PROVIDED, That in no event shall there be appointed more official reporters in any one county or judicial district than there are superior court judges in such county or judicial district; the appointments in each county with a population of one million or more shall be made by the majority vote of the judges in said county acting en banc; the appointments in each county with a population of from one hundred twenty-five thousand to less than one million may be made by each individual judge therein or by the judges in said county acting en banc. Each official reporter so appointed shall hold office during the term of office of the judge or judges appointing him or her, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his or her duties shall take an oath to perform faithfully the duties of his or her office, and file a bond in the sum of two thousand dollars for the faithful discharge of his or her duties. Such reporter in each court is hereby declared to be a necessary part of the judicial system of the state of Washington. [1992 c 189 § 6; 1991 c 363 § 2; 1990 c 186 § 3; 1989 c 328 § 4; 1988 c 66 § 3; 1987 c 323 § 4; 1957 c 244 § 1; 1945 c 154 § 1; 1943 c 69 § 1; 1921 c 42 § 1; 1913 c 126 § 1; Rem. Supp. 1945 § 42-1. Formerly RCW 2.32.180, 2.32.190.]

Effective dates—1992 c 189: See note following RCW 2.08.061.

Purpose—1991 c 363: "The purposes of this act are to eliminate the use of formal county classes and substitute the use of the most current county population figures to distinguish counties. In addition, certain old statutes that reference county class, but no longer are followed, are repealed or amended to conform with current practices." [1991 c 363 § 1.]

Captions not law—1991 c 363: "Section headings as used in this act do not constitute any part of the law." [1991 c 363 § 168.]

2.32.200 Duties of official reporter. It shall be the duty of each official reporter appointed under RCW 2.32.180 through 2.32.310 to attend every term of the superior court in the county or judicial district for which he is appointed, at such times as the judge presiding may direct; and upon the trial of any cause in any court, if either party to the suit or action, or his attorney, request the services of the official reporter, the presiding judge shall grant such request, or upon his own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except

when the judge and attorneys dispense with his services with respect to any portion of the proceedings therein, which notes shall be filed in the office of the clerk of the superior court where such trial is had. [1983 c 3 § 1; 1913 c 126 § 2; RRS § 42-2.]

2.32.210 Salaries—Expenses. Each official reporter shall be paid such compensation as shall be fixed, after recommendation by the judges of the judicial district involved, by the legislative authority of the county comprising said judicial district, or by the legislative authorities acting jointly where the judicial district is comprised of more than one county: PROVIDED, That in judicial districts having a total population of forty thousand or more, the salary of an official court reporter shall not be less than sixteen thousand five hundred dollars per annum: PROVIDED FURTHER, That in judicial districts having a total population of twenty-five thousand and under forty thousand, such salary shall not be less than eleven thousand one hundred dollars per annum.

Said compensation shall be paid out of the current expense fund of the county or counties where court is held.

In judicial districts comprising more than one county the council or commissioners thereof shall, on the first day of January of each year, or as soon thereafter as may be convenient, apportion the amount of the salary to be paid to the reporter by each county according and in proportion to the number of criminal and civil actions entered and commenced in superior court of the constituent counties in the preceding year. In addition to the salary above provided, in judicial districts comprising more than one county, the reporter shall receive his actual and necessary expenses of transportation and living expenses when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expense to be paid by the county to which he travels. If one trip includes two or more counties, the expense may be apportioned between the counties visited in proportion to the amount of time spent in each county on the trip. If an official reporter uses his own automobile for the purpose of such transportation, he shall be paid therefor at the same rate per mile as county officials are paid for use of their private automobiles. The sworn statement of the official reporter, when certified to as correct by the judge presiding, shall be a sufficient voucher upon which the county auditor shall draw his warrant upon the treasurer of the county in favor of the official reporter.

The salaries of official court reporters shall be paid upon sworn statements, when certified as correct by the judge presiding, as state and county officers are paid. [1975 1st ex.s. c 128 § 1; 1972 ex.s. c 18 § 1; 1969 c 95 § 1; 1967 c 20 § 1; 1965 ex.s. c 114 § 1; 1961 c 121 § 1; 1957 c 244 § 2; 1953 c 265 § 1; 1951 c 210 § 1. Prior: 1945 c 24 § 1; 1943 c 69 § 2; 1913 c 126 § 3; Rem. Supp. 1945 § 42-3.]

2.32.220 Application to lesser judicial districts. If the judge of the superior court in any judicial district having a total population of less than twenty-five thousand finds that the work in such district requires the services of an official court reporter he may appoint a person qualified under RCW

2.32.180. [1957 c 244 § 3; 1951 c 210 § 2; 1945 c 24 § 2; Rem. Supp. 1945 § 42-3a.]

2.32.230 One reporter for two lesser districts. An official court reporter may be appointed to serve two or more judicial districts, each of which has a total population under twenty-five thousand, if the judges thereof so agree, and the salary of such official reporter shall be determined by the total population of all the judicial districts so served in accordance with the schedule of salaries in RCW 2.32.210, and shall be apportioned between the several counties of the districts as therein provided. Such reporter, if appointed, must be qualified to serve, under RCW 2.32.180. [1951 c 210 § 3; 1945 c 24 § 3; Rem. Supp. 1945 § 42-3b.]

2.32.240 Transcript of testimony—Fee—Forma pauperis. (1) When a record has been taken in any cause as provided in RCW 2.32.180 through 2.32.310, if the court, or either party to the suit or action, or his attorney, request a transcript, the official reporter and clerk of the court shall make, or cause to be made, with reasonable diligence, full and accurate transcript of the testimony and other proceedings, which shall, when certified to as hereinafter provided, be filed with the clerk of the court where such trial is had for the use of the court or parties to the action. The fees of the reporter and clerk of the court for making such transcript shall be fixed in accordance with costs as allowed in cost bills in civil cases by the supreme court of the state of Washington, and when such transcript is ordered by any party to any suit or action, said fee shall be paid forthwith by the party ordering the same, and in all cases where a transcript is made as provided for under the provisions of RCW 2.32.180 through 2.32.310 the cost thereof shall be taxable as costs in the case, and shall be so taxed as other costs in the case are taxed: PROVIDED, That when, from and after December 20, 1973, a party has been judicially determined to have a constitutional right to a transcript and to be unable by reason of poverty to pay for such transcript, the court may order said transcript to be made by the official reporter, which transcript fee therefor shall be paid by the state upon submission of appropriate vouchers to the clerk of the supreme court. [1983 c 3 § 2; 1975 1st ex.s. c 261 § 1; 1972 ex.s. c 111 § 1; 1970 ex.s. c 31 § 1; 1965 c 133 § 3; 1957 c 244 § 4; 1943 c 69 § 4; 1913 c 126 § 5; Rem. Supp. 1943 § 42-5.]

Severability—1965 c 133: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1965 c 133 § 4.]

Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals: RCW 4.88.330.

2.32.250 Transcript accorded verity. The report of the official reporter, when transcribed and certified as being a correct transcript of the stenographic notes of the testimony, or other oral proceedings had in the matter, shall be prima facie a correct statement of such testimony or other oral proceedings had, and the same may thereafter, in any civil cause, be read in evidence as competent testimony, when satisfactory proof is offered to the judge presiding that

the witness originally giving such testimony is then dead or without the jurisdiction of the court, subject, however, to all objections the same as though such witness were present and giving such testimony in person. [1913 c 126 § 6; RRS § 42-6.]

2.32.260 Notes of outgoing reporter may be transcribed—Effect. When the official reporter who has taken notes in any cause, shall thereafter cease to be such official reporter, any transcript thereafter made by him therefrom, or made by any competent person under the direction of the court, and duly certified to by the person making the same, under oath, as a full, true and correct transcript of said notes, the same shall have full force and effect the same as though certified by an official reporter of said court. [1913 c 126 § 7; RRS § 42-7.]

2.32.270 Reporter pro tempore. In the event of the absence or inability of the official reporter to act, the presiding judge may appoint a competent stenographer to act pro tempore, who shall perform the same duties as the official reporter, and whose report when certified to, shall have the same legal effect as the certified report of the official reporter. The reporter pro tempore shall possess the qualifications and take the oath prescribed for the official reporter, and shall file a like bond, and shall receive the same compensation. [1913 c 126 § 8; RRS § 42-8.]

2.32.280 Reporter as amanuensis in counties with populations of one hundred twenty-five thousand or more. In all counties or judicial districts, except in any county with a population of one hundred twenty-five thousand or more, such official reporter shall act as amanuensis to the court for which he or she is appointed. [1991 c 363 § 3; 1957 c 244 § 5; 1943 c 69 § 5; 1913 c 126 § 9; Rem. Supp. 1943 § 42-9.]

~~Purpose—Captions not law—1991 c 363:~~ See notes following RCW 2.32.180.

2.32.290 Court files accessible to reporter. Official reporters or reporters pro tempore may, without order of court, upon giving a proper receipt therefor, procure at all reasonable hours from the office of the clerk of the court, any files or exhibits necessary for use in the preparation of statements of fact or transcribing portions of testimony or proceedings in any cause reported by them. [1913 c 126 § 10; RRS § 42-10.]

2.32.300 Office space. Suitable office space shall be furnished the official reporter. [1943 c 69 § 6; 1913 c 126 § 11; Rem. Supp. 1943 § 42-11.]

2.32.310 Other reporting service not precluded. Nothing in this act or any other act or parts of acts or court rule shall be construed to preclude such official reporter from performing other and additional reporting service at any time when such service can be performed without conflict with or prejudice to the duties of the official reporter. [1943 c 69 § 8; Rem. Supp. 1943 § 42-14.]

2.32.330 Criers and bailiffs. Every court of record shall have the power to appoint a crier and as many bailiffs as may be necessary for the orderly and expeditious dispatch of the business. [1891 c 54 § 13; RRS § 11052.]

2.32.360 Compensation of superior court bailiffs. Bailiffs of the several superior courts in this state, appointed by the respective judges thereof, shall be paid for their services such salary or per diem as shall be fixed and allowed by the board of county commissioners of the county in which they serve. [1949 c 139 § 1; 1945 c 149 § 1; 1943 c 94 § 1; 1939 c 134 § 1; 1917 c 94 § 1; 1891 c 10 § 1; Rem. Supp. 1949 § 10973. Cf. 1921 c 25 § 1; 1919 c 141 § 1.]

2.32.370 Payment of compensation. From time to time, the superior judge of the county shall certify the amount due any such bailiff, and order the payment thereof; and thereupon the county auditor shall issue to such bailiff a warrant on the county treasurer, payable out of the general fund [current expense fund], for the amount so certified. [1891 c 10 § 2; RRS § 10975.]

**Chapter 2.36
JURIES**

Sections

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Juries

crimes relating to: Chapter 9.51 RCW.

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2.36.010 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) A jury is a body of persons temporarily selected from the qualified inhabitants of a particular district, and invested with power—

- (a) To present or indict a person for a public offense.
- (b) To try a question of fact.

(2) "Court" when used without further qualification means any superior court or court of limited jurisdiction in the state of Washington.

(3) "Judge" means every judicial officer authorized to hold or preside over a court. For purposes of this chapter "judge" does not include court commissioners or referees.

(4) "Juror" means any person summoned for service on a petit jury, grand jury, or jury of inquest as defined in this chapter.

(5) "Grand jury" means those twelve persons impaneled by a superior court to hear, examine, and investigate evidence concerning criminal activity and corruption.

(6) "Petit jury" means a body of persons twelve or less in number in the superior court and six in number in courts of limited jurisdiction, drawn by lot from the jurors in attendance upon the court at a particular session, and sworn to try and determine a question of fact.

(7) "Jury of inquest" means a body of persons six or fewer in number, but not fewer than four persons, summoned before the coroner or other ministerial officer, to inquire of particular facts.

(8) "Jury source list" means the list of all registered voters for any county, as compiled by each county auditor pursuant to the provisions of chapter 29.07 RCW. The list shall specify each voter's name, residence address, and precinct as shown on the original registration card of each qualified voter. The list shall be filed with the superior court by the county auditor.

(9) "Master jury list" means the list of prospective jurors from which jurors summoned to serve will be randomly selected. The master jury list shall be either randomly selected from the jury source list or may be an exact duplicate of the jury source list.

(10) "Jury term" means a period of time of one or more days, not exceeding one month, during which summoned jurors must be available to report for juror service.

(11) "Juror service" means the period of time a juror is required to be present at the court facility. This period of time may not extend beyond the end of the jury term, and may not exceed two weeks, except to complete a trial to which the juror was assigned during the two-week period.

(12) "Jury panel" means those persons randomly selected for jury service for a particular jury term. [1992 c 93 § 1; 1988 c 188 § 2; 1891 c 48 § 1; RRS § 89.]

Legislative findings—1988 c 188: "The legislature recognizes the vital and unique role of the jury system in enhancing our system of justice. The purpose of this chapter is the promotion of efficient jury administration and the opportunity for widespread citizen participation in the jury system. To accomplish this purpose the legislature intends that all courts and juries of inquest in the state of Washington select, summon, and compensate jurors uniformly." [1988 c 188 § 1.]

Severability—1988 c 188: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 188 § 23.]

Effective date—1988 c 188: "Except for section 19, this act shall take effect January 1, 1989. Section 19 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support

of the state government and its existing public institutions, and shall take effect immediately." [1988 c 188 § 24.] "Section 19 of this act" (uncodified) took effect March 22, 1988.

2.36.020 Kinds of juries. There shall be three kinds of juries—

- (1) A grand jury.
- (2) A petit jury.
- (3) A jury of inquest. [1891 c 48 § 2; RRS § 90.]

2.36.050 Juries in courts of limited jurisdiction. In courts of limited jurisdiction, juries shall be selected and impaneled in the same manner as in the superior courts, except that a court of limited jurisdiction shall use the master jury list developed by the superior court to select a jury panel. Jurors for the jury panel may be selected at random from the population of the area served by the court. [1988 c 188 § 3; 1980 c 162 § 6; 1972 ex.s. c 57 § 1; 1891 c 48 § 4; RRS § 92.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

Severability—1980 c 162: See note following RCW 3.02.010.

Courts of limited jurisdiction: Chapter 3.02 RCW.

2.36.052 Courts of limited jurisdiction—Performance of jury management activities by superior court authorized. Pursuant to an agreement between the judge or judges of each superior court and the judge or judges of each court of limited jurisdiction, jury management activities may be performed by the superior court for any county or judicial district as provided by statute. [1988 c 188 § 20.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

2.36.055 List of registered voters—Jury source list—Master jury list. The county auditor shall prepare and file with the superior court at least annually, at a time or times set forth in an order of the judges of the superior court from the original registration files of voters of the county a list of all registered voters. The list may be divided into the respective voting precincts.

The superior court upon receipt of the list of registered voters filed by the county auditor shall use that list as the jury source list and shall compile a master jury list from the source list. The master jury list shall be certified by the superior court and filed with the county clerk. All previous jury source lists and master jury lists shall be superseded.

Upon receipt of amendments to the list of registered voters from the county auditor the superior court may update the jury source list and master jury list as maintained by the county clerk accordingly. [1988 c 188 § 4.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

2.36.063 Compilation of master jury list and selection of jurors by electronic data processing. The judge or judges of the superior court of any county may employ a properly programmed electronic data processing system or device to compile the master jury list and to

randomly select jurors from the master jury list. [1988 c 188 § 5; 1973 2nd ex.s. c 13 § 1.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

2.36.065 Judges to ensure random selection—Description of process. It shall be the duty of the judges of the superior court to ensure continued random selection of the master jury list and jury panels. The judges shall review the process from time to time and shall cause to be kept on file with the county clerk a description of the jury selection process. Any person who desires may inspect this description in said office.

Nothing in this chapter shall be construed as requiring uniform equipment or method throughout the state, so long as fair and random selection of the master jury list and jury panels is achieved. [1988 c 188 § 6.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

2.36.070 Qualification of juror. A person shall be competent to serve as a juror in the state of Washington unless that person:

- (1) Is less than eighteen years of age;
 - (2) Is not a citizen of the United States;
 - (3) Is not a resident of the county in which he or she has been summoned to serve;
 - (4) Is not able to communicate in the English language;
- or
- (5) Has been convicted of a felony and has not had his or her civil rights restored. [1988 c 188 § 7; 1975 1st ex.s. c 203 § 1; 1971 ex.s. c 292 § 3; 1911 c 57 § 1; RRS § 94. Prior: 1909 c 73 § 1.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

2.36.080 Selection of jurors—State policy—Exclusion for race, color, religion, sex, national origin, or economic status prohibited. (1) It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with *this 1979 act to be considered for jury service in this state and have an obligation to serve as jurors when summoned for that purpose.

(2) It is the policy of this state to maximize the availability of residents of the state for jury service. It also is the policy of this state to minimize the burden on the prospective jurors, their families, and employers resulting from jury service. The jury term and jury service should be set at as brief an interval as is practical given the size of the jury source list for the judicial district. The optimal jury term is two weeks or less. Optimal juror service is one day or one trial, whichever is longer.

(3) A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.

(4) This section does not affect the right to peremptory challenges under RCW 4.44.130. [1992 c 93 § 2; 1979 ex.s.

c 135 § 2; 1967 c 39 § 1; 1911 c 57 § 2; RRS § 95. Prior: 1909 c 73 § 2.]

***Reviser's note:** "this 1979 act" [1979 ex.s. c 135] consists of RCW 38.40.071, 50.20.117; the amendments to RCW 2.36.060, 2.36.080, 2.36.100, 2.36.150, 12.12.050, 35.20.090 and 72.23.050 by 1979 ex.s. c 135; and the repeal of RCW 4.44.200 and 38.40.090 by 1979 ex.s. c 135.

Severability—1979 ex.s. c 135: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 135 § 12.]

2.36.093 Selection of jurors—Length and number of terms—Time of service. (1) At such time as the judge or judges of any court of any county shall deem that the public business requires a jury term to be held, the judge or judges shall direct that a jury panel be selected and summoned to serve for the ensuing jury term or terms.

(2) The court shall establish the length and number of jury terms in a consecutive twelve-month period, and shall establish the time of juror service consistent with the provisions of RCW 2.36.010. [1992 c 93 § 3; 1988 c 188 § 8; 1973 2nd ex.s. c 13 § 2.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

2.36.095 Summons to persons selected. (1) Persons selected to serve on a petit jury, grand jury, or jury of inquest shall be summoned by mail or personal service. The county clerk shall issue summons and thereby notify persons selected for jury duty. The clerk may issue summons for any jury term, in any consecutive twelve-month period, at any time thirty days or more before the beginning of the jury term for which the summons are issued. However, when applicable, the provisions of RCW 2.36.130 apply.

(2) In courts of limited jurisdiction summons shall be issued by the court. Upon the agreement of the courts, the county clerk may summon jurors for any and all courts in the county or judicial district. [1992 c 93 § 4; 1990 c 140 § 1; 1988 c 188 § 9.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

2.36.100 Excuse from service—Reasons—Assignment to another term—Summons for additional service—Certification of prior service. (1) Except for a person who is not qualified for jury service under RCW 2.36.070, no person may be excused from jury service by the court except upon a showing of undue hardship, extreme inconvenience, public necessity, or any reason deemed sufficient by the court for a period of time the court deems necessary.

(2) At the discretion of the court's designee, after a request by a prospective juror to be excused, a prospective juror excused from juror service for a particular time may be assigned to another jury term within the twelve-month period. If the assignment to another jury term is made at the time a juror is excused from the jury term for which he or she was summoned, a second summons under RCW 2.36.095 need not be issued.

(3) When the jury source list has been fully summoned within a consecutive twelve-month period and additional jurors are needed, jurors who have already served during the

consecutive twelve-month period may be summoned again for service. A juror who has previously served may only be excused if he or she served at least two weeks of juror service within the preceding twelve months. An excuse for prior service shall be granted only upon the written request of the prospective juror, which request shall certify the terms of prior service. Prior jury service may include service in superior court, in a court of limited jurisdiction, in the United States District Court, or on a jury of inquest. [1992 c 93 § 5; 1988 c 188 § 10; 1983 c 181 § 1; 1979 ex.s. c 135 § 3; 1911 c 57 § 7; RRS § 100. Prior: 1909 c 73 § 7.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

Severability—1979 ex.s. c 135: See note following RCW 2.36.080.

2.36.110 Judge must excuse unfit person. It shall be the duty of a judge to excuse from further jury service any juror, who in the opinion of the judge, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service. [1988 c 188 § 11; 1925 ex.s. c 191 § 3; RRS § 97-1.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

2.36.130 Additional names. If for any reason the jurors drawn for service upon a jury for any term shall not be sufficient to dispose of the pending jury business, or where no jury is in regular attendance and the business of the court may require the attendance of a jury before a regular term, the judge or judges of any court may direct the random selection and summoning from the master jury list such additional names as they may consider necessary. [1988 c 188 § 12; 1911 c 57 § 6; RRS § 99.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

2.36.150 Compensation of jurors—Reimbursement of counties for jury and witness fees in certain cases. Jurors shall receive for each day's attendance, besides mileage at the rate determined under RCW 43.03.060, the following compensation:

(1) Grand jurors may receive up to twenty-five dollars but in no case less than ten dollars;

(2) Petit jurors may receive up to twenty-five dollars but in no case less than ten dollars;

(3) Coroner's jurors may receive up to twenty-five dollars but in no case less than ten dollars;

(4) District court jurors may receive up to twenty-five dollars but in no case less than ten dollars;

PROVIDED, That a person excused from jury service at his or her own request shall be allowed not more than a per diem and such mileage, if any, as to the court shall seem just and equitable under all circumstances: PROVIDED FURTHER, That the state shall fully reimburse the county in which trial is held for all jury fees and witness fees related to criminal cases which result from incidents occurring within an adult or juvenile correctional institution: PROVIDED FURTHER, That the compensation paid jurors shall be determined by the county legislative authority and shall

be uniformly applied within the county. [1987 c 202 § 105; 1979 ex.s. c 135 § 7; 1975 1st ex.s. c 76 § 1; 1959 c 73 § 1; 1951 c 51 § 2; 1943 c 188 § 1; 1933 c 52 § 1; 1927 c 171 § 1; 1907 c 56 § 1, part; Rem. Supp. 1943 § 4229. Prior: 1903 c 151 § 1, part; 1893 p 421 § 1, part; Code 1881 § 2086, part.]

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

Severability—1979 ex.s. c 135: See note following RCW 2.36.080.

Travel expense in lieu of mileage in certain cases: RCW 2.40.030.

2.36.165 Leave of absence from employment to be provided—Denial of promotional opportunities prohibited—Penalty—Civil action. (1) An employer shall provide an employee with a sufficient leave of absence from employment to serve as a juror when that employee is summoned pursuant to chapter 2.36 RCW.

(2) An employer shall not deprive an employee of employment or threaten, coerce, or harass an employee, or deny an employee promotional opportunities because the employee receives a summons, responds to the summons, serves as a juror, or attends court for prospective jury service.

(3) An employer who intentionally violates subsection (1) or (2) of this section shall be guilty of a misdemeanor.

(4) If an employer commits an act in violation of subsection (2) of this section the employee may bring a civil action for damages as a result of the violation and for an order requiring the reinstatement of the employee. If the employee prevails, the employee shall be allowed a reasonable attorney's fee as determined by the court.

(5) For purposes of this section employer means any person, association, partnership, or private or public corporation who employs or exercises control over wages, hours, or working conditions of one or more employees. [1988 c 188 § 13.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

2.36.170 Failure of juror to appear—Penalty. A person summoned for jury service who intentionally fails to appear as directed shall be guilty of a misdemeanor. [1988 c 188 § 14.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

Chapter 2.40 WITNESSES

Sections

- 2.40.010 Witness fees and mileage.
- 2.40.020 Witness fee and mileage in civil cases demandable in advance.
- 2.40.030 Travel expense in lieu of mileage in certain cases.
- 2.40.040 Attorney of record not entitled to witness fee in case.

Discovery and depositions: Title 5 RCW; see also *Rules of Court:* CR 26 through 37.

District courts, witnesses: Chapter 12.16 RCW.

Utilities and transportation commission proceedings, witness fees: RCW 80.04.040, 81.04.040.

Witness fees and mileage in criminal cases: RCW 10.01.130, 10.01.140, 10.52.040.

Witnesses: Chapters 5.56 and 5.60 RCW.

2.40.010 Witness fees and mileage. Witnesses shall receive for each day's attendance in all courts of record of this state the same compensation per day and per mile as jurors in superior court. Witnesses in any other court shall receive for each day's attendance the same compensation per day and per mile as jurors in district court. [1987 c 202 § 106; 1977 ex.s. c 54 § 1; 1951 c 51 § 3; 1907 c 56 § 1, part; RRS § 497, part. Prior: 1903 c 151 § 1, part; 1893 p 421 § 1, part; Code 1881 § 2086, part.]

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

2.40.020 Witness fee and mileage in civil cases demandable in advance. Witnesses in civil cases shall be entitled to receive, upon demand, their fees for one day's attendance, together with mileage going to the place where they are required to attend, if such demand is made to the officer or person serving the subpoena at the time of service. [Code 1881 § 2100; 1869 p 374 § 22; RRS § 507.]

2.40.030 Travel expense in lieu of mileage in certain cases. Whenever a juror, witness or officer is required to attend a court, or travel on official business out of the limits of his own county, and entitled to mileage, in lieu thereof he may at his option receive his actual and necessary traveling expenses by the usually traveled route in going to and returning from the place where the court is held, or where the business is discharged. At the close of each term of the district court, the clerk shall ascertain the amount due each juror for his mileage and per diem; and he shall also certify the amount of fees that may be due to the sheriff of any other county than that in which the court is held, who may have attended the term, having a prisoner in custody charged with or convicted of a crime, or for the purpose of conveying such prisoner to or from the county, which, when approved by the court or judge, shall be a charge upon the county to which the prisoner belongs; and he shall also certify the amount which may be due witnesses attending from another county in a criminal case for their fees, which, when approved by the court or judge, shall be a charge upon the county to which the case belongs. [Code 1881 § 2109; 1869 p 419 § 7; 1863 p 424 §§ 6, 8; RRS §§ 509, 4230.]

Compensation of jurors: RCW 2.36.150.

County officers—Expenses: RCW 42.24.090.

Salaried officers not to receive witness fees: RCW 42.16.020.

State officers—Subsistence and mileage: RCW 43.03.050, 43.03.060.

Witness fees as costs in civil actions: RCW 4.84.090.

2.40.040 Attorney of record not entitled to witness fee in case. No attorney in any case shall be allowed any fees as a witness in such case. [Code 1881 § 2095; 1869 p 374 § 17; RRS § 502.]

Chapter 2.42

INTERPRETERS IN LEGAL PROCEEDINGS

Sections

2.42.010	Legislative declaration—Intent.
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2.42.180	Visual recording of testimony.

Rules of court: ER 604.

2.42.010 Legislative declaration—Intent. It is hereby declared to be the policy of this state to secure the constitutional rights of deaf persons and of other persons who, because of impairment of hearing or speech, are unable to readily understand or communicate the spoken English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the appointment of such interpreters. [1989 c 358 § 12; 1983 c 222 § 1; 1973 c 22 § 1.]

Severability—1989 c 358: See note following RCW 2.43.010.

2.42.050 Oath. Every qualified interpreter appointed under this chapter in a judicial or administrative proceeding shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or other agency conducting the proceedings, to the best of the interpreter's skill and judgment. [1989 c 358 § 14; 1985 c 389 § 20; 1973 c 22 § 5.]

Rules of court: ER 604.

Severability—1989 c 358: See note following RCW 2.43.010.

2.42.110 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Impaired person" means a person who, because of a hearing or speech impairment, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, speech impaired, or hard of hearing.

(2) "Qualified interpreter" means a visual language interpreter who is certified by the state or is certified by the registry of interpreters for the deaf to hold the comprehensive skills certificate or both certificates of interpretation and transliteration, or an interpreter who can readily translate statements of speech impaired persons into spoken language.

(3) "Intermediary interpreter" means a hearing impaired interpreter who holds a reverse skills certificate by the state or is certified by the registry of interpreters for the deaf with a reverse skills certificate, who meets the requirements of RCW 2.42.130, and who is able to assist in providing an accurate interpretation between spoken and sign language or

between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified hearing interpreter.

(4) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision. [1991 c 171 § 1; 1985 c 389 § 11.]

2.42.120 Appointment, pay. (1) If a hearing impaired person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state or in a political subdivision, including but not limited to civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing impaired person may be subject to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.

(2) If the parent, guardian, or custodian of a juvenile brought before a court is hearing impaired, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.

(3) If a hearing impaired person participates in a program or activity ordered by a court as part of the sentence or order of disposition, required as part of a diversion agreement or deferred prosecution program, or required as a condition of probation or parole, the appointing authority shall appoint and pay for a qualified interpreter to interpret exchange of information during the program or activity.

(4) If a law enforcement agency conducts a criminal investigation involving the interviewing of a hearing impaired person, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. Whenever a law enforcement agency conducts a criminal investigation involving the interviewing of a minor child whose parent, guardian, or custodian is hearing impaired, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.

(5) If a hearing impaired person is arrested for an alleged violation of a criminal law the arresting officer or the officer's supervisor shall, at the earliest possible time, procure and arrange payment for a qualified interpreter for any notification of rights, warning, interrogation, or taking of a statement. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.

(6) Where it is the policy and practice of a court of this state or of a political subdivision to appoint and pay counsel for persons who are indigent, the appointing authority shall appoint and pay for a qualified interpreter for hearing impaired persons to facilitate communication with counsel in all phases of the preparation and presentation of the case. [1985 c 389 § 12.]

2.42.130 Source of interpreters, qualifications. (1) If a qualified interpreter for a hearing impaired person is required, the appointing authority shall request a qualified interpreter and/or an intermediary interpreter through the department of social and health services, office of deaf services, or through any community center for hearing impaired persons which operates an interpreter referral service. The office of deaf services and these community centers shall maintain an up-to-date list or lists of interpreters that are certified by the state and/or by the registry of interpreters for the deaf.

(2) The appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the hearing impaired person, that the interpreter is able in that particular proceeding, program, or activity to interpret accurately all communication to and from the hearing impaired person. If at any time during the proceeding, program, or activity, in the opinion of the hearing impaired person or a qualified observer, the interpreter does not provide accurate, impartial, and effective communication with the hearing impaired person the appointing authority shall appoint another qualified interpreter. No otherwise qualified interpreter who is a relative of any participant in the proceeding may be appointed. [1991 c 171 § 2; 1985 c 389 § 13.]

2.42.140 Intermediary interpreter, when. If the communication mode or language of the hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the appointing authority who shall appoint and pay an intermediary interpreter to assist the qualified interpreter. [1985 c 389 § 14.]

2.42.150 Waiver of right to interpreter. (1) The right to a qualified interpreter may not be waived except when:

- (a) A hearing impaired person requests a waiver through the use of a qualified interpreter;
- (b) The counsel, if any, of the hearing impaired person consents; and
- (c) The appointing authority determines that the waiver has been made knowingly, voluntarily, and intelligently.

(2) Waiver of a qualified interpreter shall not preclude the hearing impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding, program, or activity. [1985 c 389 § 15.]

2.42.160 Privileged communication. (1) A qualified and/or intermediary interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law.

(2) A qualified and/or intermediary interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending. [1991 c 171 § 3; 1985 c 389 § 16.]

2.42.170 Fee. A qualified and/or intermediary interpreter appointed under this chapter is entitled to a reasonable fee for services, including waiting time and

reimbursement for actual necessary travel expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services. [1991 c 171 § 4; 1985 c 389 § 17.]

2.42.180 Visual recording of testimony. At the request of any party to the proceeding or on the appointing authority's initiative, the appointing authority may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use in verification of the official transcript of the proceeding.

In any judicial proceeding involving a capital offense, the appointing authority shall order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use in verification of the official transcript of the proceeding. [1985 c 389 § 18.]

Chapter 2.43

INTERPRETERS FOR NON-ENGLISH-SPEAKING PERSONS

Sections

2.43.010	Legislative intent.
2.43.020	Definitions.
2.43.030	Appointment of interpreter.
2.43.040	Fees and expenses—Cost of providing interpreter.
2.43.050	Oath.
2.43.060	Waiver of right to interpreter.
2.43.070	Testing, certification of interpreters.
2.43.080	Code of ethics.

2.43.010 Legislative intent. It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the use and procedure for the appointment of such interpreters. Nothing in *this act abridges the parties' rights or obligations under other statutes or court rules or other law. [1989 c 358 § 1. Formerly RCW 2.42.200.]

***Reviser's note:** "This act" [1989 c 358] consisted of the enactment of RCW 2.42.200 through 2.42.270, the 1989 c 358 amendments to RCW 2.42.010, 2.42.020, and 2.42.050, and a severability clause.

Severability—1989 c 358: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 358 § 10.]

2.43.020 Definitions. As used in this chapter:

(1) "Non-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language, but does not include hearing-impaired persons who are covered under chapter 2.42 RCW.

(2) "Qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for non-English-speaking persons and to interpret or translate oral or written statements of non-English-speaking persons into spoken English.

(3) "Legal proceeding" means a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before [an] administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.

(4) "Certified interpreter" means an interpreter who is certified by the office of the administrator for the courts.

(5) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision thereof. [1989 c 358 § 2. Formerly RCW 2.42.210.]

Severability—1989 c 358: See note following RCW 2.43.010.

2.43.030 Appointment of interpreter. (1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the office of the administrator for the courts, unless good cause is found and noted on the record by the appointing authority. For purposes of *this act, "good cause" includes but is not limited to a determination that:

(i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the appointing authority; or

(ii) The current list of certified interpreters maintained by the office of the administrator for the courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(c) Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority shall appoint a qualified interpreter.

(2) If good cause is found for using an interpreter who is not certified or if a qualified interpreter is appointed, the appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the non-English-speaking person, that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular proceeding. The appointing authority shall satisfy itself on the record that the proposed interpreter:

(a) Is capable of communicating effectively with the court or agency and the person for whom the interpreter would interpret; and

(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules. [1990 c 183 § 1; 1989 c 358 § 3. Formerly RCW 2.42.220.]

***Reviser's note:** "This act" [1989 c 358] consisted of the enactment of RCW 2.42.200 through 2.42.270, the 1989 c 358 amendments to RCW 2.42.010, 2.42.020, and 2.42.050, and a severability clause.

Severability—1989 c 358: See note following RCW 2.43.010.

2.43.040 Fees and expenses—Cost of providing interpreter. (1) Interpreters appointed according to this chapter are entitled to a reasonable fee for their services and shall be reimbursed for actual expenses which are reasonable as provided in this section.

(2) In all legal proceedings in which the non-English-speaking person is a party, or is subpoenaed or summoned by the appointing authority or is otherwise compelled by the appointing authority to appear, including criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings.

(3) In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent according to adopted standards of the body. In such a case the cost shall be an administrative cost of the governmental body under the authority of which the legal proceeding is conducted.

(4) The cost of providing the interpreter is a taxable cost of any proceeding in which costs ordinarily are taxed. [1989 c 358 § 4. Formerly RCW 2.42.230.]

Severability—1989 c 358: See note following RCW 2.43.010.

2.43.050 Oath. Before beginning to interpret, every interpreter appointed under this chapter shall take an oath affirming that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment. [1989 c 358 § 5. Formerly RCW 2.42.240.]

Severability—1989 c 358: See note following RCW 2.43.010.

2.43.060 Waiver of right to interpreter. (1) The right to a qualified interpreter may not be waived except when:

(a) A non-English-speaking person requests a waiver; and

(b) The appointing authority determines on the record that the waiver has been made knowingly, voluntarily, and intelligently.

(2) Waiver of a qualified interpreter may be set aside and an interpreter appointed, in the discretion of the appointing authority, at any time during the proceedings. [1989 c 358 § 6. Formerly RCW 2.42.250.]

Severability—1989 c 358: See note following RCW 2.43.010.

2.43.070 Testing, certification of interpreters. (1) Subject to the availability of funds, the office of the administrator for the courts shall establish and administer a comprehensive testing and certification program for language interpreters.

(2) The office of the administrator for the courts shall work cooperatively with community colleges and other private or public educational institutions, and with other public or private organizations to establish a certification preparation curriculum and suitable training programs to ensure the availability of certified interpreters. Training programs shall be made readily available in both eastern and western Washington locations.

(3) The office of the administrator for the courts shall establish and adopt standards of proficiency, written and oral, in English and the language to be interpreted.

(4) The office of the administrator for the courts shall conduct periodic examinations to ensure the availability of certified interpreters. Periodic examinations shall be made readily available in both eastern and western Washington locations.

(5) The office of the administrator for the courts shall compile, maintain, and disseminate a current list of interpreters certified by the office of the administrator for the courts.

(6) The office of the administrator for the courts may charge reasonable fees for testing, training, and certification. [1989 c 358 § 7. Formerly RCW 2.42.260.]

Severability—1989 c 358: See note following RCW 2.43.010.

2.43.080 Code of ethics. All language interpreters serving in a legal proceeding, whether or not certified or qualified, shall abide by a code of ethics established by supreme court rule. [1989 c 358 § 8. Formerly RCW 2.42.270.]

Severability—1989 c 358: See note following RCW 2.43.010.

Chapter 2.44

ATTORNEYS AT LAW

Sections

2.44.010	Authority of attorney.
2.44.020	Appearance without authority—Procedure.
2.44.030	Production of authority to act.
2.44.040	Change of attorneys.
2.44.050	Notice of change and substitution.
2.44.060	Death or removal of attorney—Proceedings.

Rules of court: See *Code of professional responsibility*.

Attorney as witness: **Rules of court:** CR 43(g); *Code of Professional Responsibility—DR 5-102*.

Attorney fee in appeals from board of industrial insurance appeals: RCW 51.52.130.

Legal aid: Chapter 2.50 RCW.

Lien for attorneys' fees: Chapter 60.40 RCW.

Prosecuting attorneys, duties in general: Chapter 36.27 RCW.

Salaried attorney of trust company or national bank not allowed fee for probating estate: RCW 11.36.010.

2.44.010 Authority of attorney. An attorney and counselor has authority:

(1) To bind his client in any of the proceedings in an action or special proceeding by his agreement duly made, or

entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him, or signed by the party against whom the same is alleged, or his attorney;

(2) To receive money claimed by his client in an action or special proceeding, during the pendency thereof, or after judgment upon the payment thereof, and not otherwise, to discharge the same or acknowledge satisfaction of the judgment;

(3) This section shall not prevent a party [from] employing a new attorney or from issuing an execution upon a judgment, or from taking other proceedings prescribed by statute for its enforcement. [Code 1881 § 3280; 1863 p 404 § 6; RRS § 130.]

2.44.020 Appearance without authority—Procedure. If it be alleged by a party for whom an attorney appears, that he does so without authority, the court may, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his act; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his assumption of authority. [Code 1881 § 3281; 1863 p 405 § 7; RRS § 131.]

2.44.030 Production of authority to act. The court, or a judge, may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear. [Code 1881 § 3282; 1863 p 405 § 8; RRS § 132.]

2.44.040 Change of attorneys. The attorney in an action or special proceeding, may be changed at any time before judgment or final determination as follows:

(1) Upon his own consent, filed with the clerk or entered upon the minutes; or

(2) Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney have been paid by the party asking such change to be made. [Code 1881 § 3283; 1863 p 405 § 9; RRS § 133.]

2.44.050 Notice of change and substitution. When an attorney is changed, as provided in RCW 2.44.040, written notice of the change, and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party; until then, he shall be bound to recognize the former attorney. [Code 1881 § 3284; 1863 p 405 § 10; RRS § 134.]

2.44.060 Death or removal of attorney—Proceedings. When an attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney, must, at least twenty days before any further proceedings against him, be required by the adverse party, by written notice, to appoint another

attorney, or to appear in person. [Code 1881 § 3285; 1863 p 405 § 11; RRS § 135.]

Chapter 2.48 STATE BAR ACT

Sections	
2.48.010	Objects and powers.
2.48.020	First members.
2.48.021	New members.
2.48.030	Board of governors.
2.48.035	Board of governors—Membership—Effect of creation of new congressional districts or boundaries.
2.48.040	State bar governed by board of governors.
2.48.050	Powers of governors.
2.48.060	Admission and disbarment.
2.48.070	Admission of veterans.
2.48.080	Admission of veterans—Establishment of requirements if in service.
2.48.090	Admission of veterans—Establishment of requirements if discharged.
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2.48.170	Only active members may practice law.
2.48.180	Unlawful practice a misdemeanor.
2.48.190	Qualifications on admission to practice.
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2.48.210	Oath on admission.
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Rules of court: See *Rules of Professional Responsibility, Rules for Lawyer Discipline, also Admission to Practice Rules.*

Judicial council, membership on: RCW 2.52.010.

Law revision commission: Chapter 1.30 RCW.

School district hearings, hearing officers as members of state bar association: RCW 28A.405.310.

Statute law committee, membership on: RCW 1.08.001.

2.48.010 Objects and powers. There is hereby created as an agency of the state, for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association, hereinafter designated as the state bar, which association shall have a common seal and may sue and be sued, and which may, for the purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto. [1933 c 94 § 2; RRS § 138-2.]

Severability—1933 c 94: "If any section, subsection, sentence, clause or phrase of this act or any rule adopted thereunder, is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act nor of any other rule adopted hereunder. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional." [1933 c 94 § 17.]

Short title—1933 c 94: "This act may be known and cited as the State Bar Act." [1933 c 94 § 1.]

The foregoing annotations apply to RCW 2.48.010, 2.48.020, 2.48.030, 2.48.040, 2.48.050, and 2.48.060, 2.48.130 through 2.48.180, inclusive.

2.48.020 First members. The first members of the Washington State Bar Association shall be all persons now

[on June 7, 1933] entitled to practice law in this state. [1933 c 94 § 3; RRS § 138-3. FORMER PART OF SECTION: 1933 c 94 § 4; RRS § 138-4 now codified as RCW 2.48.021.]

2.48.021 New members. After the organization of the state bar, as herein provided, all persons who are admitted to practice in accordance with the provisions of RCW 2.48.010 through 2.48.180, except judges of courts of record, shall become by that fact active members of the state bar. [1933 c 94 § 4; RRS § 138-4. Formerly RCW 2.48.020, part.]

2.48.030 Board of governors. There is hereby constituted a board of governors of the state bar which shall consist of not more than fifteen members, to include: The president of the state bar elected as provided by the bylaws of the association, one member from each congressional district now or hereafter existing in the state elected by secret ballot by mail by the active members residing therein, and such additional members elected as provided by the bylaws of the association. The members of the board of governors shall hold office for three years and until their successors are elected and qualified. Any vacancies in the board of governors shall be filled by the continuing members of the board until the next election, held in accordance with the bylaws of the association.

The board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. [1982 1st ex.s. c 30 § 1; 1972 ex.s. c 66 § 1; 1933 c 94 § 5; RRS § 138-5.]

2.48.035 Board of governors—Membership—Effect of creation of new congressional districts or boundaries. The terms of office of members of the board of governors of the state bar who are elected from the various congressional districts shall not be affected by the creation of either new boundaries for congressional districts or additional districts. In such an event, each board member so elected may continue to serve in office for the balance of the term for which he or she was elected or appointed: PROVIDED, That the board member continues to reside within the boundaries of the congressional district as they existed at the time of his or her election or appointment. Vacancies which occur in a board member position during the balance of any such term shall be filled pursuant to RCW 2.48.030, as now or hereafter amended, by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was elected as they existed at the time of his or her election. At the election immediately preceding expiration of the term of office of each board member provided for in this section following the creation of either new boundaries for congressional districts or additional districts, and thereafter, a successor shall be elected from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed or elected. [1982 1st ex.s. c 30 § 2.]

2.48.040 State bar governed by board of governors.

The state bar shall be governed by the board of governors which shall be charged with the executive functions of the state bar and the enforcement of the provisions of RCW 2.48.010 through 2.48.180 and all rules adopted in pursuance thereof. The members of the board of governors shall receive no salary by virtue of their office. [1933 c 94 § 6; RRS § 138-6.]

2.48.050 Powers of governors. The said board of governors shall have power, in its discretion, from time to time to adopt rules

(1) concerning membership and the classification thereof into active, inactive and honorary members; and

(2) concerning the enrollment and privileges of membership; and

(3) defining the other officers of the state bar, the time, place and method of their selection, and their respective powers, duties, terms of office and compensation; and

(4) concerning annual and special meetings; and

(5) concerning the collection, the deposit and the disbursement of the membership and admission fees, penalties, and all other funds; and

(6) providing for the organization and government of district and/or other local subdivisions of the state bar; and

(7) providing for all other matters, whether similar to the foregoing or not, affecting in any way whatsoever, the organization and functioning of the state bar. Any such rule may be modified, or rescinded, or a new rule adopted, by a vote of the active members under rules to be prescribed by the board of governors. [1933 c 94 § 7; RRS § 138-7.]

2.48.060 Admission and disbarment. The said board of governors shall likewise have power, in its discretion, from time to time to adopt rules, subject to the approval of the supreme court, fixing the qualifications, requirements and procedure for admission to the practice of law; and, with such approval, to establish from time to time and enforce rules of professional conduct for all members of the state bar; and, with such approval, to appoint boards or committees to examine applicants for admission; and, to investigate, prosecute and hear all causes involving discipline, disbarment, suspension or reinstatement, and make recommendations thereon to the supreme court; and, with such approval, to prescribe rules establishing the procedure for the investigation and hearing of such matters, and establishing county or district agencies to assist therein to the extent provided by such rules: PROVIDED, HOWEVER, That no person who shall have participated in the investigation or prosecution of any such cause shall sit as a member of any board or committee hearing the same. [1933 c 94 § 8; RRS § 138-8.]

Rules of court: See Rules for Lawyer Discipline, also Admission to Practice Rules.

2.48.070 Admission of veterans. Any person who shall have graduated from any accredited law school and after such graduation shall have served in the armed forces of the United States of America between December 7, 1941, and the termination of the present World War, may be admitted to the practice of law in the state of Washington and to membership in the Washington State Bar Association,

upon motion made before the supreme court of the state of Washington, provided the following is made to appear:

(1) That the applicant is a person of good moral character over the age of twenty-one years;

(2) That the applicant, at the time of entering the armed forces of the United States, was a legal resident of the state of Washington;

(3) That the applicant's service in the armed forces of the United States is or was satisfactory and honorable. [1945 c 181 § 1; Rem. Supp. 1945 § 138-7A.]

Qualifications for admission to practice as prescribed by Rules of court: Admission to Practice Rules.

2.48.080 Admission of veterans—Establishment of requirements if in service. If an applicant under RCW 2.48.070 through 2.48.110 is, at the time he applies for admission to practice law in the state of Washington, still in the armed forces of the United States, he may establish the requirements of the proviso in RCW 2.48.070 by a letter or certificate from his commanding officer and by the certificates of at least two active members of the Washington State Bar Association. [1945 c 181 § 2; Rem. Supp. 1945 § 138-7B.]

2.48.090 Admission of veterans—Establishment of requirements if discharged. If an applicant under RCW 2.48.070 through 2.48.110 is, at the time he applies for admission to practice law in the state of Washington, no longer in the armed forces of the United States, he may establish the requirements of the proviso in RCW 2.48.070 as follows:

(1) If he shall have been an enlisted person, by producing an honorable discharge, and by the certificates of at least two active members of the Washington State Bar Association.

(2) If he shall have been an officer, by an affidavit showing that he has been relieved from active duty under circumstances other than dishonorable, and by the certificates of at least two active members of the Washington State Bar Association. [1945 c 181 § 3; Rem. Supp. 1945 § 138-7C.]

2.48.100 Admission of veterans—Effect of disability discharge. A physical disability discharge shall be considered an honorable discharge unless it be coupled with a dishonorable discharge. [1945 c 181 § 4; Rem. Supp. 1945 § 138-7D.]

2.48.110 Admission of veterans—Fees of veterans. An applicant applying for admission to practice law under the provisions of RCW 2.48.070 through 2.48.090, shall pay the same fees as are required of residents of the state of Washington seeking admission to practice law by examination. [1945 c 181 § 5; Rem. Supp. 1945 § 138-7E.]

2.48.130 Membership fee—Active. The annual membership fees for active members shall be payable on or before February 1st of each year. The board of governors may establish the amount of such annual membership fee to be effective each year: PROVIDED, That written notice of any proposed increase in membership fee shall be sent to

active members not less than sixty days prior to the effective date of such increase: PROVIDED FURTHER, That the board of governors may establish the fee at a reduced rate for those who have been active members for less than five years in this state or elsewhere. [1957 c 138 § 1; 1953 c 256 § 1; 1933 c 94 § 9; RRS § 138-9.]

2.48.140 Membership fee—Inactive. The annual membership fee for inactive members shall be the sum of two dollars, payable on or before the first day of February of each year. [1955 c 34 § 1; 1933 c 94 § 10; RRS § 138-10.]

2.48.150 Admission fees. Applicants for admission to the bar upon accredited certificates or upon examination, not having been admitted to the bar in another state or territory, shall pay a fee of twenty-five dollars and all other applicants a fee of fifty dollars. Said admission fees shall be used to pay the expenses incurred in connection with examining and admitting applicants to the bar, including salaries of examiners, and any balance remaining at the close of each biennium shall be paid to the state treasurer and be by him credited to the general fund. [1933 c 94 § 11; RRS § 138-11.]

Rules of court: Admission—APR 3(d).

2.48.160 Suspension for nonpayment of fees. Any member failing to pay any fees after the same become due, and after two months' written notice of his delinquency, must be suspended from membership in the state bar, but may be reinstated upon payment of accrued fees and such penalties as may be imposed by the board of governors, not exceeding double the amount of the delinquent fee. [1933 c 94 § 12; RRS § 138-12.]

2.48.170 Only active members may practice law. No person shall practice law in this state subsequent to the first meeting of the state bar unless he shall be an active member thereof as hereinbefore defined: PROVIDED, That a member of the bar in good standing in any other state or jurisdiction shall be entitled to appear in the courts of this state under such rules as the board of governors may prescribe. [1933 c 94 § 13; RRS § 138-13.]

Rules of court: Admission—APR 5.

2.48.180 Unlawful practice a misdemeanor. Any person who, not being an active member of the state bar, or who after he has been disbarred or while suspended from membership in the state bar, as by this chapter provided, shall practice law, or hold himself out as entitled to practice law, shall, except as provided in RCW 19.154.100, be guilty of a misdemeanor: PROVIDED, HOWEVER, Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive relief or to punish as for contempt. [1989 c 117 § 13; 1933 c 94 § 14; RRS § 138-14.]

Rules of court: RLD 1.1(h).

Severability—Effective date—1989 c 117: See RCW 19.154.901 and 19.154.902.

Practicing law with disbarred attorney: RCW 2.48.220(9).

2.48.190 Qualifications on admission to practice.

No person shall be permitted to practice as an attorney or counselor at law or to do work of a legal nature for compensation, or to represent himself or herself as an attorney or counselor at law or qualified to do work of a legal nature, unless he or she is a citizen of the United States and a bona fide resident of this state and has been admitted to practice law in this state: PROVIDED, That any person may appear and conduct his or her own case in any action or proceeding brought by or against him or her, or may appear in his or her own behalf in the small claims department of the district court: AND PROVIDED FURTHER, That an attorney of another state may appear as counselor in a court of this state without admission, upon satisfying the court that his or her state grants the same right to attorneys of this state. [1987 c 202 § 107; 1921 c 126 § 4; RRS § 139-4. Prior: 1919 c 100 § 1; 1917 c 115 § 1.]

Reviser's note: Last proviso, see later enactment, RCW 2.48.170.

Rules of court: Admission—APR 5.

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

2.48.200 Restrictions on practice by certain officers.

No person shall practice law who holds a commission as judge in any court of record, or as sheriff or coroner; nor shall the clerk of the supreme court, the court of appeals, or of the superior court or any deputy thereof practice in the court of which he or she is clerk or deputy clerk: PROVIDED, It shall be unlawful for a deputy prosecuting attorney, or for the employee, partner, or agent of a prosecuting attorney, or for an attorney occupying offices with a prosecuting attorney, to appear for an adverse interest in any proceeding in which a prosecuting attorney is appearing, or to appear in any suit, action or proceeding in which a prosecuting attorney is prohibited by law from appearing, but nothing herein shall prohibit a prosecuting attorney or a deputy prosecuting attorney from appearing in any action or proceeding for an interest divergent from that represented in the same action or proceeding by another attorney or special attorney in or for the same office, so long as such appearances are pursuant to the duties of prosecuting attorneys as set out in RCW 36.27.020 and such appearances are consistent with the code of professional responsibility or other code of ethics adopted by the Washington state supreme court, but nothing herein shall preclude a judge or justice of a court of this state from finishing any business undertaken in a court of the United States prior to him or her becoming a judge or justice. [1992 c 225 § 1; 1975 1st ex.s. c 19 § 3; 1971 c 81 § 13; 1921 c 126 § 5; RRS § 139-5.]

Rules of court: Judicial ethics—CJC.

Clerk not to practice law: RCW 2.32.090.

Coroner not to practice law: RCW 36.24.170.

Judges may not practice law: State Constitution Art. 4 § 19.

Sheriff not to practice law: RCW 36.28.110.

2.48.210 Oath on admission. Every person before being admitted to practice law in this state shall take and subscribe the following oath:

I do solemnly swear:

I am a citizen of the United States and owe my allegiance thereto;

I will support the Constitution of the United States and the Constitution of the state of Washington;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God. [1921 c 126 § 12; RRS § 139-12. Prior: 1917 c 115 § 14.]

Rules of court: Admission—APR 5(c) and (d).

2.48.220 Grounds of disbarment or suspension. An attorney or counselor may be disbarred or suspended for any of the following causes arising after his admission to practice:

(1) His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence.

(2) Wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with, or in the course of, his profession, which he ought in good faith to do or forbear.

(3) Violation of his oath as an attorney, or of his duties as an attorney and counselor.

(4) Corruptly or wilfully, and without authority, appearing as attorney for a party to an action or proceeding.

(5) Lending his name to be used as attorney and counselor by another person who is not an attorney and counselor.

(6) For the commission of any act involving moral turpitude, dishonesty or corruption, whether the same be committed in the course of his relations as an attorney or counselor at law, or otherwise, and whether the same constitute a felony or misdemeanor or not; and if the act constitute a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disbarment or suspension from practice therefor.

(7) Misrepresentation or concealment of a material fact made in his application for admission or in support thereof.

(8) Disbarment by a foreign court of competent jurisdiction.

(9) Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or

permitting a disbarred or suspended attorney to use his name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney or with any person not a licensed attorney.

(10) Gross incompetency in the practice of the profession.

(11) Violation of the ethics of the profession. [1921 c 126 § 14; 1909 c 139 § 7; RRS § 139-14.]

Rules of court: RLD 1.1.

2.48.230 Code of ethics. The code of ethics of the American Bar Association shall be the standard of ethics for the members of the bar of this state. [1921 c 126 § 15; RRS § 139-15. Prior: 1917 c 115 § 20.]

Reviser's note: RCW 2.48.190, 2.48.200, 2.48.210, 2.48.220, and 2.48.230 are the only sections of the earlier act relating to the admission, regulation, disbarment, etc., of attorneys which are thought not to be embraced within the general repeal contained in the state bar act of 1933.

Rules of court: See Code of Professional Responsibility, also Code of Judicial Conduct.

Chapter 2.50 LEGAL AID

Sections

2.50.010	Legal aid defined.
2.50.020	Public interest.
2.50.040	Declaration of necessity by board of county commissioners.
2.50.050	Legal aid bureau defined.
2.50.060	Board of governors—Authority.
2.50.070	Legal aid county committee created.
2.50.080	Supervision.
2.50.090	Registration fees and private funds.
2.50.100	Limitation of legal aid.
2.50.110	Attorneys' fees.
2.50.120	County funds.
2.50.125	Cities authorized to appropriate funds.
2.50.130	Revocation of declaration of necessity.
2.50.140	Washington State Bar Association not restricted.
2.50.150	Certain other acts not applicable.
2.50.160	Chapter not exclusive—Counties authorized to provide legal aid.

2.50.010 Legal aid defined. Legal aid is the rendition, without compensation, of professional services by an active member of the Washington State Bar Association to or for any indigent person unable to pay a reasonable attorney's fee determined in accordance with the established code of legal ethics. [1939 c 93 § 1; RRS § 10007-201. Formerly RCW 74.36.010.]

2.50.020 Public interest. The promotion of organized legal aid is hereby declared to be in the public interest. [1939 c 93 § 2; RRS § 10007-202. Formerly RCW 74.36.020.]

2.50.040 Declaration of necessity by board of county commissioners. The board of county commissioners (hereinafter called the county board) is empowered to find by resolution the existence of a necessity in such county for organized legal aid. Such resolution shall specify the

amount of county funds thereby to be allocated for and expended in the operation of a legal aid bureau during the period of the fiscal year or the remainder thereof. Within ten days after the passage of such a resolution, the commissioners shall cause a certified copy to be transmitted to the board of governors of the Washington State Bar Association (hereinafter called the bar board). [1939 c 93 § 4; RRS § 10007-204. Formerly RCW 74.36.040.]

2.50.050 Legal aid bureau defined. A legal aid bureau (hereinafter called the bureau), is an agency for the rendition of organized legal aid to indigent persons resident in the county, consisting of one director, who shall be an attorney resident in the county, and who shall be in good standing and active membership in the Washington State Bar Association, together with such professional and other personnel, such office facilities, and other equipment, as may be determined by the bar board and be financed by the county board. [1939 c 93 § 5; RRS § 10007-205. Formerly RCW 74.36.050.]

2.50.060 Board of governors—Authority. Upon receipt of a certified copy of such resolution the bar board is empowered and, within sixty days thereafter, is obligated to create and continue a legal aid bureau as soon and as long as the necessary funds so allocated are made available by the county board, all expenditures for the bureau to be limited to county funds so supplied, except only as hereinafter authorized. The bar board is vested with the ultimate power to control by its rules and regulations such bureau, the immediate supervision of which in actual operation shall be by the bar board itself or by a committee of its selection. [1939 c 93 § 6; RRS § 10007-206. Formerly RCW 74.36.060.]

2.50.070 Legal aid county committee created. The legal aid county committee (hereinafter called the committee), if created and continued by resolution of the bar board, shall consist of three members chosen by the bar board as follows: a member of the bar board, who shall be chairman, a judge of the superior court of the county, and an active member of the Washington State Bar Association, resident in the county. [1939 c 93 § 7; RRS § 10007-207. Formerly RCW 74.36.070.]

2.50.080 Supervision. Among the powers to supervise the actual operation of any such bureau, which shall be exercised either by the bar board itself or in its discretion by the committee, are the following:

(1) To appoint and remove at will the director and to fix the amount of his salary not in excess of two hundred dollars per month;

(2) To engage and discharge all other employees of the bureau and to fix their salaries or remuneration;

(3) To assist the director in supplying the free services of attorneys for the bureau;

(4) To cooperate with the dean of any law school now or hereafter established within this state respecting the participation of law students in the rendition of services by the bureau under the guidance of the director—however, by this provision, no law student shall be deemed authorized to

represent as an attorney in a court of record any legal aid client;

(5) To require of the director periodically written statements of account and written reports upon any and all subjects within the operation of the bureau;

(6) To prescribe rules and regulations, always subject to the bar board, for determination of the indigent persons who are entitled to legal aid, for determination of the kinds of legal problems and cases subject to legal aid, and for determination of all operative legal aid policies not inconsistent with this chapter;

(7) To advise the county board, for its budget upon its written request, as to the estimated amount of county funds reasonably required to effectively operate the bureau for the ensuing fiscal year;

(8) To receive county funds allocated by the county board for the bureau, and to render an account thereof at the times and in the manner reasonably required by the county board;

(9) To disburse such county funds, after receipt thereof, solely for the purposes contemplated by this chapter. [1939 c 93 § 8; RRS § 10007-208. Formerly RCW 74.36.080.]

2.50.090 Registration fees and private funds. For the purpose of promoting organized legal aid, the bar board is empowered to receive and disburse, at its discretion, a nominal registration fee (not in excess of fifty cents), which it may require of legal aid applicants, and also donations in any sum of private funds. [1939 c 93 § 9; RRS § 10007-209. Formerly RCW 74.36.090.]

2.50.100 Limitation of legal aid. No legal aid shall be rendered by or through any bureau as to any matter which, in the opinion of the director or the committee is not a proper subject of legal aid. No legal aid shall be given concerning matters relating to claims or litigation commonly handled on a contingent fee basis, nor to the defense of criminal charges in court. [1939 c 93 § 10; RRS § 10007-210. Formerly RCW 74.36.100.]

2.50.110 Attorneys' fees. No attorney's fee shall be charged to or received from any legal aid client as to any legal aid matter handled by or through the bureau. All attorneys' fees and court costs collected from any third party by the bureau in the name of any legal aid client shall become a part of the bureau's operation funds. [1939 c 93 § 11; RRS § 10007-211. Formerly RCW 74.36.110.]

2.50.120 County funds. The county board in its discretion shall allocate funds for the purposes of the bureau from county funds available for public assistance and relief received from the levy of three mills as provided in section 17, chapter 180, Laws of 1937. [1939 c 93 § 12; RRS § 10007-212. Formerly RCW 74.36.120.]

Reviser's note: 1937 c 180 § 17 was repealed by 1939 c 216 § 35.

2.50.125 Cities authorized to appropriate funds. A city of any class or any code city may appropriate funds in any amount for the purposes of this chapter. [1974 ex.s. c 5 § 1.]

2.50.130 Revocation of declaration of necessity. The county board is empowered to find by resolution the nonexistence of a necessity in such county for organized legal aid. Within ten days after the passage of such a resolution the county board shall cause a certified copy to be transmitted to the bar board. Upon receipt of a certified copy of such resolution the bar board is empowered and, within sixty days thereafter, is obligated to discontinue the legal aid bureau—unless it is subsequently maintained in the discretion of the bar board and financed by funds other than county funds. Nothing in this chapter shall prevent a county board from adopting successive resolutions declaring the existence or nonexistence of a necessity for organized legal aid, but no bureau actually created as a result of such a resolution shall be discontinued by a resolution of revocation within sixty days thereafter. [1939 c 93 § 13; RRS § 10007-213. Formerly RCW 74.36.130.]

2.50.140 Washington State Bar Association not restricted. No county funds shall be expended for legal aid except in accordance with this chapter, but nothing in this chapter shall limit the powers of the Washington State Bar Association, or its board of governors, to promote or render legal aid independent of county financial support. [1939 c 93 § 14; RRS § 10007-214. Formerly RCW 74.36.140.]

2.50.150 Certain other acts not applicable. The provisions of section 6 of chapter 180 of the Laws of 1937 shall not be applicable to a bureau or a committee as authorized by this chapter, or to the bar board or the Washington State Bar Association. [1939 c 93 § 15; RRS § 10007-215. Formerly RCW 74.36.150.]

Reviser's note: 1937 c 180 § 6 was repealed by 1939 c 216 § 35.

2.50.160 Chapter not exclusive—Counties authorized to provide legal aid. The provisions of this chapter are not exclusive. Nothing in this chapter shall be construed as placing a limitation on the establishment of alternative methods or systems for providing legal aid. Counties are hereby authorized to expend county funds for the establishment of such methods or systems of providing legal aid as shall be deemed in the public interest by the county legislative body. [1972 ex.s. c 109 § 1.]

Chapter 2.52 JUDICIAL COUNCIL

Sections

2.52.010	Council created—How constituted.
2.52.020	Terms—Vacancies.
2.52.030	Officers—Personnel.
2.52.035	Staff.
2.52.040	Meetings.
2.52.050	Duties.

2.52.010 Council created—How constituted. There is hereby established a judicial council which shall consist of the following:

- (1) The chief justice of the supreme court;

- (2) One judge of the court of appeals, to be selected and appointed by the three chief judges of the three divisions thereof;

- (3) One judge of the superior court, to be selected and appointed by the superior court judges' association;

- (4) Two members of the state senate who shall not be members of the same political party; two members of the state house of representatives who shall not be members of the same political party;

- (5) Four members of the bar who are practicing law, one of whom shall be either a public defender or a legal services attorney, and at least one of whom is a prosecuting attorney, with the public defender or legal services attorney, and two to be appointed by the board of governors of the Washington state bar association from a list of nominees submitted by the legislative committee of the Washington state bar association;

- (7) The attorney general; and

- (8) One judge from the courts of limited jurisdiction chosen by the Washington state magistrates' association. [1987 c 322 § 1; 1977 ex.s. c 112 § 1; 1973 c 18 § 1; 1971 c 40 § 1; 1967 c 124 § 1; 1961 c 271 § 1; 1955 c 40 § 1; 1925 ex.s. c 45 § 1; RRS § 10959-1.]

Association of superior court judges: Chapter 2.16 RCW.

2.52.020 Terms—Vacancies. The term of the member of the council who is a judge, a chairman of a judiciary committee of the legislature, or a prosecuting attorney shall be for the rest of his term in the office that qualified him to become a member. The term of a member chosen from the bar, except the one who is a prosecuting attorney, shall be two years. A vacancy shall be filled for the rest of the term by appointment as in the first instance. [1925 ex.s. c 45 § 2; RRS § 10959-2.]

2.52.030 Officers—Personnel. The chief justice shall be chairman of the council, and one of the other members may be appointed by the council to be executive secretary. The council may make rules for its procedure and the conduct of its business, and may employ such clerical assistants and procure such office supplies as shall be necessary in the performance of its duties. [1987 c 322 § 2; 1925 ex.s. c 45 § 3; RRS § 10959-3.]

2.52.035 Staff. The administrator for the courts shall make available to the council such staff as necessary to carry out the work of the council. [1987 c 322 § 4.]

2.52.040 Meetings. One meeting of the council shall be held within the state each year. Other regular meetings may be provided for by rule. A special meeting may be held anywhere in the state at any time upon call by the chairman or five other members of the council and upon notice given to each member in time to enable him to attend. [1977 ex.s. c 112 § 2; 1925 ex.s. c 45 § 4; RRS § 10959-4.]

2.52.050 Duties. It shall be the duty of the council:

- (1) To receive recommendations from justices, judges, public officials, lawyers, and the public to amend current

law, as those amendments may affect the administration of justice;

(2) To consider such recommendations, and to examine the common law and statutes of the state and judicial decisions, and propose changes in current law, as those changes may affect the administration of justice;

(3) To submit from time to time to the courts or the judges such suggestions as it may deem advisable for changes in rules, procedure, or methods of administration;

(4) To report as may be necessary to the governor and the legislature with the council's recommendations as to needed changes in the organization of the judicial department or the courts or in judicial procedure; and

(5) To assist the judges in giving effect to Art. 4, Section 25 of the state Constitution. [1987 c 322 § 3; 1981 c 260 § 1. Prior: 1977 ex.s. c 112 § 3; 1977 c 75 § 2; 1925 ex.s. c 45 § 5; RRS § 10959-5.]

Law revision commission: Chapter 1.30 RCW.

Chapter 2.56

ADMINISTRATOR FOR THE COURTS

Sections	
2.56.010	Office created—Appointment, term, age qualification, salary.
2.56.020	Appointment, compensation of assistants—Administrator, assistants not to practice law.
2.56.030	Powers and duties.
2.56.035	Report on crime victims compensation assessments.
2.56.040	Distribution of work of courts—Duty of judges to comply with chief justice's direction—Salary withheld.
2.56.050	Judges, clerks, other officers, to comply with requests of administrator.
2.56.060	Annual conference of judges—Judge's expenses.
2.56.070	Holding court in another county—Reimbursement for expenses.
2.56.080	Chapter applies to supreme and superior courts, court of appeals, and courts of limited jurisdiction.
2.56.090	Disbursement of appropriated funds.
2.56.100	Penalty assessment in addition to penalty resulting from hearing under RCW 46.63.090 or 46.63.100—Paid into judiciary education account—Account created, purposes.
2.56.110	Driving while under the influence of intoxicating liquor or any drug—Enhanced enforcement of related laws—Assignment of visiting district judges—Powers, expenses.
2.56.120	Judicial impact notes—Establishment of procedure—Legislator may request—Copies to be filed.

2.56.010 Office created—Appointment, term, age qualification, salary. There shall be a state office to be known as the office of administrator for the courts who shall be appointed by the supreme court of this state from a list of five persons submitted by the governor of the state of Washington, and shall hold office at the pleasure of the appointing power. He shall not be over the age of sixty years at the time of his appointment. He shall receive a salary to be fixed by the supreme court. [1984 c 20 § 1; 1979 ex.s. c 255 § 7; 1974 ex.s. c 156 § 1; 1969 c 93 § 1; 1957 c 259 § 1.]

Effective date—1979 ex.s. c 255: See note following RCW 43.03.010.

2.56.020 Appointment, compensation of assistants—Administrator, assistants not to practice law. The

administrator for the courts, with the approval of the chief justice of the supreme court of this state, shall appoint and fix the compensation of such assistants as are necessary to enable him to perform the power and duties vested in him. During his term of office or employment, neither the administrator nor any assistant shall engage directly or indirectly in the practice of law in this state. [1957 c 259 § 2.]

2.56.030 Powers and duties. The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Formulate and submit to the judicial council of this state recommendations of policies for the improvement of the judicial system;

(10) Submit annually, as of February 1st, to the chief justice and the judicial council, a report of the activities of the administrator's office for the preceding calendar year;

(11) Administer programs and standards for the training and education of judicial personnel;

(12) Examine the need for new superior court and district judge positions under a weighted caseload analysis that takes into account the time required to hear all the cases in a particular court and the amount of time existing judges have available to hear cases in that court. The results of the weighted caseload analysis shall be reviewed by the board for judicial administration and the judicial council, both of which shall make recommendations to the legislature by January 1, 1989. It is the intent of the legislature that weighted caseload analysis become the basis for creating

additional district court positions, and recommendations should address that objective;

(13) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(14) Attend to such other matters as may be assigned by the supreme court of this state;

(15) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers by July 1, 1988. The curriculum shall be updated yearly to reflect changes in statutes, court rules, or case law;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be completed and made available to all superior court and court of appeals judges and to all justices of the supreme court by July 1, 1989. [1992 c 205 § 115; 1989 c 95 § 2. Prior: 1988 c 234 § 2; 1988 c 109 § 23; 1987 c 363 § 6; 1981 c 132 § 1; 1957 c 259 § 3.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Construction—Severability—1989 c 95: See notes following RCW 9A.36.080.

Legislative findings—1988 c 234: "The legislature recognizes the need for appropriate training of juvenile court judges, attorneys, court personnel, and service providers in the dependency system and at-risk youth systems." [1988 c 234 § 1.]

Effective date—1988 c 109: See note following RCW 2.10.030.

2.56.035 Report on crime victims compensation assessments. Beginning in 1983, the administrator for the courts shall annually compile a report, covering the previous year, showing: (1) For each superior court district, the number of convictions and the amount of assessments paid and amount due for felonies, gross misdemeanors, and misdemeanors; (2) for each county, the number of gross misdemeanor and misdemeanor convictions in courts of limited jurisdiction and the amount of assessments paid and the amount due. This information shall be provided by class of crime (felony, gross misdemeanor, and misdemeanor). "Assessment" means the crime victims compensation assessment required under RCW 7.68.035. [1982 1st ex.s. c 8 § 6.]

Effective dates—Intent—Reports—1982 1st ex.s. c 8: See notes following RCW 7.68.035.

2.56.040 Distribution of work of courts—Duty of judges to comply with chief justice's direction—Salary withheld. The chief justice shall consider all recommendations of the administrator for the assignment of judges, and, in his discretion, direct any judge whose calendar, in the judgment of the chief justice, will permit, to hold court in any county or district where need therefor exists, to the end that the courts of this state shall function with maximum efficiency, and that the work of other courts shall be

equitably distributed. It shall be the duty of every judge to obey such direction of the chief justice unless excused by him for sufficient cause. No salary warrant shall be issued pursuant to RCW 2.08.100 until the judge who is to receive the same shall have made an affidavit, in the manner provided by law, that he has fully complied with the provisions of RCW 2.56.040 and 2.56.050. Said affidavit may be made a part of the affidavit required by RCW 2.08.100. [1957 c 259 § 4.]

Visiting judge: RCW 2.08.140 through 2.08.170, 2.08.200.

2.56.050 Judges, clerks, other officers, to comply with requests of administrator. The judges and clerks of the courts and all other officers, state and local, shall comply with all requests made by the administrator, after approval by the chief justice, for information and statistical data bearing on the state of the dockets of such courts and such other information as may reflect the business transacted by them and the expenditure of public moneys for the maintenance and operation of the judicial system. [1957 c 259 § 5.]

2.56.060 Annual conference of judges—Judge's expenses. The supreme court of this state may provide by rule or special order for the holding in this state of an annual conference of the judges of the courts of record of this state, judges of the courts of limited jurisdiction, and invited members of the bar, for the consideration of matters relating to judicial business, the improvement of the judicial system and the administration of justice. Each judge attending such annual judicial conference shall be entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, to be paid from state appropriations made for the purposes of this chapter. [1981 c 331 § 15; 1975-'76 2nd ex.s. c 34 § 6; 1957 c 259 § 6.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

2.56.070 Holding court in another county—Reimbursement for expenses. For attendance while holding court in another county or district pursuant to the direction of the chief justice, a judge shall be entitled to receive from the county to which he is sent reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended. [1981 c 186 § 4; 1957 c 259 § 7.]

2.56.080 Chapter applies to supreme and superior courts, court of appeals, and courts of limited jurisdiction. This chapter shall apply to the following courts: The supreme court, the court of appeals, the superior courts; and, when and to the extent so ordered by the supreme court, to the courts of limited jurisdiction of this state, including district courts. [1987 c 202 § 108; 1971 c 81 § 14; 1957 c 259 § 8.]

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

2.56.090 Disbursement of appropriated funds. Any moneys appropriated for the purposes of this chapter shall be disbursed, upon order of the chief justice, on warrants drawn by the state auditor on the general fund. [1957 c 259 § 9.]

2.56.100 Penalty assessment in addition to penalty resulting from hearing under RCW 46.63.090 or 46.63.100—Paid into judiciary education account—Account created, purposes.

Reviser's note: RCW 2.56.100 was amended by 1985 c 57 § 1 without reference to its repeal by 1984 c 258 § 339, both effective July 1, 1985. It has been decodified for publication purposes pursuant to RCW 1.12.025.

2.56.110 Driving while under the influence of intoxicating liquor or any drug—Enhanced enforcement of related laws—Assignment of visiting district judges—Powers, expenses. The administrator for the courts may assign one or more district judges from other judicial districts to serve as visiting district judges in a judicial district which the administrator determines is experiencing an increase in case filings as the result of enhanced enforcement of laws related to driving, or being in physical control of, a motor vehicle while under the influence of intoxicating liquor or any drug. The prosecuting, city, or town attorney of the county, city, or town in which a judicial district lies, or the presiding judge of the judicial district, may request the administrator for the courts to designate the district as an enhanced enforcement district and to make assignments under this section. An assignment shall be for a specified period of time not to exceed thirty days. A visiting district judge has the same powers as a district judge of the district to which he or she is assigned. A visiting district judge shall be reimbursed for expenses under RCW 2.56.070. [1991 c 290 § 1; 1987 c 202 § 109; 1983 c 165 § 31.]

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

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Venue, criminal actions: RCW 3.66.070.

2.56.120 Judicial impact notes—Establishment of procedure—Legislator may request—Copies to be filed. (1) The office of the administrator for the courts, in cooperation with appropriate legislative committees and legislative staff, shall establish a procedure for the provision of judicial impact notes on the effect legislative bills will have on the workload and administration of the courts of this state. The administrator for the courts and the office of financial management shall coordinate the development of judicial impact notes with the preparation of fiscal notes under chapters 43.88A and 43.132 RCW.

(2) The administrator for the courts shall provide a judicial impact note on any legislative proposal at the request of any legislator. The note shall be provided to the requesting legislator and copies filed with the appropriate legislative committees in accordance with subsection (3) of this section when the proposed legislation is introduced in either house.

(3) When a judicial impact note is prepared and approved by the administrator for the courts, copies of the note shall be filed with:

- (a) The chairperson of the committee to which the bill was referred upon introduction in the house of origin;
 - (b) The senate committee on ways and means;
 - (c) The house of representatives committee on ways and means;
 - (d) The senate judiciary committee;
 - (e) The house of representatives judiciary committee;
- and
- (f) The office of financial management.

(4) This section shall not prevent either house of the legislature from acting on any bill before it as otherwise provided by the state Constitution, by law, and by the rules and joint rules of the senate and house of representatives, nor shall the lack of any judicial impact note as provided in this section or any error in the accuracy thereof affect the validity of any measure otherwise duly passed by the legislature. [1986 c 158 § 1; 1984 c 258 § 604.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 2.60

FEDERAL COURT LOCAL LAW CERTIFICATE PROCEDURE ACT

Sections

2.60.010	Definitions.
2.60.020	Federal court certification of local law question.
2.60.030	Practice and procedure.
2.60.900	Short title.

2.60.010 Definitions. As used in this chapter:

(1) The term "certificate procedure" shall mean the procedure authorized herein by which a federal court in disposing of a cause pending before it submits a question of local law to the supreme court for answer;

(2) The term "federal court" means any court of the United States of America including the supreme court of the United States, courts of appeal, district courts and any other court created by act of congress;

(3) The term "supreme court" shall mean supreme court of Washington;

(4) The term "record" shall mean: (a) A stipulation of facts approved by the federal court showing the nature of the case and the circumstances out of which the question of law arises or such part of the pleadings, proceedings and testimony in the cause pending before the federal court as in its opinion is necessary to enable the supreme court to answer the question submitted; (b) a statement of the question of local law certified for answer. The record shall contain a certificate under the official seal of the court, signed by the chief judge of a multi-judge federal court or judge of the district court utilizing certificate procedure stating that the record contains all matters in the pending cause deemed material for consideration of the local law question certified for answer;

(5) The term "supplemental record" shall mean the original or copies of any other portion of the proceedings, pleadings and testimony before the federal court deemed desirable by the supreme court in the determination of the local law question certified for answer. The supplemental record shall contain a certificate under the official seal of the

court signed by the chief judge of such multi-judge federal court or judge of the district court, certifying that the supplemental record contains all additional matters requested;

(6) The term "opinion" shall mean the written opinion of the supreme court of Washington and shall include the certificate of the clerk of such court under seal of court stating that the opinion is in answer to the local law question submitted. [1965 c 99 § 1.]

2.60.020 Federal court certification of local law question. When in the opinion of any federal court before whom a proceeding is pending, it is necessary to ascertain the local law of this state in order to dispose of such proceeding and the local law has not been clearly determined, such federal court may certify to the supreme court for answer the question of local law involved and the supreme court shall render its opinion in answer thereto. [1965 c 99 § 2.]

2.60.030 Practice and procedure. Certificate procedure shall be governed by the following provisions:

(1) Certificate procedure may be invoked by a federal court upon its own motion or upon the motion of any interested party in the litigation involved if the federal court grants such motion.

(2) Certificate procedure shall include and be based upon the record and may include a supplemental record.

(3) Certificate procedure costs shall be equally divided between plaintiff and defendant, subject to reallocation as between or among the parties by the federal court involved.

(4) The appellant or moving party in the federal court shall file and serve upon its adversary its brief on the question certified within thirty days after the filing of the record in the supreme court. The appellee or responding party in the federal court shall file and serve upon its adversary its brief within twenty days after receipt of appellant's or moving party's brief and a reply brief shall be filed within ten days. Time for filing record, supplemental record or briefs may be extended for cause.

(5) Oral argument as in other causes on the merits may be had upon request of the supreme court or upon application of any interested party in the certificate procedure.

(6) The supreme court shall forward to the federal court utilizing certificate procedure its opinion answering the local law question submitted.

(7) The supreme court may adopt rules of practice and procedure to implement or otherwise facilitate utilization of certificate procedure. [1965 c 99 § 3.]

2.60.900 Short title. This act may be cited as the "Federal court local law certificate procedure act." [1965 c 99 § 4.]

Chapter 2.64

COMMISSION ON JUDICIAL CONDUCT

Sections

2.64.010	Definitions—Application.
2.64.020	Membership—Terms.
2.64.030	Disqualification—Vacancies—Limitations on terms—Alternates—Removal.
2.64.040	Compensation and travel expenses.
2.64.050	Employment of personnel—Expenditures authorized.
2.64.055	Disciplinary actions authorized.
2.64.057	Investigation of conduct occurring prior to, on, or after December 4, 1980.
2.64.060	Administration of oaths—Powers as to witnesses, papers, books, etc.—Subpoenas.
2.64.070	Refusal to obey subpoena—Powers of superior court.
2.64.080	Privilege from suit.
2.64.092	Administrative procedure act not applicable.
2.64.094	Suspension of judge or justice.
2.64.096	Disclosure of material tending to negate determination.
2.64.100	Proposed operating budgets—Reports to legislature.
2.64.111	Exemption from public disclosure—Records subject to public disclosure, when.
2.64.113	Confidentiality—Violations.
2.64.115	Application of open public meetings act—Exemptions.
2.64.120	Independent part of judicial branch.
2.64.910	Severability—1981 c 268.

Rules of court: See Discipline Rules for Judges (DRJ).

2.64.010 Definitions—Application. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Admonishment" means a written disposition of an advisory nature that cautions a judge or justice not to engage in certain proscribed behavior. An admonishment may include a requirement that the judge or justice follow a specified corrective course of action.

(2) "Censure" means a written action of the commission that requires a judge or justice to appear personally before the commission, and that finds that conduct of the judge or justice violates a rule of judicial conduct, detrimentally affects the integrity of the judiciary, undermines public confidence in the administration of justice, and may or may not require a recommendation to the supreme court that the judge or justice be suspended or removed. A censure shall include a requirement that the judge or justice follow a specified corrective course of action.

(3) "Commission" means the commission on judicial conduct provided for in Article IV, section 31 of the state Constitution, which is authorized to recommend to the supreme court, after notice and hearing, the suspension or removal of a judge or justice for violating a rule of judicial conduct, or the retirement of a judge or justice for disability.

(4) "Judge or justice" includes justices of the supreme court, judges of the court of appeals, judges of the superior courts, judges of any court organized under Titles 3 or 35 RCW, judges pro tempore, court commissioners, and magistrates.

(5) "Removal" means a written recommendation by the commission and a finding by the supreme court that the conduct of a judge or justice is a violation of a rule of judicial conduct and seriously impairs the integrity of the judiciary and substantially undermines the public confidence in the administration of justice to such a degree that the

judge or justice should be relieved of all duties of his or her office.

(6) "Reprimand" means a written action of the commission that requires a judge or justice to appear personally before the commission, and that finds that the conduct of the judge or justice is a minor violation of the code of judicial conduct and does not require censure or a formal recommendation to the supreme court that the judge or justice be suspended or removed. A reprimand shall include a requirement that the judge or justice follow a specified corrective course of action.

(7) "Retirement" means a written recommendation by the commission and a finding by the supreme court that a judge or justice has a disability which is permanent, or likely to become permanent, and that seriously interferes with the performance of judicial duties.

(8) "Suspension" means a written recommendation by the commission and a finding by the supreme court that the conduct of a judge or justice is a violation of a rule of judicial conduct and seriously impairs the integrity of the judiciary and substantially undermines the public confidence in the administration of justice to such a degree that the judge or justice should be relieved of the duties of his or her office by the court for a specified period of time, as determined by the court.

This chapter shall apply to any judge or justice, regardless of whether the judge or justice serves full time or part time, and regardless of whether the judge or justice is admitted to practice law in this state. [1989 c 367 § 1; 1987 c 186 § 1; 1981 c 268 § 2.]

Contingent effective date—1989 c 367: "This act shall take effect upon the effective date of an amendment to Article IV, section 31 of the state Constitution making changes to the commission on judicial conduct. If such amendment is not validly submitted to and approved and ratified by the voters at a general election held in November 1989, this act shall be null and void in its entirety." [1989 c 367 § 12.] Substitute Senate Joint Resolution No. 8202 was approved and ratified by the voters at the November 7, 1989, general election.

2.64.020 Membership—Terms. The commission shall consist of eleven members. One member shall be a judge selected by and from the court of appeals judges; one member shall be a judge selected by and from the superior court judges; one member shall be a judge selected by and from the district court judges; two members shall be selected by the state bar association and be admitted to the practice of law in this state; and six members shall be nonlawyers appointed by the governor. The term of each member of the commission shall be four years. [1989 c 367 § 2; 1987 c 186 § 2; 1981 c 268 § 3.]

Contingent effective date—1989 c 367: See note following RCW 2.64.010.

Terms of additional members—1987 c 186 § 2: "Notwithstanding RCW 2.64.020, the initial term of one of the members added to the commission on judicial conduct by section 2, chapter 186, Laws of 1987 shall end on June 16, 1990, and the term of the other member shall end on June 16, 1991, as determined by lot." [1987 c 186 § 3.]

2.64.030 Disqualification—Vacancies—Limitations on terms—Alternates—Removal. Commission membership shall terminate if a member ceases to hold the position that qualified him or her for appointment. Vacancies caused by disqualification or resignation shall be filled by the

appointing authority for the remainder of the term. No person may serve more than two consecutive four-year terms. A person may be reappointed after a lapse of one year. A member, rather than his or her successor, shall continue to participate in any hearing in progress at the end of his or her term, or when the member ceases to hold the position that qualified him or her for appointment. The appointing authority shall appoint an alternate to serve during a member's temporary disability, disqualification, or inability to serve. No member may otherwise be removed from the commission before the end of his or her term except upon good cause found by the appointing authority. [1981 c 268 § 4.]

2.64.040 Compensation and travel expenses.

Commission members and alternate members shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [1984 c 287 § 8; 1981 c 268 § 5.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

2.64.050 Employment of personnel—Expenditures authorized. The commission may employ personnel, including attorneys, and make any other expenditures necessary for the effective performance of its duties and the exercise of its powers. The commission may hire attorneys or others by personal service contract to conduct initial proceedings regarding a complaint against a judge or justice. Commission employees shall be exempt from the civil service law, chapter 41.06 RCW. [1989 c 367 § 3; 1981 c 268 § 6.]

Contingent effective date—1989 c 367: See note following RCW 2.64.010.

2.64.055 Disciplinary actions authorized. The commission is authorized to impose the following disciplinary actions, in increasing order of severity: (a) Admonishment; (b) reprimand; or (c) censure. If the conduct of the judge or justice warrants more severe disciplinary action, the commission may recommend to the supreme court the suspension or removal of the judge or justice. [1989 c 367 § 4.]

Contingent effective date—1989 c 367: See note following RCW 2.64.010.

2.64.057 Investigation of conduct occurring prior to, on, or after December 4, 1980. The commission is authorized to investigate and consider for probative value any conduct that may have occurred prior to, on, or after December 4, 1980, by a person who was, or is now, a judge or justice when such conduct relates to a complaint filed with the commission against the same judge or justice. [1989 c 367 § 5.]

Contingent effective date—1989 c 367: See note following RCW 2.64.010.

2.64.060 Administration of oaths—Powers as to witnesses, papers, books, etc.—Subpoenas. Each member of the commission, and any special master appointed by the

commission, may administer oaths. The commission may summon and examine witnesses and compel the production and examination of papers, books, accounts, documents, records, certificates, and other evidence for the determination of any issue before or the discharge of any duty of the commission. The commission shall also issue subpoenas at the request and on behalf of any judge or justice under inquiry. All subpoenas shall be signed by a member of the commission or a special master appointed by the commission. Subpoenas shall be served and witnesses reimbursed in the manner provided in civil cases in superior court. [1981 c 268 § 7.]

2.64.070 Refusal to obey subpoena—Powers of superior court. If a person refuses to obey a subpoena issued by the commission or refuses to answer any proper question during a hearing or proceeding, the superior court of any county in which the hearing or proceeding is conducted or in which the person resides or is found shall have jurisdiction, upon application by the commission, to order the person to appear before the commission, to produce evidence if so ordered, or to give testimony concerning the matter under investigation. Failure to obey the order of the court may be punished as contempt. [1981 c 268 § 8.]

2.64.080 Privilege from suit. Members and employees of the commission, including any lawyers or special masters temporarily employed by the commission, are absolutely privileged from suit in any action, civil or criminal, based upon any disciplinary proceedings or upon other official acts as members or employees of the commission. Statements made to the commission or its investigators or other employees are absolutely privileged in actions for defamation. This absolute privilege does not apply to statements made in any other forum. [1981 c 268 § 9.]

2.64.092 Administrative procedure act not applicable. The adjudicative proceedings, judicial review, and civil enforcement provisions of chapter 34.05 RCW, the administrative procedure act, do not apply to any investigations, initial proceedings, public hearings, or executive sessions involving the discipline or retirement of a judge or justice. [1989 c 367 § 7.]

Contingent effective date—1989 c 367: See note following RCW 2.64.010.

2.64.094 Suspension of judge or justice. If the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended, with salary, from his or her judicial position upon filing of the recommendation with the supreme court and until a final determination is made by the supreme court. [1987 c 186 § 6.]

2.64.096 Disclosure of material tending to negate determination. Whenever the commission determines that there is probable cause to believe that a judge or justice has violated a rule of judicial conduct or that the judge or justice suffers from a disability which is permanent or likely to become permanent and which seriously interferes with the

performance of judicial duties, the commission shall disclose to the judge or justice any material or information within the commission's knowledge which tends to negate the determination of the commission, except as otherwise provided by a protective order. [1989 c 367 § 10.]

Contingent effective date—1989 c 367: See note following RCW 2.64.010.

2.64.100 Proposed operating budgets—Reports to legislature. The commission shall prepare and present to the legislature proposed operating budgets for the commission in accordance with the provisions of chapter 43.88 RCW. The commission shall report to the legislature in the manner required by law, with due regard for the confidentiality of proceedings before the commission. [1981 c 268 § 11.]

2.64.111 Exemption from public disclosure—Records subject to public disclosure, when. All pleadings, papers, evidence records, and files of the commission, including complaints and the identity of complainants, compiled or obtained during the course of an investigation or initial proceeding involving the discipline or retirement of a judge or justice, are exempt from the public disclosure requirements of chapter 42.17 RCW during such investigation or initial proceeding. As of the date of a public hearing, all those records of the initial proceeding that were the basis of a finding of probable cause are subject to the public disclosure requirements of chapter 42.17 RCW. [1989 c 367 § 6.]

Contingent effective date—1989 c 367: See note following RCW 2.64.010.

2.64.113 Confidentiality—Violations. The commission shall provide by rule for confidentiality of its investigations and initial proceedings in accordance with Article IV, section 31 of the state Constitution.

Any person violating a rule on confidentiality is subject to a proceeding for contempt in superior court. [1989 c 367 § 9.]

Contingent effective date—1989 c 367: See note following RCW 2.64.010.

2.64.115 Application of open public meetings act—Exemptions. The commission is subject to the open public meetings act, chapter 42.30 RCW. However, investigations, initial proceedings, public hearings, and executive sessions involving the discipline or retirement of a judge or justice are governed by this chapter and Article IV, section 31 of the state Constitution and are exempt from the provisions of chapter 42.30 RCW. [1989 c 367 § 8.]

Contingent effective date—1989 c 367: See note following RCW 2.64.010.

2.64.120 Independent part of judicial branch. The commission shall for all purposes be considered an independent part of the judicial branch of government. [1981 c 268 § 13.]

2.64.910 Severability—1981 c 268. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 268 § 17.]

Chapter 2.68

JUDICIAL INFORMATION SYSTEM

Sections

- 2.68.010 Judicial information system committee—Fees.
2.68.020 Judicial information system account.
2.68.030 Schedule of user fees.

2.68.010 Judicial information system committee—Fees. The judicial information system committee, as established by court rule, shall determine all matters pertaining to the delivery of services available from the judicial information system. The committee may establish a fee schedule for the provision of information services and may enter into contracts with any person, public or private, including the state, its departments, subdivisions, institutions, and agencies. However, no fee may be charged to county or city governmental agencies within the state of Washington using the judicial information system for the business of the courts. [1989 c 364 § 1.]

2.68.020 Judicial information system account. There is created an account in the custody of the state treasurer to be known as the judicial information system account. The office of the administrator for the courts shall maintain and administer the account, in which shall be deposited all moneys received from in-state noncourt users and any out-of-state users of the judicial information system. The legislature shall appropriate the funds in the account for the purposes of the judicial information system. The account shall be credited with all receipts from the rental, sale, or distribution of supplies, equipment, computer software, products, and services rendered to in-state noncourt users and all out-of-state users and licensees of the judicial information system. [1989 c 364 § 2.]

2.68.030 Schedule of user fees. The judicial information system committee shall develop a schedule of user fees for in-state noncourt users and all out-of-state users of the judicial information computer system and charges for judicial information system products and licenses for the purpose of distributing and apportioning the full cost of operation and continued development of the system among the users. The schedule shall generate sufficient revenue to cover the costs relating to (1) the payment of salaries, wages, other costs including, but not limited to the acquisition, operation, and administration of acquired information services, supplies, and equipment; and (2) the development of judicial information system products and services. As used in this section, the term "supplies" shall not be interpreted to delegate or abrogate the state purchasing and material control director's responsibilities and authority to purchase supplies as provided in chapter 43.19 RCW. [1989 c 364 § 3.]

Title 3

DISTRICT COURTS— COURTS OF LIMITED JURISDICTION

Chapters

- 3.02 Courts of limited jurisdiction.
- 3.20 Venue.
- 3.30 District courts.
- 3.34 District judges.
- 3.38 District court districts.
- 3.42 District court commissioners.
- 3.46 Municipal departments.
- 3.50 Municipal departments—Alternate provision.
- 3.54 Clerks and deputy clerks.
- 3.58 Salaries and expenses.
- 3.62 Income of court.
- 3.66 Jurisdiction and venue.
- 3.70 Magistrates' association.
- 3.74 Miscellaneous.

Rules of court: Rules for Courts of Limited Jurisdiction—See Rules of Court, Part V.

District courts—Civil procedure: Title 12 RCW.

Justice or constable levying demand or promising reward: RCW 9.12.020.

Municipal courts, cities, over four hundred thousand: Chapter 35.20 RCW.

Persons convicted in district court may be placed under supervision of county probation officer: RCW 9.92.060, 9.95.210.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Chapter 3.02

COURTS OF LIMITED JURISDICTION

Sections

- 3.02.010 Court of limited jurisdiction defined.
- 3.02.020 Review of proceedings.
- 3.02.030 Record of proceedings.
- 3.02.040 Electronic recording equipment.
- 3.02.045 Use of collection agencies and attorneys to collect unpaid amounts—Credit card use—Assessment of amounts paid for collection as court costs.
- 3.02.050 Discovery rules in civil cases.

3.02.010 Court of limited jurisdiction defined. For purposes of this chapter, a court of limited jurisdiction is any court organized under Titles 3, 35, or 35A RCW. [1980 c 162 § 1.]

Effective dates, savings—1980 c 162: "Sections 1 through 4 of this 1980 act shall take effect on January 1, 1981, and shall apply to civil or criminal actions commenced on or after January 1, 1981. Sections 8 and 9 of this 1980 act shall take effect on May 1, 1980." [1980 c 162 § 13.] "Sections 1 through 4 of this 1980 act" are codified as RCW 3.02.010 through 3.02.040. "Sections 8 and 9 of this 1980 act" are the 1980 c 162 amendments to RCW 3.58.010 and 3.62.060, respectively.

Severability—1980 c 162: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 162 § 12.]

3.02.020 Review of proceedings. Review of the proceedings in a court of limited jurisdiction shall be by the superior court, the procedure for which may be established by supreme court rule. [1980 c 162 § 2.]

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

3.02.030 Record of proceedings. The supreme court may, by court rule, establish a method of making a record of the proceedings of a court of limited jurisdiction for purposes of review. [1980 c 162 § 3.]

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

3.02.040 Electronic recording equipment. The administrator for the courts shall supervise the selection, installation, and operation of any electronic recording equipment in courts of limited jurisdiction. [1980 c 162 § 4.]

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

3.02.045 Use of collection agencies and attorneys to collect unpaid amounts—Credit card use—Assessment of amounts paid for collection as court costs. (1) Courts of limited jurisdiction may use collection agencies under chapter 19.16 RCW for purposes of collecting unpaid penalties on infractions, criminal fines, costs, assessments, civil judgments, or forfeitures that have been imposed by the courts. Courts of limited jurisdiction may enter into agreements with one or more attorneys or collection agencies for collection of outstanding penalties, fines, costs, assessments, and forfeitures. These agreements may specify the scope of work, remuneration for services, and other charges deemed appropriate.

(2) Courts of limited jurisdiction may use credit cards for purposes of billing and collecting unpaid penalties, fines, costs, assessments, and forfeitures so imposed. Courts of limited jurisdiction may enter into agreements with one or more financial institutions for the purpose of the collection of penalties, fines, costs, assessments, and forfeitures. The agreements may specify conditions, remuneration for services, and other charges deemed appropriate.

(3) Servicing of delinquencies by collection agencies or by collecting attorneys in which the court retains control of its delinquencies shall not constitute assignment of debt.

(4) For purposes of this section, the term debt shall include penalties, fines, costs, assessments, or forfeitures imposed by the courts.

(5) The court may assess as court costs the moneys paid for remuneration for services or charges paid to collecting attorneys, to collection agencies, or, in the case of credit cards, to financial institutions. [1987 c 266 § 1.]

3.02.050 Discovery rules in civil cases. By January 1, 1982, the supreme court shall adopt rules providing for discovery in civil cases in the courts of limited jurisdiction. [1981 c 331 § 8.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Chapter 3.20

VENUE

(Formerly: Jurisdiction and venue)

Sections

3.20.100 Change of venue—Affidavit of prejudice.

District courts, civil procedure: Title 12 RCW.

Venue as to motor vehicle violations: RCW 46.52.100.

3.20.100 Change of venue—Affidavit of prejudice. If, previous to the commencement of any trial before a justice of the peace, the defendant, his attorney or agent, shall make and file with the justice an affidavit that the deponent believes that the defendant cannot have an impartial trial before such justice, it shall be the duty of the justice to forthwith transmit all papers and documents belonging to the case to the next nearest justice of the peace in the same county, who is not of kin to either party, sick, absent from the county, or interested in the result of the action, either as counsel or otherwise. The justice to whom such papers and documents are so transmitted shall proceed as if the suit had been instituted before him. Distance, as contemplated by this section, shall mean to be by the nearest traveled route. The costs of such change of venue shall abide the result of the suit. In precincts, and incorporated cities and towns where there are two or more justices of the peace, any one of them shall be considered the next nearest justice of the peace. [1943 c 126 § 1; 1881 p 8 §§ 2, 3; Code 1881 § 1938; 1867 p 88 § 2; Rem. Supp. 1943 § 1774.]

Chapter 3.30

DISTRICT COURTS

Sections

3.30.010 Definitions.
3.30.015 Construction of "justices of the peace," "justice courts," "justice of the peace courts."
3.30.020 Application of chapters 3.30 through 3.74 RCW.
3.30.030 Nomenclature for judges and courts.
3.30.040 Sessions.
3.30.050 Departments.
3.30.060 Adjournments.
3.30.070 Records.
3.30.080 Rules.
3.30.090 Violations bureau.

Rules of court: See *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ)*.

County probation services for persons convicted in district court: RCW 9.92.060, 9.95.210, 36.01.070.

3.30.010 Definitions. As used in this chapter unless the context clearly requires otherwise:

"City" means an incorporated city or town.

"Department" means an administrative unit of a district court established for the orderly and efficient administration

of business and may include, without being limited in scope thereby, a unit or units for determining traffic cases, violations of city ordinances, violations of state law, criminal cases, civil cases, or jury cases.

"Population" means the latest population of the judicial district of each county as estimated and certified by the office of financial management. The office of financial management, on or before May 1, 1970 and on or before May 1st each four years thereafter, shall estimate and certify to the county legislative authority the population of each judicial district of each county. [1984 c 258 § 3; 1979 c 151 § 1; 1967 ex.s. c 42 § 1; 1961 c 299 § 1.]

Court Improvement Act of 1984—Effective dates—1984 c 258: "(1) Sections 1 through 210, 511, 601 through 808, and 901 of this act shall take effect on July 1, 1984.

(2) Sections 501 through 510 and 512 through 524 of this act shall take effect on January 1, 1985.

(3) Sections 301 through 405 of this act shall take effect on July 1, 1985." [1984 c 258 § 902.] For codification of 1984 c 258, see Codification Tables, Volume 0.

Court Improvement Act of 1984—Severability—1984 c 258: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 258 § 903.]

Short title—1984 c 258: "This act may be known and cited as the court improvement act of 1984." [1984 c 258 § 1.]

Savings—1967 ex.s. c 42: "All matters relating to functions transferred under the provisions of this 1967 amendatory act which at the time of transfer have not been completed may be undertaken and completed by the director of the planning and community affairs agency, who is authorized, empowered, and directed to promulgate any and all orders, rules and regulations necessary to accomplish this purpose." [1967 ex.s. c 42 § 4.] The planning and community affairs agency has been redesignated the department of community development. See RCW 43.63A.045.

Effective date—1967 ex.s. c 42: "This 1967 amendatory act shall take effect on July 1, 1967." [1967 ex.s. c 42 § 5.]

Population determinations, office of financial management: Chapter 43.62 RCW.

3.30.015 Construction of "justices of the peace," "justice courts," "justice of the peace courts." All references to justices of the peace in other titles of the Revised Code of Washington shall be construed as meaning district judges. All references to justice courts or justice of the peace courts in other titles of the Revised Code of Washington shall be construed as meaning district courts. [1984 c 258 § 90.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.020 Application of chapters 3.30 through 3.74 RCW. The provisions of chapters 3.30 through 3.74 RCW shall apply to each county with a population of two hundred ten thousand or more: PROVIDED, That any city having a population of more than four hundred thousand may by resolution of its legislative body elect to continue to operate a municipal court pursuant to the provisions of chapter 35.20 RCW, as if chapters 3.30 through 3.74 RCW had never been enacted: PROVIDED FURTHER, That if a city elects to continue its municipal court pursuant to this section, the number of district judges allocated to the county in RCW 3.34.010 shall be reduced by two and the number of full time district judges allocated by RCW 3.34.020 to the district in which the city is situated shall also be reduced by two. The provisions of chapters 3.30 through 3.74 RCW

may be made applicable to any county with a population of less than two hundred ten thousand upon a majority vote of its county legislative authority. [1991 c 363 § 4; 1987 c 202 § 110; 1961 c 299 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

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

Municipal courts in cities of over four hundred thousand: Chapter 35.20 RCW.

3.30.030 Nomenclature for judges and courts. The judges of each district court district shall be the justices of the peace of the district elected or appointed as provided in chapters 3.30 through 3.74 RCW. Such courts shall alternately be referred to as district courts and the judges thereof as district judges. [1984 c 258 § 4; 1971 c 73 § 1; 1961 c 299 § 3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.040 Sessions. The district courts shall be open except on nonjudicial days. Sessions of the court shall be held at such places as shall be provided by the district court districting plan. The court shall sit as often as business requires in each city of the district which provides suitable courtroom facilities, to hear causes in which such city is the plaintiff. [1984 c 258 § 5; 1961 c 299 § 4.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.050 Departments. Each court may be organized in a manner consistent with the departments created by the districting plan. [1984 c 258 § 6; 1971 c 73 § 2; 1961 c 299 § 5.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.060 Adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. [1961 c 299 § 6.]

3.30.070 Records. The clerk of each district court shall keep uniform records of each case filed and the proceedings had therein including an accounting for all funds received and disbursed. Financial reporting shall be in such form as may be prescribed by the office of the state auditor, division of municipal corporations. The form of other records may be prescribed by the supreme court. [1971 c 73 § 3; 1961 c 299 § 7.]

3.30.080 Rules. The supreme court may adopt rules of procedure for district courts. A district court may adopt local rules of procedure which are not inconsistent with state law or with the rules adopted by the supreme court. The rules for a county with a single district and multiple facilities may include rules to provide where cases shall be filed and where cases shall be heard. If the rules of the supreme court authorized under this section are adopted, all procedural laws in conflict with the rules shall be of no effect. [1989 c 227 § 5; 1984 c 258 § 7; 1961 c 299 § 8.]

Intent—1989 c 227: See note following RCW 3.38.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.090 Violations bureau. A violations bureau may be established by any city or district court having jurisdiction of traffic cases to assist in processing traffic cases. As designated by written order of the court having jurisdiction of traffic cases, specific offenses under city ordinance, county resolution, or state law may be processed by such bureau. Such bureau may be authorized to receive the posting of bail for such specified offenses, and, as authorized by the court order, to accept forfeiture of bail and payment of monetary penalties. The court order shall specify the amount of bail to be posted and shall also specify the circumstances or conditions which will require an appearance before the court. Such bureau, upon accepting the prescribed bail, shall issue a receipt to the alleged violator, which receipt shall bear a legend informing him of the legal consequences of bail forfeiture. The bureau shall transfer daily to the clerk of the proper department of the court all bail posted for offenses where forfeiture is not authorized by the court order, as well as copies of all receipts. All forfeitures or penalties paid to a violations bureau for violations of municipal ordinances shall be placed in the city general fund or such other fund as may be prescribed by ordinance. All forfeitures or penalties paid to a violations bureau for violations of state laws or county resolutions shall be remitted at least monthly to the county treasurer for deposit in the current expense fund. Employees of violations bureaus of a city shall be city employees under any applicable municipal civil service system. [1979 ex.s. c 136 § 15; 1971 c 73 § 4; 1961 c 299 § 9.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Chapter 3.34 DISTRICT JUDGES

Sections

3.34.010	District judges—Number for each county.
3.34.020	District judges—Number—Changes.
3.34.025	District judge positions—Approval and agreement.
3.34.040	District judges—Full time—Other.
3.34.050	District judges—Election.
3.34.060	District judges—Eligibility and qualifications.
3.34.070	District judges—Term of office.
3.34.080	Oath—District judges—Court commissioners.
3.34.090	Bonds—Insurance as reimbursable expense.
3.34.100	District judges—Vacancies—Remuneration.
3.34.110	District judges—Disqualification.
3.34.120	District judges—Disqualification of partners.
3.34.130	District judges pro tempore—Reduction in salary of judges replaced—Exception—Reimbursement of counties.
3.34.140	Exchange of district judges—Reimbursement for expenses.
3.34.150	Presiding judge.

3.34.010 District judges—Number for each county.

The number of district judges to be elected in each county shall be: Adams, three; Asotin, one; Benton, two; Chelan, one; Clallam, one; Clark, four; Columbia, one; Cowlitz, two; Douglas, one; Ferry, two; Franklin, one; Garfield, one; Grant, one; Grays Harbor, two; Island, three; Jefferson, one; King, twenty-six; Kitsap, two; Kittitas, two; Klickitat, two;

Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, two; Pierce, eleven; San Juan, one; Skagit, three; Skamania, one; Snohomish, eight; Spokane, nine; Stevens, two; Thurston, one; Wahkiakum, one; Walla Walla, three; Whatcom, two; Whitman, two; Yakima, six: PROVIDED, That this number may be increased in accordance with a resolution of the county commissioners under RCW 3.34.020. [1991 c 354 § 1; 1989 c 227 § 6; 1987 c 202 § 111; 1975 1st ex.s. c 153 § 1; 1973 1st ex.s. c 14 § 1; 1971 ex.s. c 147 § 1; 1970 ex.s. c 23 § 1; 1969 ex.s. c 66 § 1; 1965 ex.s. c 110 § 5; 1961 c 299 § 10.]

Intent—1989 c 227: See note following RCW 3.38.070.

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

3.34.020 District judges—Number—Changes. (1)

Any change in the number of full and part-time district judges after January 1, 1992, shall be determined by the legislature after receiving a recommendation from the supreme court. The supreme court shall make its recommendations to the legislature based on a weighted caseload analysis that takes into account the following:

(a) The extent of time that existing judges have available to hear cases in that court;

(b) A measurement of the judicial time needed to process various types of cases;

(c) A determination of the time required to process each type of case to the individual court workload;

(d) A determination of the amount of a judge's annual work time that can be devoted exclusively to processing cases; and

(e) An assessment of judicial resource needs, including annual case filings, and case weights and the judge year value determined under the weighted caseload method.

(2) The administrator for the courts, under the supervision of the supreme court, may consult with the board of judicial administration, the judicial council, and the district and municipal court judge's association in developing the procedures and methods of applying the weighted caseload analysis.

(3) For each recommended change from the number of full and part-time district judges in any county as of January 1, 1992, the administrator for the courts, under the supervision of the supreme court, shall complete a judicial impact note detailing any local or state cost associated with such recommended change.

(4) If the legislature approves an increase in the base number of district judges in any county as of January 1, 1992, such increase in the base number of district judges and all related costs may be paid for by the county from moneys provided under RCW 82.14.310, and any such costs shall be deemed to be expended for criminal justice purposes as provided in RCW 82.14.315, and such expenses shall not constitute a supplanting of existing funding.

(5)(a) A county legislative authority that desires to change the number of full or part-time district judges from the base number on January 1, 1992, must first request the assistance of the supreme court. The administrator for the courts, under the supervision of the supreme court, shall conduct a weighted caseload analysis and make a recommendation of its findings to the legislature for consideration as provided in this section.

(b) The legislative authority of any county may change a part-time district judge position to a full-time position. [1991 c 313 § 2; 1987 c 202 § 112; 1984 c 258 § 8; 1982 c 29 § 1; 1973 1st ex.s. c 14 § 2; 1970 ex.s. c 23 § 2; 1969 ex.s. c 66 § 7; 1961 c 299 § 11.]

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

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.025 District judge positions—Approval and agreement. Any additional district judge positions created under RCW 3.34.020 shall be effective only if the legislative authority of the affected county documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities. The legislative authority of any such county may, at its discretion, phase in any judicial positions over a period of time not to exceed two years from the effective date of the additional district judge positions. [1991 c 313 § 3.]

3.34.040 District judges—Full time—Other. A district judge serving a district having a population of forty thousand or more persons, and a district judge receiving a salary equal to the maximum salary set by the salary commission under RCW 3.58.020 for district judges shall be deemed full time judges and shall devote all of their time to the office and shall not engage in the practice of law. Other judges shall devote sufficient time to the office to properly fulfill the duties thereof and may engage in other occupations but shall maintain a separate office for private business and shall not use for private business the services of any clerk or secretary paid for by the county or office space or supplies furnished by the judicial district. [1991 c 338 § 2; 1984 c 258 § 10; 1983 c 195 § 1; 1974 ex.s. c 95 § 2; 1971 ex.s. c 147 § 2; 1961 c 299 § 13.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.050 District judges—Election. At the general election in November 1962 and quadrennially thereafter, there shall be elected by the voters of each district court district the number of judges authorized for the district by the district court districting plan. Judges shall be elected for each district and electoral district, if any, by the qualified electors of the district in the same manner as judges of courts of record are elected. Not less than ten days before the time for filing declarations of candidacy for the election of judges for districts entitled to more than one judge, the county auditor shall designate each such office of district judge to be filled by a number, commencing with the number one and numbering the remaining offices consecutively. At the time of the filing of the declaration of candidacy, each candidate shall designate by number which one, and only one, of the numbered offices for which he or she is a candidate and the name of the candidate shall appear on the ballot for only the numbered office for which the candidate filed a declaration of candidacy. [1989 c 227 § 3;

1984 c 258 § 11; 1975-'76 2nd ex.s. c 120 § 8; 1961 c 299 § 14.]

Intent—1989 c 227: See note following RCW 3.38.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

3.34.060 District judges—Eligibility and qualifications. To be eligible to file a declaration of candidacy for and to serve as a district court judge, a person must:

(1) Be a registered voter of the district court district and electoral district, if any; and

(2) Be either:

(a) A lawyer admitted to practice law in the state of Washington; or

(b) A person who has been elected and has served as a justice of the peace, district judge, municipal judge, or police judge in Washington; or

(c) In those districts having a population of less than five thousand persons, a person who has taken and passed the qualifying examination for the office of district judge as shall be provided by rule of the supreme court. [1991 c 361 § 1; 1989 c 227 § 4; 1984 c 258 § 12; 1961 c 299 § 15.]

Intent—1989 c 227: See note following RCW 3.38.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.070 District judges—Term of office. Every district judge shall hold office for a term of four years from and after the second Monday in January next succeeding his or her selection and continuing until a successor is elected and qualified. [1984 c 258 § 13; 1961 c 299 § 16.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.080 Oath—District judges—Court commissioners. Each district judge, district judge pro tempore and district court commissioner shall, before entering upon the duties of office, take an oath to support the Constitution of the United States and the Constitution and laws of the state of Washington, and to perform the duties of the office faithfully and impartially and to the best of his or her ability. [1984 c 258 § 14; 1961 c 299 § 17.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.090 Bonds—Insurance as reimbursable expense. The county legislative authority shall provide for the bonding of each district judge, district judge pro tempore, district court commissioner, clerk of the district court, and court employee, at the expense of the county, in such amount as the county legislative authority shall prescribe, conditioned that each such person will pay over according to law all moneys which shall come into the person's custody in causes filed in the district court. Such bond shall not be less than the maximum amount of money liable to be under the control, at any one time, of each such person in the performance of his or her duties. Such bond may be a blanket bond. If the county obtains errors and omissions insurance covering district court personnel, the costs of such

coverage shall be a reimbursable expense pursuant to RCW 3.62.050 as now or hereafter amended. [1984 c 258 § 15; 1971 c 73 § 5; 1961 c 299 § 18.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.100 District judges—Vacancies—Remuneration. If a district judge dies, resigns, is convicted of a felony, ceases to reside in the district, fails to serve for any reason except temporary disability, or if his or her term of office is terminated in any other manner, the office shall be deemed vacant. The county legislative authority shall fill all vacancies by appointment and the judge thus appointed shall hold office until the next general election and until a successor is elected and qualified. District judges shall be granted sick leave in the same manner as other county employees. A district judge may receive when vacating office remuneration for unused accumulated leave and sick leave at a rate equal to one day's monetary compensation for each full day of accrued leave and one day's monetary compensation for each four full days of accrued sick leave, the total remuneration for leave and sick leave not to exceed the equivalent of thirty days' monetary compensation. [1992 c 76 § 1; 1984 c 258 § 16; 1961 c 299 § 19.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.110 District judges—Disqualification. A district judge shall not act as judge in any of the following cases:

(1) In an action to which the judge is a party, or in which the judge is directly interested, or in which the judge has been an attorney for a party.

(2) When the judge or one of the parties believes that the parties cannot have an impartial trial before the judge. Only one change of judges shall be allowed each party under this subsection.

When a judge is disqualified under this section, the case shall be heard before another judge or judge pro tempore of the same county. [1984 c 258 § 17; 1961 c 299 § 20.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.120 District judges—Disqualification of partners. The partner and associates of a judge who is a lawyer shall not practice law before the judge. [1984 c 258 § 18; 1961 c 299 § 21.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.130 District judges pro tempore—Reduction in salary of judges replaced—Exception—Reimbursement of counties. (1) Each district court shall designate one or more persons as judge pro tempore who shall serve during the temporary absence, disqualification, or incapacity of a district judge. The qualifications of a judge pro tempore shall be the same as for a district judge, except that with respect to RCW 3.34.060(1), the person appointed need only be a registered voter of the state. A judge pro tempore may sit in any district of the county for which he or she is appointed. A judge pro tempore shall be paid the salary authorized by the county legislative authority. For each day

that a judge pro tempore serves in excess of thirty days during any calendar year, the annual salary of the judge in whose place he or she serves shall be reduced by an amount equal to one-two hundred fiftieth of such salary: PROVIDED, That each full time district judge shall have up to fifteen days annual leave without reduction for service on judicial commissions established by the legislature or the chief justice of the supreme court. No reduction in salary shall occur when a judge pro tempore serves while a district judge is using sick leave granted in accordance with RCW 3.34.100.

(2) The legislature may appropriate money for the purpose of reimbursing counties for the salaries of judges pro tempore for certain days in excess of thirty worked per year that the judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (1) of this section. No later than September 1 of each year, each county treasurer shall certify to the administrator for the courts for the year ending the preceding June 30, the number of days in excess of thirty that any judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (1) of this section. Upon receipt of the certification, the administrator for the courts shall reimburse the county from money appropriated for that purpose. [1986 c 161 § 4; 1984 c 258 § 302; 1984 c 258 § 19; 1983 c 195 § 2; 1981 c 331 § 9; 1961 c 299 § 22.]

Severability—1986 c 161: See note following RCW 43.03.010.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

3.34.140 Exchange of district judges—Reimbursement for expenses. Any district judge may hold a session in any district in the state, at the request of the judge or majority of judges in the district if the visiting judge determines that the state of business in his or her district allows the judge to be absent. The county legislative authority in which the district court is located shall first approve the temporary absence and the judge pro tempore shall not be required to serve during the judge's absence. A visiting judge shall be entitled to reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended while so acting, to be paid by the visited district. These expenses shall not be paid to the visiting judge unless the legislative authority of the county in which the visited district is located has approved the payment before the visit. [1984 c 258 § 20; 1981 c 186 § 5; 1961 c 299 § 23.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.150 Presiding judge. If a district has more than one judge, the supreme court may by rule provide for the manner of selection of one of the judges to serve as presiding judge and prescribe the presiding judge's duties. If a county has multiple districts or has one district with multiple electoral districts, the supreme court may by rule provide for

the manner of selection of one of the judges to serve as presiding judge and prescribe the presiding judge's duties. [1989 c 227 § 7; 1984 c 258 § 21; 1961 c 299 § 24.]

Intent—1989 c 227: See note following RCW 3.38.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 3.38

DISTRICT COURT DISTRICTS

Sections

3.38.010	Districting committee—Membership.
3.38.020	Districting committee—Duties—Districting plan.
3.38.022	Location of offices and courtrooms.
3.38.030	Districting plan—Adoption.
3.38.031	Districting plan—Transitional provisions.
3.38.040	Districting plan—Amendment.
3.38.050	District court districts—Standards.
3.38.060	Joint district court districts.
3.38.070	Separate electoral districts—Establishment.
3.38.080	Separate electoral districts—Definition.

3.38.010 Districting committee—Membership.

There is established in each county a district court districting committee composed of the following:

(1) The judge of the superior court, or, if there be more than one such judge, then one of the judges selected by that court;

(2) The prosecuting attorney, or a deputy selected by the prosecuting attorney;

(3) A practicing lawyer of the county selected by the president of the largest local bar association, if there be one, and if not, then by the county legislative authority;

(4) A judge of a court of limited jurisdiction in the county selected by the president of the Washington state magistrates' association; and

(5) The mayor, or representative appointed by the mayor, of each first, second, and third class city of the county;

(6) One person to represent the fourth class cities of the county, if any, to be designated by the president of the association of Washington cities: PROVIDED, That if there should be neither a first class nor a second class city within the county, the mayor, or the mayor's representative, of each fourth class city shall be a member;

(7) The chairman of the county legislative authority; and

(8) The county auditor. [1984 c 258 § 22; 1961 c 299 § 25.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.020 Districting committee—Duties—Districting plan. The district court districting committee shall meet at the call of the prosecuting attorney to prepare a plan for the districting of the county into one or more district court districts in accordance with the provisions of chapters 3.30 through 3.74 RCW. The plan shall include the following:

(1) The boundaries of each district proposed to be established;

(2) The number of judges to be elected in each district;

(3) The location of the central office, courtrooms and records of each court;

(4) The other places in the district, if any, where the court shall sit;

(5) The number and location of district court commissioners to be authorized, if any;

(6) The departments, if any, into which each district court shall be initially organized, including municipal departments provided for in chapter 3.46 RCW;

(7) The name of each district; and

(8) The allocation of the time and allocation of salary of each judge who will serve part time in a municipal department. [1984 c 258 § 23; 1965 ex.s. c 110 § 1; 1961 c 299 § 26.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.022 Location of offices and courtrooms. The districting plan may provide that the offices and courtrooms of more than one district may be in the same building: PROVIDED, That no office or courtroom of any district shall be located further than two miles outside the boundary of the district which it serves. [1984 c 258 § 24; 1963 c 213 § 1.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.030 Districting plan—Adoption. Upon receipt of the districting plan, the county legislative authority shall hold a public hearing, pursuant to the provisions of RCW 36.32.120(7), as now or hereafter amended. At the hearing, anyone interested in the plan may attend and be heard as to the convenience which will be afforded to the public by the plan, and as to any other matters pertaining thereto. If the county legislative authority finds that the plan proposed by the districting committee conforms to the standards set forth in chapters 3.30 through 3.74 RCW and is conducive to the best interests and welfare of the county as a whole it may adopt such plan. If the county legislative authority finds that the plan does not conform to the standards as provided in chapters 3.30 through 3.74 RCW, the county legislative authority may modify, revise or amend the plan and adopt such amended or revised plan as the county's district court districting plan. The plan decided upon shall be adopted by the county legislative authority not later than six months after the county initially obtains a population of two hundred ten thousand or more or the adoption of the elective resolution. [1991 c 363 § 5; 1984 c 258 § 25; 1965 ex.s. c 110 § 2; 1961 c 299 § 27.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.031 Districting plan—Transitional provisions. As a part of the districting plan, the county legislative authority shall designate a date on which the terms of the district judges of the county shall end.

For each judicial position under the districting plan, the county legislative authority shall appoint a person qualified under RCW 3.34.060 who shall take office on the date designated by the county legislative authority and shall serve until the next quadrennial election of district judges as provided in RCW 3.34.050.

(1992 Ed.)

Pending cases, proceedings, and matters shall be transferred to the appropriate court as provided in RCW 3.74.900. [1984 c 258 § 26; 1965 ex.s. c 110 § 3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.040 Districting plan—Amendment. The districting committee may meet for the purpose of amending the districting plan at any time on call of the county legislative authority, the chairperson of the committee or a majority of its members. Amendments to the plan shall be submitted to the county legislative authority not later than March 15th of each year for adoption by the county legislative authority following the same procedure as with the original districting plan. Amendments shall be adopted not later than May 1st following submission by the districting committee. Any amendment which would reduce the salary or shorten the term of any judge shall not be effective until the next regular election for district judge. All other amendments may be effective on a date set by the county legislative authority. [1984 c 258 § 27; 1969 ex.s. c 66 § 3; 1961 c 299 § 28.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.050 District court districts—Standards. District court districts shall be established in accordance with the following standards:

- (1) Every part of the county shall be in some district.
- (2) The whole county may constitute one district.
- (3) There shall not be more districts than there are judges authorized for the county.
- (4) A district boundary shall not intersect the boundary of an election precinct.
- (5) A city shall not lie in more than one district.
- (6) Whenever a county is divided into more than one district, each district shall be so established as best to serve the convenience of the people of the district, considering the distances which must be traveled by parties and witnesses in going to and from the court and any natural barriers which may obstruct such travel. [1984 c 258 § 28; 1961 c 299 § 29.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.060 Joint district court districts. Joint districts may be established containing all or part of two or more counties. The county containing the largest portion of the population of a joint district shall be known as the "principal county" and each joint district shall be deemed to lie within the principal county for the purpose of chapters 3.30 through 3.74 RCW. A joint district may be established by resolution of one county concurred in by a resolution of each other county: PROVIDED, That the county legislative authority of a county containing the largest portion of the population of a city may include the portions of such city lying outside the county in a joint district without concurrence of the other counties.

Elections of judges in joint districts shall be conducted and canvassed in the same manner as elections of superior court judges in joint judicial districts. [1984 c 258 § 29; 1961 c 299 § 30.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.070 Separate electoral districts—Establishment. A county legislative authority for a county that has a single district but has multiple locations for courtrooms may establish separate electoral districts to provide for election of district court judges by subcounty local districts. In any county containing a city of more than four hundred thousand population, the legislative authority of such a county shall establish such separate electoral districts. The procedures in chapter 3.38 RCW for the establishment of district court districts apply to the establishment of separate electoral districts authorized by this section. [1990 c 257 § 1; 1989 c 227 § 2.]

Intent—1989 c 227: "It is the intent of the legislature to continue to provide the option for local election of district court judges where a county district court with multiple courtrooms is unified into a single district court for operational and administrative purposes." [1989 c 227 § 1.]

3.38.080 Separate electoral districts—Definition. In any county in which separate electoral districts have been established pursuant to RCW 3.38.070, the term "district" also means "electoral district" for purposes of RCW 3.38.022, 3.38.050, and 3.38.060. [1990 c 257 § 2.]

Chapter 3.42

DISTRICT COURT COMMISSIONERS

Sections

- 3.42.010 District court commissioners—Appointment—Qualifications—Term of office.
3.42.020 Powers of commissioners.
3.42.030 Transfer of cases to district judge.
3.42.040 Compensation.

3.42.010 District court commissioners—Appointment—Qualifications—Term of office. When so authorized by the districting plan, one or more district court commissioners may be appointed in any district by the judges of the district. Each commissioner shall be a registered voter of the county in which the district or a portion thereof is located, and shall hold office at the pleasure of the appointing judges. Any person appointed as a commissioner authorized to hear or dispose of cases shall be a lawyer who is admitted to the practice of law in the state of Washington or who has passed the qualifying examination for lay judges as provided under RCW 3.34.060. [1984 c 258 § 30; 1980 c 162 § 7; 1961 c 299 § 31.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Severability—1980 c 162: See note following RCW 3.02.010.

District court commissioners
bond: RCW 3.34.090.
oath: RCW 3.34.080.

3.42.020 Powers of commissioners. Each district court commissioner shall have such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess and shall prescribe. [1984 c 258 § 31; 1979 ex.s. c 136 § 16; 1961 c 299 § 32.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

3.42.030 Transfer of cases to district judge. Any party may have a case transferred from a district court commissioner to a judge of the same district for hearing, by filing a motion for transfer. The commissioner shall forthwith transfer the case to the judge. [1984 c 258 § 32; 1961 c 299 § 33.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.42.040 Compensation. District court commissioners shall receive such compensation as the county legislative authority or city council shall provide. [1984 c 258 § 33; 1969 ex.s. c 66 § 4; 1961 c 299 § 34.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

District court commissioners

salary: RCW 3.46.090 and 3.58.030.

travel expenses: RCW 3.58.040.

Chapter 3.46

MUNICIPAL DEPARTMENTS

Sections

- 3.46.010 Municipal department authorized.
3.46.020 Judges.
3.46.030 Jurisdiction.
3.46.040 Petition.
3.46.050 Selection of full time judges.
3.46.060 Selection of part time judges.
3.46.070 Election.
3.46.080 Term and removal.
3.46.090 Salary—City cost.
3.46.100 Vacancy.
3.46.110 Night sessions.
3.46.120 Revenue—Disposition.
3.46.130 Facilities.
3.46.140 Personnel.
3.46.145 Court commissioners.
3.46.150 Termination of municipal department—Agreement covering costs of handling resulting criminal cases—Arbitration.

Rules of court: See *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ)*.

3.46.010 Municipal department authorized. Any city may secure the establishment of a municipal department of the district court, to be designated "The Municipal Department of (city)." Such department may also be designated "The Municipal Court of (city)." [1984 c 258 § 72; 1961 c 299 § 35.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.020 Judges. Each judge of a municipal department shall be a judge of the district court in which the municipal department is situated. Such judge shall be designated as a municipal judge. [1987 c 3 § 1; 1984 c 258 § 73; 1961 c 299 § 36.]

Severability—1987 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act

or the application of the provision to other persons or circumstances is not affected." [1987 c 3 § 21.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.030 Jurisdiction. A municipal department shall have exclusive jurisdiction of matters arising from ordinances of the city, and no jurisdiction of other matters except as conferred by statute. [1985 c 303 § 13; 1961 c 299 § 37.]

3.46.040 Petition. Establishment of a municipal department shall be initiated by a petition from the legislative body of the city to the county legislative authority. Such petition shall be filed not less than thirty days prior to February 1, 1962, or any subsequent year, and shall set forth: (1) The number of full time and part time judges required for the municipal department; (2) the amount of time for which a part time judge will be required for the municipal department; and (3) whether the full time judge or judges will be elected or appointed. In a petition filed subsequent to 1962 provision shall be made for temporary appointment of a municipal judge to fill each elective position until the next election for district judges. The petition shall be forthwith transmitted to the districting committee. The organization of the municipal department shall be incorporated into the districting plan. The districting committee in its plan shall designate the proportion of the salary of each judge serving as a part time municipal judge to be paid by the city, which shall be proportionate to the time of such judge allotted to the municipal department by the districting plan. A city may withdraw its petition any time prior to adoption of the districting plan by the county legislative authority, and thereupon the municipal department pursuant to this chapter shall not be established. [1984 c 258 § 74; 1961 c 299 § 38.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.050 Selection of full time judges. Each city may select its full time municipal judge or judges by election, or by appointment in such manner as the city legislative body determines: PROVIDED, That in cities having a population in excess of four hundred thousand, the municipal judges shall be elected. [1975 c 33 § 2; 1961 c 299 § 39.]

Severability—1975 c 33: See note following RCW 35.21.780.

3.46.060 Selection of part time judges. In district court districts having more than one judge, appointment of part time municipal judges shall be made from the judges of the district by the mayor in such manner as the city legislative body shall determine. [1984 c 258 § 75; 1961 c 299 § 40.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.070 Election. In each district court district where an election is held for the position of municipal judge, the county auditor, prior to the date for filing declarations for the office of district judge, shall designate the proper number of municipal judge positions, commencing with number one,

and if there is more than one municipal judge in any municipal department, one or more positions may, at the request of the legislative body of the city, be further designated as municipal traffic judge positions. Only voters of the city shall vote for municipal judges. [1984 c 258 § 76; 1961 c 299 § 41.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.080 Term and removal. A municipal judge shall serve in such capacity for his or her term as district judge and may be removed from so serving in the same manner and for the same reasons as he or she may be removed from the office of district judge. [1984 c 258 § 77; 1961 c 299 § 42.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.090 Salary—City cost. The salary of a full time municipal judge shall be paid wholly by the city. The salary of a district judge serving a municipal department part time shall be paid jointly by the county and the city in the same proportion as the time of the judge has been allocated to each. Salaries of court commissioners serving the municipal department shall be paid by the city. [1984 c 258 § 78; 1969 ex.s. c 66 § 5; 1961 c 299 § 43.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.100 Vacancy. A vacancy in a position of full time municipal judge shall be filled for the unexpired term by appointment in such manner as the city may determine. In districts having more than one judge, a vacancy in a position of part time municipal judge shall be filled for the unexpired term by appointment in such manner as the city shall determine from the judges of the district, including any judge appointed by the county commissioners to fill an unexpired term. [1984 c 258 § 79; 1961 c 299 § 44.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.110 Night sessions. A city may authorize its municipal department to hold night sessions. [1961 c 299 § 45.]

3.46.120 Revenue—Disposition. (1) All money received by the clerk of a municipal department including penalties, fines, bail forfeitures, fees and costs shall be paid by the clerk to the city treasurer.

(2) The city treasurer shall remit monthly thirty-two percent of the money received under this section, other than for parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money

remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received under this section shall be retained by the city and deposited as provided by law. [1988 c 169 § 1; 1985 c 389 § 3; 1984 c 258 § 303; 1975 1st ex.s. c 241 § 4; 1961 c 299 § 46.]

Effective date—1985 c 389: See note following RCW 27.24.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Legislative intent—1984 c 258 §§ 302-340: "It is the intent of the legislature to assure accountability, uniformity, economy, and efficiency in the collection and distribution by superior, district, and municipal courts of fees, fines, forfeitures, and penalties assessed and collected for violations of state statutes, and county, city, and town ordinances." [1984 c 258 § 301.]

3.46.130 Facilities. All courtrooms, offices, facilities and supplies for the operation of a municipal department shall be furnished by the city. [1961 c 299 § 47.]

3.46.140 Personnel. All such personnel shall be deemed employees of the city, shall be compensated wholly by the city, and shall be appointed under and subject to any applicable civil service laws and regulations. [1961 c 299 § 48.]

3.46.145 Court commissioners. The provisions of chapter 3.42 RCW shall apply to this chapter 3.46 RCW. [1969 ex.s. c 66 § 6.]

3.46.150 Termination of municipal department—Agreement covering costs of handling resulting criminal cases—Arbitration. Any city, having established a municipal department as provided in this chapter may, by written notice to the county legislative authority not less than thirty days prior to February 1st of any year, require the termination of the municipal department created pursuant to this chapter. However, the city may not give the written notice required by this section unless the city has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 210; 1961 c 299 § 49.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 3.50

MUNICIPAL DEPARTMENTS—ALTERNATE PROVISION

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Rules of court: See *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ)*.

3.50.003 Definition. "Mayor," as used in this chapter, means the chief administrative officer of the city. [1984 c 258 § 125.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.005 Legislative finding—Alternative court structure for cities and towns of four hundred thousand or less. The legislature finds that there is a multitude of statutes governing the municipal courts of the state. This

situation is confusing and misleading to attorneys, judges, court personnel, and others who work with the municipal courts. The legislature therefore finds that a reorganization of the municipal courts of the state would allow those courts to operate in a more effective and efficient manner. This chapter provides a court structure which may be used by cities and towns with a population of four hundred thousand or less which choose to operate under this chapter. [1984 c 258 § 101.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: "The enactment of sections 101 through 139 of this act shall not affect any case, proceeding, appeal, or other matter pending in any court operating under Title 35 or 35A RCW on the effective date of this act [July 1, 1984]. The enactment of sections 101 through 139 of this act shall not have the effect of terminating or in any way modifying any right or liability, civil or criminal, which may be in existence on the effective date of this act [July 1, 1984]." [1984 c 258 § 128.] For disposition of sections 101 through 139 of this act, see Codification Tables, Volume 0.

3.50.007 Cities and towns of four hundred thousand or less to operate municipal court under this chapter or chapter 3.46 RCW—Municipal judges in office on July 1, 1984—Terms. After January 1, 1985, cities and towns with a population of four hundred thousand or less which are operating a municipal court under Title 35 or 35A RCW shall operate the court pursuant to this chapter. In the alternative, a city or town may establish a municipal department of a district court under chapter 3.46 RCW.

Municipal judges holding office on July 1, 1984, shall continue to hold office until expiration of their term or January 1, 1986, whichever occurs first. [1984 c 258 § 102.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.010 Municipal court authorized in cities of four hundred thousand or less. Any city or town with a population of four hundred thousand or less may by ordinance provide for an inferior court to be known and designated as a municipal court, which shall be entitled "The Municipal Court of (insert name of city or town)", hereinafter designated and referred to as "municipal court", which court shall have jurisdiction and shall exercise all powers by this chapter declared to be vested in the municipal court, together with such other powers and jurisdiction as are generally conferred upon such court in this state either by common law or by express statute. [1984 c 258 § 103; 1961 c 299 § 50.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.020 Jurisdiction. The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city in which the municipal court is located and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or

given by such ordinances or by state statutes. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. [1985 c 303 § 14; 1984 c 258 § 104; 1979 ex.s. c 136 § 17; 1961 c 299 § 51.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

3.50.030 Violations bureau for traffic cases—Disposition of moneys collected. Every city or town may establish and operate under the supervision of the municipal court a violations bureau to assist the court in processing traffic cases. Each municipal court shall designate the specific traffic offenses and traffic infractions under city or town ordinances which may be processed by the violations bureau.

A violations bureau may be authorized to process traffic infractions in conformity with chapter 46.63 RCW.

A violations bureau may be authorized to receive the posting of bail for specified offenses and, to the extent authorized by court order, permitted to accept forfeiture of bail and payment of penalties. Any violations bureau, upon accepting the prescribed bail, shall issue a receipt therefor to the alleged violator, acknowledging the posting thereof and informing the accused of the legal consequences of bail forfeiture. Any person charged with any criminal traffic offense within the authority of the violations bureau may, upon signing a written appearance, a written plea of guilty and a written waiver of trial, pay to the violations bureau the fine established for the offense charged and costs and this shall have the same effect as a court conviction. All penalties and forfeitures paid to a violations bureau for the violation of municipal ordinance shall be placed in the city or town general fund or such other fund as may be prescribed by ordinance of the city or town or laws of the state of Washington.

Any employees of an existing violations bureau of any city shall continue as city employees. [1984 c 258 § 105; 1979 ex.s. c 136 § 18; 1961 c 299 § 52.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

3.50.040 Municipal judges—Appointed—Terms, qualifications—District judge as part time municipal judge. Within thirty days after the effective date of the ordinance creating the municipal court, the mayor of each city or town shall appoint a municipal judge or judges of the municipal court for a term of four years. The terms of judges serving on July 1, 1984, and municipal judges who are appointed to terms commencing before January 1, 1986, shall expire January 1, 1986. The terms of their successors

shall commence on January 1, 1986, and on January 1 of each fourth year thereafter, pursuant to appointment or election as provided in this chapter. Appointments shall be made on or before December 1 of the year next preceding the year in which the terms commence.

The legislative authority of a city or town that has the general power of confirmation over mayoral appointments shall have the power to confirm the appointment of a municipal judge.

A person appointed as a full-time or part-time municipal judge shall be a citizen of the United States of America and of the state of Washington; and an attorney admitted to practice law before the courts of record of the state of Washington: PROVIDED, That in a municipality having a population less than five thousand persons, a person other than an attorney may be the judge. Any city or town shall have authority to appoint a district judge as its municipal judge when the municipal judge is not required to serve full time. In the event of the appointment of a district judge, the city or town shall pay a pro rata share of the salary. [1984 c 258 § 106; 1975-'76 2nd ex.s. c 35 § 1; 1961 c 299 § 53.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.050 Municipal judge may be elective position—Qualifications, term. The legislative authority of the city or town may, by ordinance, provide that the position of municipal judge within the city or town shall be an elective position. The ordinance shall provide for the qualifications of the municipal judge which shall be the same as the qualifications necessary for the appointment thereof; and further, shall provide that the municipal judge shall be elected in the same manner as other elective city officials are elected to office, and that the term of the municipal judge shall be for a term of four years commencing on January 1, 1986, and every four years thereafter. [1984 c 258 § 107; 1961 c 299 § 54.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.060 Termination of municipal court—Requirements—Establishment of court. A city or town electing to establish a municipal court pursuant to this chapter may terminate such court by adoption of an appropriate ordinance. However no municipal court may be terminated unless the municipality has complied with RCW 3.50.805, 35.22.425, 35.23.595, 35.24.455, 35.27.515, 35.30.100, and 35A.11.200.

A city or town newly establishing a municipal court pursuant to this chapter shall do so by adoption of an appropriate ordinance on or before December 1 of any year, to take effect January 1 of the following year. [1984 c 258 § 108; 1961 c 299 § 55.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.070 Additional judges—Appointment, election. Additional full or part time judges may be appointed or elected, as provided by ordinance of the legislative body of the city or town when public interest and the administration of justice makes such additional judge or judges necessary. [1984 c 258 § 109; 1961 c 299 § 56.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.080 Salaries of judges—Payment of court operating costs from city funds—Judges and employees as city employees. Salaries of municipal court judges shall be fixed by ordinance. All costs of operating the municipal court, including but not limited to salaries of judges and court employees, dockets, books of records, forms, furnishings, and supplies, shall be paid wholly out of the funds of the city or town. The city shall provide a suitable place for holding court and pay all expenses of maintaining it.

All employees of the municipal court shall, for all purposes, be deemed employees of the city or town. They shall be appointed by and serve at the pleasure of the court. [1984 c 258 § 111; 1961 c 299 § 57.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Salaries of municipal judges in cities over 400,000: RCW 3.58.010 and 35.20.160.

3.50.090 Judges pro tem. The mayor shall, in writing, appoint judges pro tem who shall act in the absence or disability of the regular judge of a municipal court or subsequent to the filing of an affidavit of prejudice. The judges pro tem shall be qualified to hold the position of judge of the municipal court as provided herein. The municipal court judges pro tem shall receive such compensation as shall be fixed by the ordinances of the legislative body of the city or town wherein the municipal court is located. The term of the appointment shall be specified in writing but in any event shall not extend beyond the term of the appointing mayor. [1984 c 258 § 112; 1961 c 299 § 58.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.093 Municipal judge—Vacancy—Appointment. Any vacancy in the municipal court due to a death, disability, or resignation of a municipal court judge shall be filled by the mayor, for the remainder of the unexpired term. The appointment shall be subject to confirmation by the legislative authority of the city or town if the legislative authority has the general power of confirmation over mayoral appointments. The appointed judge shall be qualified to hold the position of judge of the municipal court as provided in this chapter. [1984 c 258 § 113.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.095 Municipal judge—Removal from office. A municipal judge shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering the judge incapable of performing the duties of the office. [1984 c 258 § 124.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.097 Judge's oath—Bonds. Every judge of a municipal court, before entering upon the duties of the office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge of the municipal court of the city of (naming such city) according to the best of my ability." The oath shall be filed in the office of the county auditor. The judge shall also give such bonds to the state and city for the faithful performance of the judge's duties as may be by law or ordinance directed. [1984 c 258 § 110.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.100 Revenue—Disposition. (1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs, fines, forfeitures and other money imposed by any municipal court for the violation of any municipal or town ordinances shall be collected by the court clerk and, together with any other revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or deposited in such other funds as may be designated by the laws of the state of Washington.

(2) The city treasurer shall remit monthly thirty-two percent of the money received under this section, other than for parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received under this section shall be retained by the city and deposited as provided by law. [1988 c 169 § 2; 1985 c 389 § 4; 1984 c 258 § 304; 1975 1st ex.s. c 241 § 3; 1961 c 299 § 59.]

Effective date—1985 c 389: See note following RCW 27.24.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

3.50.110 Sessions. The municipal court shall be open and shall hold such regular and special sessions as may be prescribed by the legislative body of the city or town: PROVIDED, That the municipal court shall not be open on nonjudicial days. [1984 c 258 § 114; 1961 c 299 § 60.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.115 Municipal court seal. The municipal court shall have a seal which shall be the vignette of George Washington, with the words "Seal of The Municipal Court of (name of city), State of Washington," surrounding the vignette. [1984 c 258 § 123.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.125 Transfer within municipal court. A transfer of a case from the municipal court to either another municipal judge of the same city or to a judge pro tempore appointed in the manner prescribed by this chapter shall be allowed in accordance with RCW 3.66.090 in all civil and criminal proceedings. [1984 c 258 § 122.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.135 Request for jury trial in civil cases—Exception—Fee—Juror compensation—Jury trials in criminal cases. In all civil cases, the plaintiff or defendant may demand a jury, which shall consist of six citizens of the state who shall be impaneled and sworn as in cases before district courts, or the trial may be by a judge of the municipal court: PROVIDED, That no jury trial may be held on a proceeding involving a traffic infraction. A party requesting a jury shall pay to the court a fee which shall be the same as that for a jury in district court. If more than one party requests a jury, only one jury fee shall be collected by the court. The fee shall be apportioned among the requesting parties. Each juror may receive up to twenty-five dollars but in no case less than ten dollars for each day in attendance upon the municipal court, and in addition thereto shall receive mileage at the rate determined under RCW 43.03.060: PROVIDED, That the compensation paid jurors shall be determined by the legislative authority of the city and shall be uniformly applied. Jury trials shall be allowed in all criminal cases unless waived by the defendant. [1984 c 258 § 126.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.300 Execution of sentence—Jail in lieu of fine and costs, computation. In all cases of conviction, unless otherwise provided in chapters 3.30 through 3.74 RCW as now or hereafter amended, where a jail sentence is given to the defendant, execution shall issue accordingly and where

the judgment of the court is that the defendant pay a fine and costs, the defendant may be committed to jail until the judgment is paid in full.

A defendant who has been committed shall be discharged upon the payment for such part of the fine and costs as remains unpaid after deducting from the whole amount any previous payment, and after deducting the amount allowed for each day of imprisonment, which amount shall be the same and computed in the same manner as provided for superior court cases in RCW 10.82.030 and 10.82.040, as now or hereafter amended. In addition, all other proceedings in respect of such fine and costs shall be the same as in like cases in the superior court. [1984 c 258 § 115; 1969 c 84 § 1; 1961 c 299 § 79.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.320 Deferral of sentence—Change of plea, dismissal. After a conviction, the court may defer sentencing and place the defendant on probation and prescribe the conditions thereof, but in no case shall it extend for more than two years from the date of conviction. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty, permit the defendant to enter a plea of not guilty, and dismiss the charges. [1984 c 258 § 116; 1983 c 156 § 5; 1961 c 299 § 81.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.330 Continuing jurisdiction of court after sentence. For a period not to exceed two years after imposition of sentence, the court shall have continuing jurisdiction and authority to suspend the execution of all or any part of the sentence upon stated terms, including installment payment of fines. [1984 c 258 § 117; 1983 c 156 § 6; 1961 c 299 § 82.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.340 Revocation of deferred or suspended sentence—Limitations—Termination of probation. Deferral of sentence and suspension of execution of sentence may be revoked if the defendant violates or fails to carry out any of the conditions of the deferral or suspension. Upon the revocation of the deferral or suspension, the court shall impose the sentence previously suspended or any unexecuted portion thereof. In no case shall the court impose a sentence greater than the original sentence, with credit given for time served and money paid on fine and costs.

Any time before entering an order terminating probation, the court may revoke or modify its order suspending the imposition or execution of the sentence. If the ends of justice will be served and when warranted by the reformation of the probationer, the court may terminate the period of

probation and discharge the person so held. [1984 c 258 § 118; 1983 c 156 § 7; 1961 c 299 § 83.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.425 Issuance of criminal process. All criminal process issued by the municipal court shall be in the name of the state of Washington and run throughout the state, and be directed to and served by the chief of police, marshal, or other police officer of any city or to any sheriff in the state. [1984 c 258 § 127.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.430 Criminal prosecution in city's name for violation of ordinances. All criminal prosecutions for the violation of a city ordinance shall be conducted in the name of the city and may be upon the complaint of any person. [1984 c 258 § 119; 1961 c 299 § 92.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.440 Penalty if no other punishment prescribed. Every person convicted by the municipal court of a violation of the criminal provisions of an ordinance for which no punishment is specifically prescribed in the ordinance shall be punished by a fine of not more than five thousand dollars or imprisonment in the city jail for a period not to exceed one year, or both such fine and imprisonment. [1984 c 258 § 120; 1961 c 299 § 93.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.450 Pleadings, practice and procedure not provided for governed by district court law. Pleadings, practice and procedure in cases not governed by statutes or rules specifically applicable to municipal courts shall, insofar as applicable, be governed by the statutes and rules now existing or hereafter adopted governing pleadings, practice and procedure applicable to district courts. [1984 c 258 § 121; 1961 c 299 § 94.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.800 Repeal of municipal criminal code—Agreement covering costs of handling resulting criminal cases—Arbitration—Renewal. (1) If a municipality has, prior to July 1, 1984, repealed in its entirety that portion of its municipal code defining crimes but continues to hear and determine traffic infraction cases under chapter 46.63 RCW in a municipal court, the municipality and the appropriate county shall, prior to January 1, 1985, enter into an agree-

ment under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs incurred after January 1, 1985, associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. If the municipality and the county cannot come to an agreement within the time prescribed by this section, they shall be deemed to have entered into an agreement to submit the issue to arbitration pursuant to chapter 7.04 RCW. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW.

(2) The agreement between the municipality and the county shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 202.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.50.805 Termination of municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration—Repeal of municipal criminal code—Agreement—Arbitration—Repeal of a municipal crime equivalent to offense in RCW 46.63.020—Agreement—Arbitration. (1) A municipality operating a municipal court under this chapter shall not terminate that court unless the municipality has reached an agreement with the appropriate county or another municipality under chapter 39.34 RCW under which the county or municipality is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district or municipal court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county or municipality are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county or municipality have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. A municipality that has entered into agreements with other municipalities that have terminated their municipal courts may not thereafter terminate its court unless each municipality has reached an agreement with the appropriate county in accordance with this section.

(2) A municipality operating a municipal court under this chapter may not repeal in its entirety that portion of its municipal code defining crimes while retaining the court's authority to hear and determine traffic infractions under chapter 46.63 RCW unless the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs

associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW.

(3) A municipality operating a municipal court under this chapter may not repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 203.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 3.54

CLERKS AND DEPUTY CLERKS

Sections

3.54.010	Compensation.
3.54.020	Powers and duties.
3.54.030	Seal.

3.54.010 Compensation. The clerk and deputy clerks of district courts shall receive such compensation as shall be provided by the county legislative authority. [1984 c 258 § 34; 1971 c 73 § 6; 1961 c 299 § 98.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.54.020 Powers and duties. The district courts shall prescribe the duties of the clerk and deputy clerks. Such duties shall include all of the requirements of RCW 3.62.020 and 3.62.040 as now or hereafter amended and the receipt of bail and additionally the power to:

- (1) Accept and enter pleas;
- (2) Receive bail as set by the court;
- (3) Set cases for trial;
- (4) Administer oaths. [1975 1st ex.s. c 241 § 1; 1971 c 73 § 7; 1961 c 299 § 99.]

3.54.030 Seal. The district court shall have a seal that shall be the vignette of George Washington, with the words "Seal of the District Court of County, State of Washington," surrounding the vignette. All process from the court must be issued under its seal and runs throughout the state. [1992 c 29 § 1.]

Chapter 3.58 SALARIES AND EXPENSES

Sections

3.58.010	Salaries of full time district court judges.
3.58.020	Salaries of part time district judges.
3.58.030	Payment of salaries.
3.58.040	Travel expenses.
3.58.050	Other court expenses—Lease, construction, of courtrooms and offices.

3.58.010 Salaries of full time district court judges. The annual salary of each full time district court judge shall be established by the Washington citizen's commission on salaries for elected officials. A member of the legislature whose term of office is partly coextensive with or extends beyond the present term of office of any of the officials whose salary is increased by virtue of the provisions of RCW 43.03.010, 2.04.092, 2.06.062, 2.08.092, and 3.58.010 shall be eligible to be appointed or elected to any of the offices the salary of which is increased hereby but he shall not be entitled to receive such increased salary until after the expiration of his present term of office and his subsequent election or reelection to the office to which he was appointed or elected respectively during his term of office as legislator. [1986 c 155 § 7; 1985 c 7 § 1; 1983 c 186 § 2; 1980 c 162 § 8; 1979 ex.s. c 255 § 8; 1977 ex.s. c 318 § 5; 1975 1st ex.s. c 263 § 5; 1975 c 33 § 3; 1974 ex.s. c 149 § 6 (Initiative Measure No. 282, approved November 6, 1973); 1972 ex.s. c 100 § 4; 1969 c 52 § 1; 1965 c 147 § 1; 1961 c 299 § 100.]

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

Effective date—1979 ex.s. c 255: See note following RCW 43.03.010.

Effective date—1977 ex.s. c 318: See note following RCW 43.03.010.

Severability—Effective date—1975 1st ex.s. c 263: See notes following RCW 43.03.010.

Severability—1975 c 33: See note following RCW 35.21.780.

Severability—1974 ex.s. c 149 (Initiative Measure No. 282): See note following RCW 43.03.010.

District court judges' salaries: State Constitution Art. 28 § 1.

District courts, judges pro tempore, salaries: RCW 3.34.130.

Municipal courts, cities over 400,000, judges' salaries: RCW 35.20.160.

Superior courts, judges' salaries: RCW 2.08.092.

Washington citizens' commission on salaries for elected officials: RCW 43.03.305.

3.58.020 Salaries of part time district judges. The annual salaries of part time district judges shall be set by the citizens' commission on salaries. [1991 c 338 § 3; 1984 c

258 § 35; 1982 c 29 § 2; 1979 ex.s. c 255 § 9; 1974 ex.s. c 95 § 1; 1969 ex.s. c 192 § 1; 1961 c 299 § 101.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—1979 ex.s. c 255: See note following RCW 43.03.010.

District judges—Full time—Other: RCW 3.34.040.

3.58.030 Payment of salaries. The compensation of judges, clerks, judges pro tempore, deputy clerks, and court commissioners payable by the county shall be paid monthly out of the county treasury from the same funds out of which other salaried county officers are paid. [1984 c 258 § 36; 1961 c 299 § 102.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.58.040 Travel expenses. District judges, judges pro tempore, court commissioners, and district court employees shall receive their reasonable traveling expenses when engaged in the business of the court as provided in chapter 42.24 RCW. [1984 c 258 § 37; 1983 c 3 § 3; 1961 c 299 § 103.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.58.050 Other court expenses—Lease, construction, of courtrooms and offices. The county legislative authority shall furnish all necessary facilities for the district courts, including suitable courtrooms, furniture, books, stationery, postage, office equipment, heat, light and telephone and may lease or construct courtrooms and offices for such purpose. The county legislative authority shall not be required to furnish courtroom space in any place other than as provided in the districting plan. [1984 c 258 § 38; 1963 c 213 § 3; 1961 c 299 § 104.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 3.62 INCOME OF COURT

Sections

3.62.010	Suspension of fine or penalty.
3.62.020	Costs, fees, fines, forfeitures, and penalties except city cases—Disposition.
3.62.040	Costs, fines, forfeitures, and penalties from city cases—Disposition.
3.62.050	Court expenditures to be paid from county current expense fund—Exception.
3.62.060	Filing fees in civil cases—Fees allowed as court costs.
3.62.065	Fees allowed as court costs.
3.62.070	Filing fees in criminal cases and traffic infractions.
3.62.090	Public safety and education assessment—Amount.

3.62.010 Suspension of fine or penalty. The district court may at the time of sentencing or at any time thereafter suspend a portion or all of a fine or penalty. [1984 c 258 § 305; 1961 c 299 § 105.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

3.62.020 Costs, fees, fines, forfeitures, and penalties except city cases—Disposition. (1) Except as provided in subsection (4) of this section, all costs, fees, fines, forfeitures and penalties assessed and collected in whole or in part by district courts, except costs, fines, forfeitures and penalties assessed and collected, in whole or in part, because of the violation of city ordinances, shall be remitted by the clerk of the district court to the county treasurer at least monthly, together with a financial statement as required by the division of municipal corporations, noting the information necessary for crediting of such funds as required by law.

(2) The county treasurer shall remit thirty-two percent of the money received under subsection (1) of this section except certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received by the county treasurer under subsection (1) of this section shall be deposited in the county current expense fund.

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund. [1988 c 169 § 3; 1985 c 389 § 5; 1984 c 258 § 306; 1971 c 73 § 8; 1969 ex.s. c 199 § 2; 1961 c 299 § 106.]

Effective date—1985 c 389: See note following RCW 27.24.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

3.62.040 Costs, fines, forfeitures, and penalties from city cases—Disposition. (1) Except as provided in subsection (4) of this section, all costs, fines, forfeitures and penalties assessed and collected, in whole or in part, by district courts because of violations of city ordinances shall be remitted by the clerk of the district court at least monthly directly to the treasurer of the city wherein the violation occurred.

(2) The city treasurer shall remit monthly thirty-two percent of the money received under this section, other than for parking infractions and certain costs, to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money

remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received under this section shall be retained by the city and deposited as provided by law.

(4) All money collected for city parking infractions shall be remitted by the clerk of the district court at least monthly to the city treasurer for deposit in the city's general fund. [1988 c 169 § 4; 1985 c 389 § 6; 1984 c 258 § 307; 1975 1st ex.s. c 241 § 2; 1961 c 299 § 108.]

Effective date—1985 c 389: See note following RCW 27.24.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

3.62.050 Court expenditures to be paid from county current expense fund—Exception. The total expenditures of the district courts, including the cost of providing courtroom and office space, the cost of probation and parole services and any personnel employment therefor, and the cost of providing services necessary for the preparation and presentation of a defense at public expense, except costs of defense to be paid by a city pursuant to RCW 3.62.070, shall be paid from the county current expense fund. [1987 c 202 § 114; 1984 c 258 § 308; 1973 1st ex.s. c 10 § 1; 1969 ex.s. c 199 § 3; 1969 c 111 § 1; 1963 c 213 § 2; 1961 c 299 § 109.]

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

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

3.62.060 Filing fees in civil cases—Fees allowed as court costs. Clerks of the district courts shall collect the following fees for their official services:

(1) In any civil action commenced before or transferred to a district court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of thirty-one dollars plus any surcharge authorized by RCW 7.75.035. No party shall be compelled to pay to the court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

(2) For issuing a writ of garnishment or other writ a fee of six dollars.

(3) For filing a supplemental proceeding a fee of twelve dollars.

(4) For demanding a jury in a civil case a fee of fifty dollars to be paid by the person demanding a jury.

(5) For preparing a transcript of a judgment a fee of six dollars.

(6) For certifying any document on file or of record in the clerk's office a fee of five dollars.

(7) For preparing the record of a case for appeal to superior court a fee of forty dollars including any costs of tape duplication as governed by the rules of appeal for courts of limited jurisdiction (RALJ).

(8) For duplication of part or all of the electronic tape or tapes of a proceeding ten dollars per tape.

The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded. [1992 c 62 § 8; 1990 c 172 § 2; 1987 c 382 § 2;

1984 c 258 § 309; 1981 c 330 § 1; 1980 c 162 § 9; 1969 c 25 § 1; 1965 c 55 § 1; 1961 c 299 § 110.]

Effective date—1992 c 62: See RCW 27.24.900.

Effective date—1990 c 172: See note following RCW 7.75.035.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1981 c 330: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 330 § 11.]

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

3.62.065 Fees allowed as court costs. All courts organized under Title 3 or 35 RCW may charge fees as prescribed in RCW 3.62.060. The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded. [1992 c 62 § 7.]

Effective date—1992 c 62: See RCW 27.24.900.

3.62.070 Filing fees in criminal cases and traffic infractions. Except in traffic cases wherein bail is forfeited or a monetary penalty paid to a violations bureau, and except in cases filed in municipal departments established pursuant to chapter 3.46 RCW and except in cases where a city has contracted with another city for such services pursuant to chapter 39.34 RCW, in every criminal or traffic infraction action filed by a city for an ordinance violation, the city shall be charged a filing fee determined pursuant to an agreement as provided for in chapter 39.34 RCW, the interlocal cooperation act, between the city and the county providing the court service. In such criminal or traffic infraction actions the cost of providing services necessary for the preparation and presentation of a defense at public expense are not within the filing fee and shall be paid by the city. In all other criminal or traffic infraction actions, no filing fee shall be assessed or collected: PROVIDED, That in such cases, for the purposes of RCW 3.62.010, four dollars or the agreed filing fee of each fine or penalty, whichever is greater, shall be deemed filing costs. In the event no agreement is reached between a municipal corporation and the county providing the court service within ninety days of September 1, 1979, the municipal corporation and the county shall be deemed to have entered into an agreement to submit the issue to arbitration pursuant to chapter 7.04 RCW, and the municipal corporation and the county shall be entitled to the same rights and subject to the same duties as other parties who have agreed to submit to arbitration pursuant to chapter 7.04 RCW. In the event that such issue is submitted to arbitration, the arbitrator or arbitrators shall only consider those additional costs borne by the county in providing district court services for such city. [1984 c 258 § 39; 1980 c 128 § 14; 1979 ex.s. c 129 § 1; 1973 1st ex.s. c 10 § 2; 1961 c 299 § 111.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

3.62.090 Public safety and education assessment—Amount. (1) There shall be assessed and collected in

addition to any fines, forfeitures, or penalties assessed, other than for parking infractions, by all courts organized under Title 3 or 35 RCW a public safety and education assessment equal to sixty percent of such fines, forfeitures, or penalties, which shall be remitted as provided in chapters 3.46, 3.50, 3.62, and 35.20 RCW. The assessment required by this section shall not be suspended or waived by the court.

(2) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions and for fines levied under RCW 46.61.515, and in addition to the public safety and education assessment required under subsection (1) of this section, by all courts organized under Title 3 or 35 RCW, an additional public safety and education assessment equal to fifty percent of the public safety and education assessment required under subsection (1) of this section, which shall be remitted to the state treasurer and deposited as provided in RCW 43.08.250. The additional assessment required by this subsection shall not be suspended or waived by the court. [1986 c 98 § 4; 1984 c 258 § 337.]

Effective date—1986 c 98: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1986." [1986 c 98 § 5.] Section 4 of this act consists of the 1986 c 98 amendments to RCW 3.62.090.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Public safety and education account: RCW 43.08.250.

Chapter 3.66 JURISDICTION AND VENUE

Sections

3.66.010	General powers of district court.
3.66.020	Civil jurisdiction.
3.66.030	Restrictions on civil jurisdiction.
3.66.040	Venue—Civil action.
3.66.050	Transfer of proceedings.
3.66.060	Criminal jurisdiction.
3.66.065	Assessment of punishment.
3.66.067	Assessment of punishment—Deferral of sentence, probation—Withdrawal of plea and dismissal of charges.
3.66.068	Assessment of punishment—Suspension of sentence—Terms.
3.66.069	Assessment of punishment—Revocation of deferred or suspended sentence—Limitations—Termination of probation.
3.66.070	Venue—Criminal actions.
3.66.080	Criminal venue corrected.
3.66.090	Change of venue.
3.66.095	Removal of certain civil actions to superior court.
3.66.100	Territorial jurisdiction—Process.
3.66.110	Advertising authority to solemnize marriages is breach of judicial ethics.

3.66.010 General powers of district court. The justices of the peace elected in accordance with chapters 3.30 through 3.74 RCW are authorized to hold court as judges of the district court for the trial of all actions enumerated in chapters 3.30 through 3.74 RCW or assigned to the district court by law; to hear, try, and determine the same according to the law, and for that purpose where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of

record in this state; and all laws of a general nature shall apply to such district court as far as the same may be applicable and not inconsistent with the provisions of chapters 3.30 through 3.74 RCW. The district court shall, upon the demand of either party, impanel a jury to try any civil or criminal case in accordance with the provisions of chapter 12.12 RCW. No jury trial may be held in a proceeding involving a traffic infraction. [1984 c 258 § 40; 1979 ex.s. c 136 § 20; 1961 c 299 § 112.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Powers and jurisdiction of district court commissioner: RCW 3.42.020.

3.66.020 Civil jurisdiction. If the value of the claim or the amount at issue does not exceed twenty-five thousand dollars, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction and cognizance of the following civil actions and proceedings:

- (1) Actions arising on contract for the recovery of money;
- (2) Actions for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same and actions to recover the possession of personal property;
- (3) Actions for a penalty;
- (4) Actions upon a bond conditioned for the payment of money, when the amount claimed does not exceed twenty-five thousand dollars, though the penalty of the bond exceeds that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;
- (5) Actions on an undertaking or surety bond taken by the court;
- (6) Actions for damages for fraud in the sale, purchase, or exchange of personal property;
- (7) Proceedings to take and enter judgment on confession of a defendant;
- (8) Proceedings to issue writs of attachment, garnishment and replevin upon goods, chattels, moneys, and effects; and
- (9) All other actions and proceedings of which jurisdiction is specially conferred by statute, when the title to, or right of possession of real property is not involved. [1991 c 33 § 1; 1984 c 258 § 41; 1981 c 331 § 7; 1979 c 102 § 3; 1965 c 95 § 1; 1961 c 299 § 113.]

Effective date—1991 c 33: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 33 § 7.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Application, savings—1979 c 102: "Sections 2, 3, and 4 of this 1979 amendatory act upon taking effect shall apply to all actions filed on or after December 8, 1977. Any party to an action which is pending on the effective date of this act shall be permitted to amend any pleadings to reflect such increase in court jurisdiction: PROVIDED, That nothing in this act shall affect the validity of judicial acts taken prior to its effective date." [1979 c 102 § 5.]

Severability—1979 c 102: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 102 § 6.]

Effective date—1979 c 102: "Sections 2 through 5 of this 1979 amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1979." [1979 c 102 § 7.]

3.66.030 Restrictions on civil jurisdiction. The jurisdiction covered by RCW 3.66.020 shall not extend to the following civil actions:

- (1) Actions involving title to real property;
- (2) Actions for the foreclosure of a mortgage or enforcement of a lien on real estate;
- (3) Actions for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction; and
- (4) Actions against an executor or administrator as such. [1961 c 299 § 114.]

3.66.040 Venue—Civil action. (1) An action arising under RCW 3.66.020 (1), (2) except for the recovery of possession of personal property, (4), (6), (7), and (9) may be brought in any district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed or in which the defendant, or if there be more than one defendant, where some one of the defendants may be served with the notice and complaint in which latter case, however, the district where the defendant or defendants is or are served must be within the county in which the said defendant or defendants reside. If the residence of the defendant is not ascertained by reasonable efforts, the action may be brought in the district in which the defendant's place of actual physical employment is located.

(2) An action arising under RCW 3.66.020(2) for the recovery of possession of personal property and RCW 3.66.020(8) shall be brought in the district in which the subject matter of the action or some part thereof is situated.

(3) An action arising under RCW 3.66.020 (3) and (5) shall be brought in the district in which the cause of action, or some part thereof arose.

(4) An action arising under RCW 3.66.020(2) for the recovery of damages for injuries to the person or for injury to personal property arising from a motor vehicle accident may be brought, at the plaintiff's option, either in the district in which the cause of action, or some part thereof, arose, or in the district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed.

(5) An action against a nonresident of this state may be brought in any district where service of process may be had, or in which the cause of action or some part thereof arose, or in which the plaintiff or one of them resides.

(6) For the purposes of chapters 3.30 through 3.74 RCW, the residence of a corporation defendant shall be deemed to be in any district where the corporation transacts business or has an office for the transaction of business or transacted business at the time the cause of action arose or where any person resides upon whom process may be served

upon the corporation, unless herein otherwise provided. [1988 c 71 § 1; 1984 c 258 § 42; 1961 c 299 § 115.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.66.050 Transfer of proceedings. If a civil action is brought in the wrong district, the action may nevertheless be tried therein unless the defendant, at the time the defendant appears, requests a transfer of the action to the proper district. Upon such demand an order shall be entered transferring the action to the proper district and awarding the defendant a reasonable attorney's fee to be paid by the plaintiff. [1984 c 258 § 43; 1961 c 299 § 116.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.66.060 Criminal jurisdiction. The district court shall have jurisdiction: (1) Concurrent with the superior court of all misdemeanors and gross misdemeanors committed in their respective counties and of all violations of city ordinances. It shall in no event impose a greater punishment than a fine of five thousand dollars, or imprisonment for one year in the county or city jail as the case may be, or both such fine and imprisonment, unless otherwise expressly provided by statute. It may suspend and revoke vehicle operators' licenses in the cases provided by law; (2) to sit as a committing magistrate and conduct preliminary hearings in cases provided by law; (3) concurrent with the superior court of a proceeding to keep the peace in their respective counties; (4) concurrent with the superior court of all violations under Title 75 RCW; and (5) to hear and determine traffic infractions under chapter 46.63 RCW. [1984 c 258 § 44; 1983 1st ex.s. c 46 § 176; 1982 c 150 § 1; 1961 c 299 § 117.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—Savings—Effective date—1983 1st ex.s. c 46: See RCW 75.98.005 through 75.98.007.

Violations under Title 75 RCW (Fisheries Code), concurrent jurisdiction: RCW 75.10.060.

3.66.065 Assessment of punishment. If a defendant is found guilty, a judge holding office pursuant to chapters 3.30 through 3.74 RCW, or chapter 35.20 RCW, and not the jury, shall assess punishment, notwithstanding the provisions of RCW 10.04.100. If the judge determines that the punishment authorized is inadequate compared to the gravity of the offense he or she may order such defendant to enter recognition to appear in the superior court of the county and may also recognize the witnesses and shall proceed as a committing magistrate. [1984 c 258 § 45; 1975 c 29 § 1; 1965 ex.s. c 110 § 7.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Sentence and judgment: Rules of court: CrRLJ 7.2.

3.66.067 Assessment of punishment—Deferral of sentence, probation—Withdrawal of plea and dismissal of charges. After a conviction, the court may defer sentencing the defendant and place the defendant on probation and prescribe the conditions thereof, but in no case shall it extend for more than two years from the date of conviction.

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During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty and to enter a plea of not guilty, and the court may dismiss the charges. [1984 c 258 § 46; 1983 c 156 § 1; 1969 c 75 § 1.]

Rules of court: ER 410.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.66.068 Assessment of punishment—Suspension of sentence—Terms. For a period not to exceed two years after imposition of sentence, the court has continuing jurisdiction and authority to suspend the execution of all or any part of its sentence upon stated terms, including installment payment of fines. [1983 c 156 § 2; 1969 c 75 § 2.]

3.66.069 Assessment of punishment—Revocation of deferred or suspended sentence—Limitations—Termination of probation. Deferral of sentence and suspension of execution of sentence may be revoked if the defendant violates or fails to carry out any of the conditions of the deferral or suspension. Upon the revocation of the deferral or suspension, the court may impose the sentence previously suspended or any unexecuted portion thereof. In no case shall the court impose a sentence greater than the original sentence, with credit given for time served and money paid on fine and costs.

Any time before entering an order terminating probation, the court may revoke or modify its order suspending the imposition or execution of the sentence. Whenever the ends of justice will be served and when warranted by the reformation of the probationer, the court may terminate the period of probation and discharge the person so held. [1983 c 156 § 3; 1969 c 75 § 3.]

3.66.070 Venue—Criminal actions. All criminal actions shall be brought in the district where the alleged violation occurred: PROVIDED, That (1) the prosecuting attorney may file felony cases in the district in which the county seat is located, (2) with the consent of the defendant criminal actions other than those arising out of violations of city ordinances may be brought in or transferred to the district in which the county seat is located, and (3) if the alleged violation relates to driving, or being in actual physical control of, a motor vehicle while under the influence of intoxicating liquor or any drug and the alleged violation occurred within a judicial district which has been designated an enhanced enforcement district under RCW 2.56.110, the charges may be filed in that district or in a district within the same county which is adjacent to the district in which the alleged violation occurred. [1991 c 290 § 2; 1984 c 258 § 47; 1983 c 165 § 32; 1961 c 299 § 118.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

3.66.080 Criminal venue corrected. If a criminal action is commenced in an improper district under RCW 3.66.070, the court may of its own volition or at the request

of either party order the case removed for trial to a proper district. [1984 c 258 § 48; 1961 c 299 § 119.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.66.090 Change of venue. A change of venue may be allowed upon motion:

(1) Where there is reason to believe that an impartial trial cannot be had in the district or municipal court in which the action was commenced; or

(2) Where the convenience of witnesses or the ends of justice would be forwarded by the change.

When such change is ordered, it shall be to the district court of another district in the same county, if any, otherwise to the district court of an adjacent district in another county: PROVIDED, That where an affidavit of prejudice is filed against a judge of a municipal court the cause shall be transferred to another department of the municipal court, if one exists, otherwise to a judge pro tempore appointed in the manner prescribed by law. The court to which a case is removed on change of venue under this section shall have the same jurisdiction, either civil or criminal to hear and determine the case as the court from which the case was removed. [1984 c 258 § 49; 1967 c 241 § 1; 1961 c 299 § 120.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1967 c 241: "The provisions of this 1967 amendatory act shall apply only to those cities as to which the law requires that the judge be a qualified attorney." [1967 c 241 § 10.] For codification of 1967 c 241, see Codification Tables, Volume 0.

3.66.095 Removal of certain civil actions to superior court. See chapter 4.14 RCW.

3.66.100 Territorial jurisdiction—Process. (1) Every district judge having authority to hear a particular case may issue criminal process in and to any place in the state.

(2) Notwithstanding any provision in the civil rules to the contrary, every district judge having authority to hear a particular case may issue civil process, including writs of execution, attachment, garnishment, and replevin, in and to any place in the state. [1987 c 442 § 1101; 1984 c 258 § 701; 1961 c 299 § 121.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Issuance of process

infractions generally: RCW 7.80.020.

natural resource infractions: RCW 7.84.120.

traffic infractions: RCW 46.63.130.

3.66.110 Advertising authority to solemnize marriages is breach of judicial ethics. It shall be a breach of judicial ethics for any judge of any court of limited jurisdiction, as defined in RCW 3.02.010, to advertise in any manner that he or she is authorized to solemnize marriages. Any violation of this section shall be grounds for forfeiture of office. [1983 c 186 § 3; 1961 c 299 § 122.]

Chapter 3.70

MAGISTRATES' ASSOCIATION

Sections

3.70.010	Magistrates' association established.
3.70.020	Meetings.
3.70.030	Expenses of members.
3.70.040	Powers and duties.

3.70.010 Magistrates' association established. There is established in the state an association, to be known as the Washington state magistrates' association, membership in which shall include all duly elected or appointed and qualified judges of courts of limited jurisdiction, including but not limited to district judges and municipal court judges. [1987 c 3 § 2; 1984 c 258 § 50; 1961 c 299 § 123.]

Severability—1987 c 3: See note following RCW 3.46.020.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.70.020 Meetings. The first meeting of the Washington state magistrates' association shall be held at the next regular meeting of the present organization after June 7, 1961 to be held during the month of August or September, 1961, at which meeting those judges of courts of limited jurisdiction, as provided in RCW 3.70.010, attending shall temporarily organize themselves for the purpose of adopting a Constitution and bylaws and may either adopt or amend the present Constitution and bylaws of the Washington state magistrates' association or provide for bylaws only, electing officers as provided therein and doing all things necessary and proper to formally establish a permanent Washington state magistrates' association, after which meeting the association may meet each year during the month of August or September, beginning in 1962. Meetings shall be held in the state of Washington. [1984 c 258 § 51; 1961 c 299 § 124.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.70.030 Expenses of members. For attendance at the annual meetings of the association, beginning in 1962 and thereafter, a judge of a court of limited jurisdiction shall be entitled to receive reimbursement for judge's reasonable travel expenses as provided in RCW 43.03.050 and 43.03.060 from the county or city responsible for the operating cost of the court over which he or she presides while attending meetings of the association. The per diem and transportation or mileage allowance authorized by this section shall not be paid to any judge for more than five days in any one calendar year. [1984 c 258 § 52; 1961 c 299 § 125.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.70.040 Powers and duties. The Washington state magistrates' association shall:

(1) Continuously survey and study the operation of the courts served by its membership, the volume and condition of business of such courts, the methods of procedure therein, the work accomplished, and the character of the results;

(2) Promulgate suggested rules for the administration of the courts of limited jurisdiction not inconsistent with the law or rules of the supreme court relating to such courts;

(3) Report annually to the supreme court as well as the governor and the legislature on the condition of business in the courts of limited jurisdiction, including the association's recommendations as to needed changes in the organization, operation, judicial procedure, and laws or statutes implemented or enforced in these courts. [1984 c 258 § 53; 1980 c 162 § 10; 1961 c 299 § 126.]

~~Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.~~

~~Severability—1980 c 162: See note following RCW 3.02.010.~~

Chapter 3.74 MISCELLANEOUS

Sections

- 3.74.010 District judges to be members of state retirement system.
3.74.020 Full time district judges ineligible for any other office or public employment than judicial.
3.74.030 Mandatory retirement for district judges.
3.74.900 Transfer of proceedings—1961 c 299.
3.74.930 Severability—1961 c 299.
3.74.931 Severability—1965 ex.s. c 110.
3.74.932 Severability—1967 c 241.
3.74.940 Validation—1991 c 363; 1965 ex.s. c 110.

3.74.010 District judges to be members of state retirement system. All district judges under chapters 3.30 through 3.74 RCW shall remain members of the state retirement system. [1984 c 258 § 54; 1961 c 299 § 130.]

~~Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.~~

3.74.020 Full time district judges ineligible for any other office or public employment than judicial. The full time judges of the district court shall be ineligible to any other office, or public employment than a judicial office or employment during the term for which they shall have been elected. [1984 c 258 § 55; 1961 c 299 § 131.]

~~Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.~~

3.74.030 Mandatory retirement for district judges. A district judge shall retire from judicial office at the end of the calendar year in which he or she has attained the age of seventy-five years. This provision shall not affect the term to which any such judge shall have been elected or appointed prior to August 11, 1969. [1984 c 258 § 56; 1969 ex.s. c 6 § 1.]

~~Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.~~

3.74.900 Transfer of proceedings—1961 c 299. All cases, proceedings and matters pending before justice courts, police courts, municipal courts and night courts shall be transferred to the appropriate court established by chapters 3.30 through 3.74 RCW, together with all files, records and proceedings relating to such cases. Chapters 3.30 through 3.74 RCW shall not affect any appeal from any municipal court, police court, justice court or night court, but such

appeal shall be conducted and concluded as if chapters 3.30 through 3.74 RCW had not been enacted, except that if remanded from the superior court the superseding court shall have the authority and power to forfeit bail or bond or impose sentence thereon. [1961 c 299 § 127.]

3.74.930 Severability—1961 c 299. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 299 § 132.]

3.74.931 Severability—1965 ex.s. c 110. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1965 ex.s. c 110 § 8.]

3.74.932 Severability—1967 c 241. If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1967 c 241 § 11.]

3.74.940 Validation—1991 c 363; 1965 ex.s. c 110. Any prior action by the legislative authority of any county with a population of less than two hundred ten thousand to make the provisions of chapters 3.30 through 3.74 RCW applicable to their county and the organization of any justice court as a result thereof, and all other things and proceedings done or taken by such county or by their respective officers acting under or in pursuance to such prior action and organization are hereby declared legal and valid and of full force and effect. [1991 c 363 § 6; 1965 ex.s. c 110 § 4.]

~~Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.~~

Title 4

CIVIL PROCEDURE

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- 4.12 Venue—Jurisdiction.**
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- cities and towns: Chapters 35.31, 35A.31 RCW.*
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Indians, jurisdiction in criminal and civil causes: Chapter 37.12 RCW.

Industrial insurance, procedure: Title 51 RCW.

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Real estate mortgages, foreclosure: Chapter 61.12 RCW.

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Chapter 4.04

RULE OF DECISION—FORM OF ACTIONS

Sections

4.04.010 Extent to which common law prevails.

General definitions: Chapter 1.16 RCW.

Rules of construction: Chapter 1.12 RCW.

4.04.010 Extent to which common law prevails.

The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state. [1891 c 17 § 1; Code 1881 § 1; 1877 p 3 § 1; 1862 p 83 § 1; RRS § 143. Formerly RCW 1.12.030.]

Chapter 4.08

PARTIES TO ACTIONS

Sections

4.08.030 Either husband or wife may sue for community—Necessary parties.

4.08.040 When husband and wife may join, defend.

4.08.050 Guardian ad litem for infant.

4.08.060 Guardian ad litem for insane person.

4.08.080 Action on assigned choses in action.

4.08.100 Action to recover purchase money on land—Final judgment.

4.08.110 Action by public corporations.

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4.08.140 New party entitled to service of summons.

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- 4.08.160 Action to determine conflicting claims to property.
 4.08.170 Action to determine conflicting claims to property—
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 4.08.180 Action to determine conflicting claims to property—Trial of
 issue.
 4.08.210 Physician, dentist, and pharmacist members of committees
 to evaluate credentials and qualifications of physicians,
 dentists, and pharmacists—Immunity from civil suit.

4.08.030 Either husband or wife may sue for community—Necessary parties. Either husband or wife may sue on behalf of the community: PROVIDED, That

(1) When the action is for personal injuries, the spouse having sustained personal injuries is a necessary party;

(2) When the action is for compensation for services rendered, the spouse having rendered the services is a necessary party. [1972 ex.s. c 108 § 1; Code 1881 § 6; 1877 p 4 § 6; 1875 p 4 § 2; 1869 p 4 § 6; 1854 p 131 § 5; RRS § 181.]

4.08.040 When husband and wife may join, defend. Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them.

If a husband and wife be sued together, either or both spouses may defend, and if one spouse neglects to defend, the other spouse may defend for the nonacting spouse also. And each spouse may defend in all cases in which he or she is interested, whether that spouse is sued with the other spouse or not. [1972 ex.s. c 108 § 2; Code 1881 § 7; 1877 p 4 § 7; 1875 p 4 § 3; 1854 p 219 § 492; RRS § 182.]

4.08.050 Guardian ad litem for infant. Except as provided under RCW 26.50.020, when an infant is a party he or she shall appear by guardian, or if he or she has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he or she be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon the application of the infant, if he or she be of the age of fourteen years, and applies within thirty days after the service of the summons; if he or she be under the age of fourteen, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant. [1992 c 111 § 9; 1891 c 30 § 1; Code 1881 § 12; 1854 p 132 §§ 6, 7; RRS § 187.]

Severability—1992 c 111: See RCW 26.50.903.

Findings—1992 c 111: See note following RCW 26.50.030.

4.08.060 Guardian ad litem for insane person. When an insane person is a party to an action in the superior courts he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed as follows:

(1) When the insane person is plaintiff, upon the application of a relative or friend of the insane person.

(2) When the insane person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within thirty days after the service of summons if served in the state of Washington, and if served out of the state or service is made by publication, then such application shall be made within sixty days after the first publication of summons or within sixty days after the service out of the state. If no such application be made within the time above limited, application may be made by any party to the action. [1899 c 91 § 1; RRS § 188.]

4.08.080 Action on assigned choses in action. Any assignee or assignees of any judgment, bond, specialty, book account, or other chose in action, for the payment of money, by assignment in writing, signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions in his or her name, against the obligor or obligors, debtor or debtors, named in such judgment, bond, specialty, book account, or other chose in action, notwithstanding the assignor may have an interest in the thing assigned: PROVIDED, That any debtor may plead in defense as many defenses, counterclaims and offsets, whether they be such as have heretofore been denominated legal or equitable, or both, if held by him against the original owner, against the debt assigned, save that no counterclaim or offset shall be pleaded against negotiable paper assigned before due, and where the holder thereof has purchased the same in good faith and for value, and is the owner of all interest therein. [1927 c 87 § 1; 1891 c 30 § 2; Code 1881 § 15; 1879 p 122 § 1; 1854 p 131 § 3; RRS § 191.]

4.08.100 Action to recover purchase money on land—Final judgment. In any action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not the plaintiff, may be made a party, and the court in a final judgment may order the interest of purchaser to be sold or transferred to the plaintiff upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser, in case a sale be ordered. [Code 1881 § 19; 1877 p 6 § 19; 1854 p 219 § 490; RRS § 195.]

4.08.110 Action by public corporations. An action at law may be maintained by any county, incorporated town, school district or other public corporation of like character, in its corporate name, and upon a cause of action accruing to it, in its corporate character and not otherwise, in any of the following cases:

(1) Upon a contract made with such public corporation;
 (2) Upon a liability prescribed by law in favor of such public corporation;

(3) To recover a penalty or forfeiture given to such public corporation;

(4) To recover damages for an injury to the corporate rights or property of such public corporation. [1953 c 118 § 1. Prior: Code 1881 § 661; 1869 p 154 § 601; RRS § 950.]

4.08.120 Action against public corporations. An action may be maintained against a county or other of the public corporations mentioned or described in RCW 4.08.110, either upon a contract made by such county, or other public corporation in its corporate character and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation. [1953 c 118 § 2. Prior: Code 1881 § 662; 1869 p 154 § 602; RRS § 951.]

4.08.140 New party entitled to service of summons. When a new party is introduced into an action as a representative or successor of a former party, such new party is entitled to the same summons to be served in the same manner as required for defendants in the commencement of an action. [1957 c 7 § 1. Prior: Code 1881 §§ 21, 742; 1877 pp 6 and 151 §§ 21, 747; 1873 pp 7 and 176 §§ 21, 682; 1869 pp 6 and 172 §§ 21, 684; 1863 p 194 § 524; 1860 p 99 § 477; 1854 p 219 § 485; RRS § 197.]

Rules of court: Cf. CR 3; CR 5.

4.08.150 Substitution and interpleader. A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may make the order. [Code 1881 § 22; 1877 p 6 § 22; 1869 p 7 § 22; 1854 p 132 § 12; RRS § 198.]

Rules of court: Interpleader—CR 22; Substitution—CR 25.

4.08.160 Action to determine conflicting claims to property. Anyone having in his possession, or under his control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interested in, or to have a lien on, such property, money or indebtedness, or any part thereof, may commence an action in the superior court against all or any of such persons, and have their rights, claims, interest or liens adjudged, determined and adjusted in such action. [1890 p 93 § 1; RRS § 199.]

4.08.170 Action to determine conflicting claims to property—Disclaimer and deposit in court. In any action commenced under RCW 4.08.160, the plaintiff may disclaim any interest in the money, property or indebtedness, and deposit with the clerk of the court the full amount of such money or indebtedness, or other property, and he shall not be liable for any costs accruing in said action. And the clerks of the various courts shall receive and file such complaint, and all other officers shall execute the necessary processes to carry out the purposes of this section, and RCW 4.08.160 and 4.08.180, free from all charge to said plaintiff, and the court, in its discretion, shall determine the liability for costs of the action. [1890 p 93 § 2; RRS § 200.]

4.08.180 Action to determine conflicting claims to property—Trial of issue. Either of the defendants may set up or show any claim or lien he may have to such property, money or indebtedness, or any part thereof, and the superior right, title or lien, whether legal or equitable, shall prevail.

The court or judge thereof may make all necessary orders, during the pendency of said action, for the preservation and protection of the rights, interests or liens of the several parties. [1890 p 94 § 3; RRS § 201.]

4.08.210 Physician, dentist, and pharmacist members of committees to evaluate credentials and qualifications of physicians, dentists, and pharmacists—Immunity from civil suit. See RCW 4.24.240.

Chapter 4.12

VENUE—JURISDICTION

Sections

- 4.12.010 Actions to be commenced where subject is situated.
- 4.12.020 Actions to be tried in county where cause arose.
- 4.12.024 Actions involving probate or trust matters.
- 4.12.025 Action to be brought where defendant resides—Residence of corporations—Optional venue of actions against corporations.
- 4.12.030 Grounds authorizing change of venue.
- 4.12.040 Prejudice of judge, transfer to another department, visiting judge—Change of venue generally, criminal cases.
- 4.12.050 Affidavit of prejudice.
- 4.12.060 To what county venue may be changed—Limitation on number of changes.
- 4.12.070 Change to newly created county.
- 4.12.080 Change by stipulation.
- 4.12.090 Transmission of record on change of venue—Costs, attorney's fee.
- 4.12.100 Transcript of record entries.
- 4.12.110 Effect of neglect of moving party.
- 4.12.120 Change deemed complete, when.

Rules of court: Venue—CR 82.

Actions against nonresident motorist: RCW 46.64.040.

4.12.010 Actions to be commenced where subject is situated. Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated:

(1) For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property.

(2) All questions involving the rights to the possession or title to any specific article of personal property, in which last mentioned class of cases, damages may also be awarded for the detention and for injury to such personal property. [Code 1881 § 47; 1877 p 11 § 48; 1869 p 12 § 48; 1860 p 7 § 15; 1854 p 133 § 13; RRS § 204.]

4.12.020 Actions to be tried in county where cause arose. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose:

(1) For the recovery of a penalty or forfeiture imposed by statute;

(2) Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid, shall do anything touching the duties of such officer;

(3) For the recovery of damages arising from a motor vehicle accident; but in a cause arising because of motor vehicle accident plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action. [1941 c 81 § 1; Code 1881 § 48; 1877 p 11 § 49; 1869 p 12 § 49; 1860 p 7 § 16; 1854 p 133 § 14; Rem. Supp. 1941 § 205.]

4.12.024 Actions involving probate or trust matters.
See RCW 11.96.050.

4.12.025 Action to be brought where defendant resides—Residence of corporations—Optional venue of actions against corporations. (1) An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For the purpose of this section, the residence of a corporation defendant shall be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; or (d) where any person resides upon whom process may be served upon the corporation.

(2) The venue of any action brought against a corporation, at the option of the plaintiff, shall be: (a) In the county where the tort was committed; (b) in the county where the work was performed for said corporation; (c) in the county where the agreement entered into with the corporation was made; or (d) in the county where the corporation has its residence. [1985 c 68 § 2; 1983 c 31 § 1; 1965 c 53 § 168; 1927 c 173 § 1; RRS § 205-1. Prior: 1909 c 42 § 1; Code 1881 § 49; 1877 p 11 § 50; 1869 p 13 § 50; 1860 p 101 § 488; 1854 p 220 § 494.]

4.12.030 Grounds authorizing change of venue. The court may, on motion, in the following cases, change the place of trial when it appears by affidavit, or other satisfactory proof:

(1) That the county designated in the complaint is not the proper county; or,

(2) That there is reason to believe that an impartial trial cannot be had therein; or,

(3) That the convenience of witnesses or the ends of justice would be forwarded by the change; or,

(4) That from any cause the judge is disqualified; which disqualification exists in either of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity, within the third degree; when he has been of counsel for either party in the action or proceeding. [Code 1881 § 51; 1877 p 12 § 52; 1875 p 6 § 8; 1869 p 13 § 52; 1854 p 134 § 16; RRS § 209.]

4.12.040 Prejudice of judge, transfer to another department, visiting judge—Change of venue generally, criminal cases. (1) No judge of a superior court of the state of Washington shall sit to hear or try any action or proceeding when it shall be established as hereinafter provided that said judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge in judicial districts where there is more than one judge shall forthwith transfer the action to another department of the same court, or call in a judge from some other court. In all judicial districts where there is only one judge, a certified copy of the motion and affidavit filed in the cause shall be transmitted by the clerk of the superior court to the clerk of the superior court designated by the chief justice of the supreme court. Upon receipt the clerk of said superior court shall transmit the forwarded affidavit to the presiding judge who shall direct a visiting judge to hear and try such action as soon as convenient and practical.

(2) The presiding judge in judicial districts where there is more than one judge, or the presiding judge of judicial districts where there is only one judge, may send a case for trial to another court if the convenience of witnesses or the ends of justice will not be interfered with by such a course and the action is of such a character that a change of venue may be ordered: PROVIDED, That in criminal prosecutions the case shall not be sent for trial to any court outside the county unless the accused shall waive his right to a trial by a jury of the county in which the offense is alleged to have been committed. [1989 c 15 § 1; 1961 c 303 § 1; 1927 c 145 § 1; 1911 c 121 § 1; RRS § 209-1.]

Criminal proceedings, venue and jurisdiction: Chapter 10.25 RCW.

4.12.050 Affidavit of prejudice. Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion, supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such judge: PROVIDED, That such motion and affidavit is filed and called to the attention of the judge before he shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party making the affidavit has been given notice, and before the judge presiding has made any order or ruling involving discretion, but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso; and in any event, in counties where there is but one resident judge, such motion and affidavit shall be filed not later than the day on which the case is called to be set for trial: AND PROVIDED FURTHER, That notwithstanding the filing of such motion and affidavit, if the parties shall, by stipulation in writing agree, such judge may hear argument and rule upon any preliminary motions, demurrers, or other matter thereafter presented: AND PROVIDED FURTHER, That no party or attorney shall be permitted to make more than one such application in any action or proceeding under this section and RCW

4.12.040. [1941 c 148 § 1; 1927 c 145 § 2; 1911 c 121 § 2; Rem. Supp. 1941 § 209-2.]

Rules of court: Demurrers abolished—CR 7(c).

4.12.060 To what county venue may be changed—Limitation on number of changes. If the motion for a change of the place of trial be allowed, the change shall be made to the county where the action ought to have been commenced, if it be for the cause mentioned in RCW 4.12.030(1), and in other cases to the most convenient county where the cause alleged does not exist. Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed. [Code 1881 § 52; 1877 p 12 § 53; 1869 p 14 § 53; RRS § 210.]

4.12.070 Change to newly created county. Any party in a civil action pending in the superior court in a county out of whose limits a new county, in whole or in part, has been created, may file with the clerk of such superior court an affidavit setting forth that he is a resident of such newly created county, and that the venue of such action is transitory, or that the venue of such action is local, and that it ought properly to be tried in such newly created county; and thereupon the clerk shall make out a transcript of the proceedings already had in such action in such superior court, and certify it under the seal of the court, and transmit such transcript, together with the papers on file in his office connected with such action, to the clerk of the superior court of such newly created county, wherein it shall be proceeded with as in other cases. [1891 c 33 § 2; Code 1881 § 53; 1877 p 12 § 54; 1869 p 14 § 54; 1854 p 377 § 2; RRS § 211.]

4.12.080 Change by stipulation. Notwithstanding the provisions of RCW 4.12.030 all the parties to the action by stipulation in writing or by consent in open court entered in the records may agree that the place of trial be changed to any county of the state, and thereupon the court must order the change agreed upon. [Code 1881 § 55; 1877 p 13 § 56; RRS § 216.]

4.12.090 Transmission of record on change of venue—Costs, attorney's fee. (1) When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleadings and papers therein to the court to which it is transferred. The costs and fees thereof and of filing the papers anew must be paid by the party at whose instance the order was made, except in the cases mentioned in RCW 4.12.030(1), in which case the plaintiff shall pay costs of transfer and, in addition thereto, if the court finds that the plaintiff could have determined the county of proper venue with reasonable diligence, it shall order the plaintiff to pay the reasonable attorney's fee of the defendant for the changing of venue to the proper county. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

(2) In acting on any motion for dismissal without prejudice in a case where a motion for change of venue under subsection (1) of this section has been made, the court

shall, if it determines the motion for change of venue proper, determine the amount of attorney's fee properly to be awarded to defendant and, if the action be dismissed, the attorney's fee shall be a setoff against any claim subsequently brought on the same cause of action. [1969 ex.s. c 144 § 1; Code 1881 § 54; 1877 p 12 § 55; 1875 p 7 § 10; 1869 p 14 §§ 55, 56; RRS § 215.]

4.12.100 Transcript of record entries. The clerk of the court must also transmit with the original papers where an order is made changing the place of trial, a certified transcript of all record entries up to and including the order for such change. [Code 1881 § 58; 1877 p 13 § 59; RRS § 219.]

4.12.110 Effect of neglect of moving party. If such papers be not transmitted to the clerk of the proper court within the time prescribed in the order allowing the change, and the delay be caused by the act or omission of the party procuring the change, the adverse party, on motion to the court or judge thereof, may have the order vacated, and thereafter no other change of the place of trial shall be allowed to such party. [Code 1881 § 56; 1877 p 13 § 57; 1869 p 15 § 57; 1854 p 135 § 21; RRS § 217.]

4.12.120 Change deemed complete, when. Upon the filing of the papers with the clerk of the court to which the cause is transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced in that court. [Code 1881 § 57; 1877 p 13 § 58; 1869 p 15 § 58; 1854 p 135 § 22; RRS § 218.]

Chapter 4.14

REMOVAL OF CERTAIN ACTIONS TO SUPERIOR COURT

Sections

- 4.14.010 Removal of certain actions from justice court to superior court authorized—Grounds—Joint claims or actions.
- 4.14.020 Petition for removal—Contents—Filing—Notice.
- 4.14.030 Orders and process upon removal—Remand of cases im-providently removed.
- 4.14.040 Attached property—Custody.

4.14.010 Removal of certain actions from justice court to superior court authorized—Grounds—Joint claims or actions. Whenever the removal of such action to superior court is required in order to acquire jurisdiction over a third party defendant, who is or may be liable to the defendant for all or part of the judgment and resides outside the county wherein the action was commenced, any civil action which could have been brought in superior court may, if commenced in justice court, be removed by the defendant or defendants to the superior court for the county where such action is pending if the court determines that there are reasonable grounds to believe that a third party may be liable to the plaintiff and issues an order so stating.

Whenever a separate or independent claim or cause of action which would be removable if sued upon alone is joined with one or more otherwise nonremovable claims or

causes of action, the entire case may be removed and the superior court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction. [1967 ex.s. c 46 § 4.]

4.14.020 Petition for removal—Contents—Filing—Notice. (1) A defendant or defendants desiring to remove any civil action from a justice court as authorized by RCW 4.14.010 shall file in the superior court in the county where such action is pending, a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(2) The petition for removal of a civil action or proceeding shall be filed within twenty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within twenty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper, including the defendant's answer, from which it may first be ascertained that the case is or has become removable.

(3) Promptly after the filing of such petition the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the justice court, which shall effect the removal and the justice court shall proceed no further unless and until the case is remanded. [1967 ex.s. c 46 § 5.]

4.14.030 Orders and process upon removal—Remand of cases improvidently removed. In any case removed from justice court under the provisions of this chapter, the superior court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the justice court or otherwise.

If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the superior court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by the clerk of the superior court to the justice court. The justice court may thereupon proceed with such case. [1967 ex.s. c 46 § 6.]

4.14.040 Attached property—Custody. Whenever any action is removed from a justice court to a superior court under the provisions of this chapter, any attachment or sequestration of the property of the defendant in such action in the justice court shall remain in the custody of the sheriff to answer the final judgment or decree in the same manner as would have been held to answer had the cause been brought in the superior court originally. [1967 ex.s. c 46 § 7.]

Chapter 4.16 LIMITATION OF ACTIONS

Sections

4.16.005	Commencement of actions.
4.16.020	Actions to be commenced within ten years.
4.16.030	Actions to foreclose special assessments.
4.16.040	Actions limited to six years.
4.16.050	Action on irrigation or drainage district warrant.
4.16.060	Action on irrigation district bonds.
4.16.070	Actions limited to five years.
4.16.080	Actions limited to three years.
4.16.085	Actions based on product defects, etc.
4.16.090	Action to cancel tax deed.
4.16.100	Actions limited to two years.
4.16.110	Actions limited to one year.
4.16.112	Actions for contribution between joint tortfeasors.
4.16.115	Special provisions for action on penalty.
4.16.130	Action for relief not otherwise provided for.
4.16.150	Action on mutual open accounts.
4.16.160	Application of limitations to actions by state, counties, municipalities.
4.16.170	Tolling of statute—Actions, when deemed commenced or not commenced.
4.16.180	Statute tolled by absence from state, concealment, etc.
4.16.190	Statute tolled by personal disability.
4.16.200	Statute tolled by death.
4.16.210	Statute tolled—By war as to enemy alien.
4.16.220	Statute tolled—As to person in military service of United States.
4.16.230	Statute tolled by judicial proceedings.
4.16.240	Effect of reversal of judgment on appeal.
4.16.250	Disability must exist when right of action accrued.
4.16.260	Coexisting disabilities.
4.16.270	Effect of partial payment.
4.16.280	New promise must be in writing.
4.16.290	Foreign statutes of limitation, how applied.
4.16.300	Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property.
4.16.310	Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property—Accrual and limitations of actions or claims.
4.16.320	Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property—Construction.
4.16.340	Actions based on childhood sexual abuse.
4.16.350	Action for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc.
4.16.360	Application of chapter to paternity action.
4.16.370	Actions against personal representative or trustee for breach of fiduciary duties—Statute of limitations.

Claims against

counties: RCW 36.32.330; chapter 36.45 RCW.

estates: RCW 11.40.060.

the state: RCW 4.92.050.

Criminal procedure, limitation of actions: RCW 9A.04.080.

Garnishment writ, dismissal after one year: RCW 6.27.310.

Lawyer discipline: Rules of court—RLD 12.10.

Product liability actions: RCW 7.72.060(3).

Tax liability, action by another state, limitation: RCW 4.24.140.

Uniform conflict of laws—Limitations act: Chapter 4.18 RCW.

Usury, business organizations engaged in lending or real estate development cannot bring action: RCW 19.52.080.

4.16.005 Commencement of actions. Except as otherwise provided in this chapter, and except when in special cases a different limitation is prescribed by a statute not contained in this chapter, actions can only be com-

menced within the periods provided in this chapter after the cause of action has accrued. [1989 c 14 § 1.]

4.16.020 Actions to be commenced within ten years.

The period prescribed for the commencement of actions shall be as follows:

Within ten years:

(1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

(2) For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States.

(3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support that has accrued under an order entered after *the effective date of this act by any of the above-named courts or that has accrued under an administrative order as defined in RCW 74.20A.020(6), which is issued after *the effective date of this act. [1989 c 360 § 1; 1984 c 76 § 1; 1980 c 105 § 1; Code 1881 § 26; 1877 p 7 § 26; 1854 p 363 § 2; RRS § 156.]

*Reviser's note: "This act" [1989 c 360] has three effective dates. Sections 9, 10, and 16 are effective May 12, 1989, section 39 is effective July 1, 1990, and the remainder of this act is effective July 23, 1989.

Application—1980 c 105: "This act shall apply to all judgments which have not expired before June 12, 1980." [1980 c 105 § 7.]

Adverse possession

limitation tolled when personal disability: RCW 7.28.090.

recovery of realty, limitation: RCW 7.28.050.

4.16.030 Actions to foreclose special assessments.

An action to collect any special assessment for local improvements of any kind against any person, corporation or property whatsoever, or to enforce any lien for any special assessment for local improvements of any kind, whether said action be brought by a municipal corporation or by the holder of any delinquency certificate, or by any other person having the right to bring such an action, shall be commenced within ten years after such assessment shall have become delinquent, or due, or within ten years after the last installment of any such special assessment shall have become delinquent or due when said special assessment is payable in installments. [1907 c 182 § 1; Rem. Supp. 1945 § 10322C-1.]

Actions brought by code city: RCW 35A.21.200.

Actions to foreclose special assessments in cities or towns: RCW 35.50.050.

4.16.040 Actions limited to six years.

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement.

(2) An action upon an account receivable incurred in the ordinary course of business.

(3) An action for the rents and profits or for the use and occupation of real estate. [1989 c 38 § 1; 1980 c 105 § 2;

1927 c 137 § 1; Code 1881 § 27; 1854 p 363 § 3; RRS § 157.]

Application—1980 c 105: See note following RCW 4.16.020.

4.16.050 Action on irrigation or drainage district warrant. Action to enforce any right arising out of the issuance or ownership of any warrant of an irrigation or drainage district organized under the laws of this state, must be brought within six years from and after the date of the issuance of such warrant. [1931 c 75 § 1; RRS § 157-1.]

Reviser's note: Transitional proviso omitted. Such proviso reads: "PROVIDED, That this section shall not apply to actions not otherwise barred on warrants heretofore issued, if the same shall be commenced within one year after the taking effect of this act".

4.16.060 Action on irrigation district bonds. No action against any irrigation district organized under the laws of this state, or its officers, to enforce any right or claim arising out of the issuance or ownership of any negotiable bond, payable on a day certain, of the irrigation district, where such district is under contract with the United States, or any department or agency thereof, to sell its lands and its right, title and interest in its distribution canals and pipelines and its water rights, thereby necessitating the discontinuance of the district operation upon fulfillment of the contract, shall be brought after a period of six years from and after the maturity date of such bond. [1939 c 57 § 1; RRS § 157-2.]

Reviser's note: Transitional proviso omitted. Such proviso reads: "PROVIDED, That this section shall not apply to actions not otherwise barred on such irrigation district bonds heretofore issued, if the same shall be commenced within six (6) months after the taking effect of this act".

4.16.070 Actions limited to five years. No action for the recovery of any real estate sold by an executor or administrator under the laws of this state shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale, and no action for any estate sold by a guardian shall be maintained by the ward, or by any person claiming under him, unless commenced within five years next after the termination of the guardianship, except that minors, and other persons under legal disability to sue at the time when the right of action first accrued, may commence such action at any time within three years after the removal of the disability. [1890 p 81 § 1; RRS § 158. Prior: 1863 p 245 §§ 251, 252; 1860 p 205 §§ 217, 218; 1854 p 290 §§ 137, 138.]

Age of majority: Chapter 26.28 RCW.

Probate

actions by and against executors, etc.: Chapter 11.48 RCW.

guardianship: Chapters 11.88, 11.92 RCW.

sales and mortgages of real estate: Chapter 11.56 RCW; RCW 11.60.010.

Sales not voided by irregularities: RCW 11.56.115.

4.16.080 Actions limited to three years. The following actions shall be commenced within three years:

(1) An action for waste or trespass upon real property;

(2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

(3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

(4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subdivision shall not apply to action for an escape;

(6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise. [1989 c 38 § 2; 1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.]

Reviser's note: Transitional proviso omitted from subsection (6). Such proviso reads: "PROVIDED, FURTHER, That no action heretofore barred under the provisions of this paragraph shall be commenced after ninety days from the time this act becomes effective:".

4.16.085 Actions based on product defects, etc. See RCW 7.72.060(3).

4.16.090 Action to cancel tax deed. Actions to set aside or cancel any deed heretofore or hereafter issued by any county treasurer after and upon the sale of lands for general, state, county or municipal taxes, or upon the sale of lands acquired by any county on foreclosure of general, state, county or municipal taxes, or for the recovery of any lands so sold, must be brought within three years from and after the date of the issuance of such treasurer's deed. [1949 c 74 § 1; 1907 c 173 § 1; Rem. Supp. 1949 § 162.]

Reviser's note: Transitional proviso omitted. Such proviso reads: "PROVIDED, This act shall not apply to actions not otherwise barred on deeds heretofore issued if the same be commenced within one year after the passage of this act".

4.16.100 Actions limited to two years. Within two years:

(1) An action for libel, slander, assault, assault and battery, or false imprisonment.

(2) An action upon a statute for a forfeiture or penalty to the state. [Code 1881 § 29; 1877 p 8 § 29; 1869 p 9 § 29; 1854 p 363 § 5; RRS § 160.]

Limitation of action for recovery of transportation charges: RCW 81.28.270.

4.16.110 Actions limited to one year. Within one year an action shall be brought against a sheriff, or other officer for the escape of a prisoner arrested or imprisoned on civil process. [1985 c 11 § 2. Prior: 1984 c 149 § 1; Code 1881 § 30; 1877 p 8 § 30; 1869 p 9 § 30; 1854 p 364 § 5; RRS § 161.]

Purpose—1985 c 11: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 11 § 1.]

Severability—1985 c 11: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 11 § 4.]

Reviser's note: 1985 c 11 reenacted RCW 4.16.110 and 4.16.370 without amendment.

Short title—Application—1985 c 30: See RCW 11.02.900 and 11.02.901.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Sheriff, civil liability: RCW 36.28.150.

4.16.112 Actions for contribution between joint tortfeasors. See RCW 4.22.050.

4.16.115 Special provisions for action on penalty. An action upon a statute for a penalty given in whole or in part to the person who may prosecute for the same, shall be commenced within three years [one year] after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years after the commission of the offense in behalf of the state by the prosecuting attorney of the county, where said offense was committed. [1877 p 9 § 31; 1854 p 364 § 6; RRS § 163. Formerly RCW 4.16.140. Cf. Code 1881 § 31.]

Reviser's note: "one year" appeared in Laws of 1854 and 1877; "three years" appears in Code of 1881.

4.16.130 Action for relief not otherwise provided for. An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued. [Code 1881 § 33; 1877 p 9 § 32; 1854 p 364 § 7; RRS § 165.]

Limitation of action to recover taxes paid: RCW 84.68.060.

4.16.150 Action on mutual open accounts. In an action brought to recover a balance due upon a mutual open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side, but whenever a period of more than one year shall have elapsed between any of a series of items or demands, they are not to be deemed such an account. [Code 1881 § 34; 1877 p 9 § 33; 1869 p 10 § 33; 1854 p 364 § 8; RRS § 166.]

4.16.160 Application of limitations to actions by state, counties, municipalities. The limitations prescribed

in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: PROVIDED, That, except as provided in RCW 4.16.310, there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: AND FURTHER PROVIDED, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such a statute. [1986 c 305 § 701; 1955 c 43 § 2. Prior: 1903 c 24 § 1; Code 1881 § 35; 1873 p 10 §§ 34, 35; 1869 p 10 §§ 34, 35; 1854 p 364 § 9; RRS § 167, part.]

Preamble—1986 c 305: "Tort law in this state has generally been developed by the courts on a case-by-case basis. While this process has resulted in some significant changes in the law, including amelioration of the harshness of many common law doctrines, the legislature has periodically intervened in order to bring about needed reforms. The purpose of this chapter is to enact further reforms in order to create a more equitable distribution of the cost and risk of injury and increase the availability and affordability of insurance.

The legislature finds that counties, cities, and other governmental entities are faced with increased exposure to lawsuits and awards and dramatic increases in the cost of insurance coverage. These escalating costs ultimately affect the public through higher taxes, loss of essential services, and loss of the protection provided by adequate insurance. In order to improve the availability and affordability of quality governmental services, comprehensive reform is necessary.

The legislature also finds comparable cost increases in professional liability insurance. Escalating malpractice insurance premiums discourage physicians and other health care providers from initiating or continuing their practice or offering needed services to the public and contribute to the rising costs of consumer health care. Other professionals, such as architects and engineers, face similar difficult choices, financial instability, and unlimited risk in providing services to the public.

The legislature also finds that general liability insurance is becoming unavailable or unaffordable to many businesses, individuals, and nonprofit organizations in amounts sufficient to cover potential losses. High premiums have discouraged socially and economically desirable activities and encourage many to go without adequate insurance coverage.

Therefore, it is the intent of the legislature to reduce costs associated with the tort system, while assuring that adequate and appropriate compensation for persons injured through the fault of others is available." [1986 c 305 § 100.]

Report to legislature—1986 c 305: "The insurance commissioner shall submit a report to the legislature by January 1, 1991, on the effects of this act on insurance rates and the availability of insurance coverage and the impact on the civil justice system." [1986 c 305 § 909.]

Application—1986 c 305: "Except as provided in sections 202 and 601 of this act and except for section 904 of this act, this act applies to all actions filed on or after August 1, 1986." [1986 c 305 § 910.]

Severability—1986 c 305: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 305 § 911.]

4.16.170 Tolling of statute—Actions, when deemed commenced or not commenced. For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety

days from the date of filing the complaint. If the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service. If following service, the complaint is not so filed, or following filing, service is not so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations. [1971 ex.s. c 131 § 1; 1955 c 43 § 3. Prior: 1903 c 24 § 1; Code 1881 § 35; 1873 p 10 § 35; 1869 p 10 § 35; RRS § 167, part.]

4.16.180 Statute tolled by absence from state, concealment, etc. If the cause of action shall accrue against any person who is a nonresident of this state, or who is a resident of this state and shall be out of the state, or concealed therein, such action may be commenced within the terms herein respectively limited after the coming, or return of such person into the state, or after the end of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this state, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limit for the commencement of such action. [1927 c 132 § 1; Code 1881 § 36; 1854 p 364 § 10; RRS § 168.]

4.16.190 Statute tolled by personal disability. If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action. [1977 ex.s. c 80 § 2; 1971 ex.s. c 292 § 74; Code 1881 § 37; 1877 p 9 § 38; 1869 p 10 § 38; 1861 p 61 § 1; 1854 p 364 § 11; RRS § 169.]

Purpose—Intent—1977 ex.s. c 80: "It is the purpose of the legislature in enacting this 1977 amendatory act to provide for a comprehensive revision of out-dated and offensive language, procedures and assumptions that have previously been used to identify and categorize mentally, physically, and sensory handicapped citizens. It is legislative intent that language references such as idiots, imbeciles, feeble-minded or defective persons be deleted and replaced with more appropriate references to reflect current statute law more recently enacted by the federal government and this legislature. It is legislative belief that use of the undefined term "insanity" be avoided in preference to the use of a process for defining incompetency or disability as fully set forth in chapter 11.88 RCW; that language that has allowed or implied a presumption of incompetency or disability on the basis of an apparent condition or appearance be deleted in favor of a reference to necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability." [1977 ex.s. c 80 § 1.]

Severability—1977 ex.s. c 80: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 80 § 76.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010. *Adverse possession, personal disability, limitation tolled: RCW 7.28.090.*

4.16.200 Statute tolled by death. Limitations on actions against a person who dies before the expiration of the time otherwise limited for commencement thereof are as set forth in chapter 11.40 RCW. Subject to the limitations on claims against a deceased person under chapter 11.40 RCW, if a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his representatives after the expiration of the time and within one year from his death. [1989 c 333 § 8; Code 1881 § 38; 1877 p 9 § 38; 1854 p 364 § 12; RRS § 170.]

Application—Effective date—1989 c 333: See note following RCW 11.40.010.

Decedents

liability for debts: RCW 11.04.270.

suit on rejected claims: RCW 11.40.060.

4.16.210 Statute tolled—By war as to enemy alien. When a person shall be an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action. [1941 c 174 § 1, part; Code 1881 § 39; 1854 p 365 § 13; Rem. Supp. 1941 § 171, part.]

4.16.220 Statute tolled—As to person in military service of United States. When the enforcement of civil liabilities against a person in the military service of the United States has been suspended by operation of law, the period of such suspension shall not be a part of the period limited for the commencement of the action. [1941 c 174 § 1, part; Code 1881 § 39; 1854 p 365 § 13; Rem. Supp. 1941 § 171, part.]

Application of federal law: RCW 73.16.070.

4.16.230 Statute tolled by judicial proceedings. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action. [Code 1881 § 40; 1877 p 10 § 41; 1854 p 365 § 14; RRS § 172.]

4.16.240 Effect of reversal of judgment on appeal. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he dies and the cause of action survives, his heirs or representatives may commence a new action within one year after reversal. [Code 1881 § 41; 1877 p 10 § 42; 1854 p 365 § 15; RRS § 173.]

4.16.250 Disability must exist when right of action accrued. No person shall avail himself of a disability unless it existed when his right of action accrued. [Code 1881 § 42; 1877 p 10 § 43; 1854 p 365 § 16; RRS § 174.]

4.16.260 Coexisting disabilities. When two or more disabilities shall coexist at the time the right of action accrues, the limitation shall not attach until they all be removed. [Code 1881 § 43; 1877 p 10 § 44; 1854 p 365 § 17; RRS § 175.]

4.16.270 Effect of partial payment. When any payment of principal or interest has been or shall be made upon any existing contract, whether it be a bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made. [Code 1881 § 45; 1877 p 10 § 46; 1854 p 365 § 19; RRS § 177.]

4.16.280 New promise must be in writing. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter, unless it is contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest. [Code 1881 § 44; 1877 p 10 § 45; 1854 p 365 § 18; RRS § 176.]

4.16.290 Foreign statutes of limitation, how applied. When the cause of action has arisen in another state, territory or country between nonresidents of this state, and by the laws of the state, territory or country where the action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this state. [Code 1881 § 46; 1877 p 10 § 47; 1854 p 365 § 20; RRS § 178.]

4.16.300 Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property. RCW 4.16.300 through 4.16.320 shall apply to all claims or causes of action of any kind against any person, arising from such person having constructed, altered or repaired any improvement upon real property, or having performed or furnished any design, planning, surveying, architectural or construction or engineering services, or supervision or observation of construction, or administration of construction contracts for any construction, alteration or repair of any improvement upon real property. This section is intended to benefit only those persons referenced herein and shall not apply to claims or causes of action against manufacturers. [1986 c 305 § 703; 1967 c 75 § 1.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.16.310 Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property—Accrual and limitations of actions or claims. All claims or causes of action as set forth in RCW 4.16.300 shall accrue, and the applicable statute of limitation shall begin to run only during the period within six years after substantial completion of construction, or during the period within six years after the termination of the services enumerated in RCW 4.16.300, whichever is later. The phrase "substantial completion of construction" shall mean the state of completion reached when an improvement upon real property may be used or occupied for its intended use. Any cause of action which has not accrued within six years after such substantial completion of construction, or within six years

after such termination of services, whichever is later, shall be barred: PROVIDED, That this limitation shall not be asserted as a defense by any owner, tenant or other person in possession and control of the improvement at the time such cause of action accrues. The limitations prescribed in this section apply to all claims or causes of action as set forth in RCW 4.16.300 brought in the name or for the benefit of the state which are made or commenced after June 11, 1986. [1986 c 305 § 702; 1967 c 75 § 2.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.16.320 Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property—Construction. Nothing in RCW 4.16.300 through 4.16.320 shall be construed as extending the period now permitted by law for bringing any kind of action. [1967 c 75 § 3.]

4.16.340 Actions based on childhood sexual abuse.

(1) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within the later of the following periods:

(a) Within three years of the act alleged to have caused the injury or condition;

(b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or

(c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:

PROVIDED, That the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen years.

(2) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

(3) The knowledge of a custodial parent or guardian shall not be imputed to a person under the age of eighteen years.

(4) For purposes of this section, "child" means a person under the age of eighteen years.

(5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed. [1991 c 212 § 2; 1989 c 317 § 2; 1988 c 144 § 1.]

Finding—Intent—1991 c 212: "The legislature finds that:

(1) Childhood sexual abuse is a pervasive problem that affects the safety and well-being of many of our citizens.

(2) Childhood sexual abuse is a traumatic experience for the victim causing long-lasting damage.

(3) The victim of childhood sexual abuse may repress the memory of the abuse or be unable to connect the abuse to any injury until after the statute of limitations has run.

(4) The victim of childhood sexual abuse may be unable to understand or make the connection between childhood sexual abuse and emotional harm or damage until many years after the abuse occurs.

(5) Even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later.

(6) The legislature enacted RCW 4.16.340 to clarify the application of the discovery rule to childhood sexual abuse cases. At that time the legislature intended to reverse the Washington supreme court decision in *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986).

It is still the legislature's intention that *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986) be reversed, as well as the line of cases that state that discovery of any injury whatsoever caused by an act of childhood sexual abuse commences the statute of limitations. The legislature intends that the earlier discovery of less serious injuries should not affect the statute of limitations for injuries that are discovered later." [1991 c 212 § 1.]

Intent—1989 c 317: "(1) The legislature finds that possible confusion may exist in interpreting the statute of limitations provisions for child sexual abuse civil actions in RCW 4.16.190 and 4.16.340 regarding the accrual of a cause of action for a person under age eighteen. The legislature finds that amending RCW 4.16.340 will clarify that the time limit for commencement of an action under RCW 4.16.340 is tolled until the child reaches age eighteen. The 1989 amendment to RCW 4.16.340 is intended as a clarification of existing law and is not intended to be a change in the law.

(2) The legislature further finds that the enactment of chapter 145, Laws of 1988, which deleted specific reference to RCW 9A.44.070, 9A.44.080, and 9A.44.100(1)(b) from RCW 9A.04.080 and also deleted those specific referenced provisions from the laws of Washington, did not intend to change the statute of limitations governing those offenses from seven to three years." [1989 c 317 § 1.]

Application—1988 c 144: "Sections 1 and 2 of this act apply to all causes of action commenced on or after June 9, 1988, regardless of when the cause of action may have arisen. To this extent, sections 1 and 2 of this act apply retrospectively." [1988 c 144 § 3.]

4.16.350 Action for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc. Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, *podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence

of a foreign body not intended to have a therapeutic or diagnostic purpose or effect.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5). [1988 c 144 § 2; 1987 c 212 § 1401; 1986 c 305 § 502; 1975-'76 2nd ex.s. c 56 § 1; 1971 c 80 § 1.]

***Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Application—1988 c 144: See note following RCW 4.16.340.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Severability—1975-'76 2nd ex.s. c 56: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 56 § 15.] For codification of 1975-'76 2nd ex.s. c 56, see Codification Tables, Volume 0.

Actions for injuries resulting from health care: Chapter 7.70 RCW.

Complaint in personal injury actions not to include statement of damages: RCW 4.28.360.

Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: Chapter 5.64 RCW.

Immunity of members of professional review committees, societies, examining, licensing or disciplinary boards from civil suit: RCW 4.24.240.

Proof and evidence required in actions against hospitals, personnel and members of healing arts: RCW 4.24.290.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

4.16.360 Application of chapter to paternity action.

This chapter does not limit the time in which an action for determination of paternity may be brought under chapter 26.26 RCW. [1983 1st ex.s. c 41 § 13.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

4.16.370 Actions against personal representative or trustee for breach of fiduciary duties—Statute of limitations. The statute of limitations for actions against a personal representative or trustee for breach of fiduciary duties is as set forth in RCW 11.96.060. [1985 c 11 § 3. Prior: 1984 c 149 § 2.]

Short title—Application—1985 c 30: See RCW 11.02.900 and 11.02.901.

Purpose—Severability—1985 c 11: See notes following RCW 4.16.110.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 4.18

UNIFORM CONFLICT OF LAWS—LIMITATIONS ACT

Sections

4.18.010	Definitions.
4.18.020	Conflict of laws—Limitation periods.
4.18.030	Rules of law applicable to computation of limitation period.
4.18.040	Application of limitation period of other state—Unfairness.
4.18.900	Short title.
4.18.901	Application of chapter—Existing and future claims.
4.18.902	Uniformity of application and construction of chapter.
4.18.903	Severability—1983 c 152.
4.18.904	Captions not law—1983 c 152.

Limitation of actions generally: Chapter 4.16 RCW.

4.18.010 Definitions.

As used in this chapter:
(1) "Claim" means a right of action that may be asserted in a civil action or proceeding and includes a right of action created by statute.

(2) "State" means a state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them. [1983 c 152 § 1.]

4.18.020 Conflict of laws—Limitation periods.

(1) Except as provided by RCW 4.18.040, if a claim is substantively based:

(a) Upon the law of one other state, the limitation period of that state applies; or

(b) Upon the law of more than one state, the limitation period of one of those states, chosen by the law of conflict of laws of this state, applies.

(2) The limitation period of this state applies to all other claims. [1983 c 152 § 2.]

4.18.030 Rules of law applicable to computation of limitation period.

If the statute of limitations of another state applies to the assertion of a claim in this state, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period, but its statutes and other rules of law governing conflict of laws do not apply. [1983 c 152 § 3.]

4.18.040 Application of limitation period of other state—Unfairness.

If the court determines that the limitation period of another state applicable under RCW 4.18.020 and 4.18.030 is substantially different from the limitation period of this state and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of this state applies. [1983 c 152 § 4.]

4.18.900 Short title. This chapter may be cited as the Uniform Conflict of Laws—Limitations Act. [1983 c 152 § 7.]

4.18.901 Application of chapter—Existing and future claims. This chapter applies to claims:

- (1) Accruing after July 24, 1983; or
 (2) Asserted in a civil action or proceeding more than one year after July 24, 1983, but it does not revive a claim barred before July 24, 1983. [1983 c 152 § 5.]

4.18.902 Uniformity of application and construction of chapter. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1983 c 152 § 6.]

4.18.903 Severability—1983 c 152. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 152 § 8.]

4.18.904 Captions not law—1983 c 152. Section captions used in this act constitute no part of the law. [1983 c 152 § 9.]

Chapter 4.20 SURVIVAL OF ACTIONS

Sections

- 4.20.005 Wrongful death—Application of terms.
 4.20.010 Wrongful death—Right of action.
 4.20.020 Wrongful death—Beneficiaries of action.
 4.20.030 Workers' compensation act not affected.
 4.20.046 Survival of actions.
 4.20.050 Action not abated by death or disability if it survives—Substitution.
 4.20.060 Action for personal injury survives to surviving spouse, child, stepchildren, or heirs.

Action for injury or death of a child: RCW 4.24.010.

Actions by and against executors: Chapter 11.48 RCW.

Imputation of contributory fault of decedent in wrongful death actions: RCW 4.22.020.

4.20.005 Wrongful death—Application of terms. Words in RCW 4.20.010, 4.20.020, and 4.20.030 denoting the singular shall be understood as belonging to a plurality of persons or things. The masculine shall apply also to the feminine, and the word person shall also apply to bodies politic and corporate. [1917 c 123 § 3; RRS § 183-2. Formerly RCW 4.20.010, part.]

4.20.010 Wrongful death—Right of action. When the death of a person is caused by the wrongful act, neglect or default of another his personal representative may maintain an action for damages against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony. [1917 c 123 § 1; RRS § 183. FORMER PARTS OF SECTION: 1917 c 123 § 3 now codified as RCW 4.20.005. Prior: 1909 c 129 § 1; Code 1881 § 8; 1875 p 4 § 4; 1854 p 220 § 496.]

4.20.020 Wrongful death—Beneficiaries of action. Every such action shall be for the benefit of the wife, husband, child or children, including stepchildren, of the

person whose death shall have been so caused. If there be no wife or husband or such child or children, such action may be maintained for the benefit of the parents, sisters or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death.

In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just. [1985 c 139 § 1; 1973 1st ex.s. c 154 § 2; 1917 c 123 § 2; RRS § 183-1.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

4.20.030 Workers' compensation act not affected. RCW 4.20.005, 4.20.010, and 4.20.020 shall not repeal or supersede chapter 74 of the Laws of 1911 [Title 51 RCW] and acts amendatory thereof, or any part thereof. [1917 c 123 § 5; RRS § 183-3.]

4.20.046 Survival of actions. (1) All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section: PROVIDED, HOWEVER, That no personal representative shall be entitled to recover damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by a deceased. The liability of property of a husband and wife held by them as community property to execution in satisfaction of a claim enforceable against such property so held shall not be affected by the death of either or both spouses; and a cause of action shall remain an asset as though both claiming spouses continued to live despite the death of either or both claiming spouses.

(2) Where death or an injury to person or property, resulting from a wrongful act, neglect or default, occurs simultaneously with or after the death of a person who would have been liable therefor if his death had not occurred simultaneously with such death or injury or had not intervened between the wrongful act, neglect or default and the resulting death or injury, an action to recover damages for such death or injury may be maintained against the personal representative of such person. [1961 c 137 § 1.]

4.20.050 Action not abated by death or disability if it survives—Substitution. No action shall abate by the death, marriage or other disability of the party, or by the transfer of any interest therein, if the cause of action survives or continues; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his representatives or successors in interest. [Code 1881 § 17; 1877 p 6 § 17; 1869 p 6 § 17; 1854 p 132 § 11; RRS § 193.]

Rules of court: Cf. RAP 3.2, 18.22.

4.20.060 Action for personal injury survives to surviving spouse, child, stepchildren, or heirs. No action for a personal injury to any person occasioning death shall abate, nor shall such right of action determine, by reason of

such death, if such person has a surviving spouse or child living, including stepchildren, or leaving no surviving spouse or such children, if there is dependent upon the deceased for support and resident within the United States at the time of decedent's death, parents, sisters or brothers; but such action may be prosecuted, or commenced and prosecuted, by the executor or administrator of the deceased, in favor of such surviving spouse, or in favor of the surviving spouse and such children, or if no surviving spouse, in favor of such child or children, or if no surviving spouse or such child or children, then in favor of the decedent's parents, sisters or brothers who may be dependent upon such person for support, and resident in the United States at the time of decedent's death. [1985 c 139 § 2; 1973 1st ex.s. c 154 § 3; 1927 c 156 § 1; 1909 c 144 § 1; Code 1881 § 18; 1854 p 220 § 495; RRS § 194.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Chapter 4.22

CONTRIBUTORY FAULT—EFFECT— IMPUTATION—CONTRIBUTION— SETTLEMENT AGREEMENTS

Sections

4.22.005	Effect of contributory fault.
4.22.015	"Fault" defined.
4.22.020	Imputation of contributory fault—Spouse or minor child of spouse—Wrongful death actions.
4.22.030	Nature of liability.
4.22.040	Right of contribution—Indemnity.
4.22.050	Enforcement of contribution.
4.22.060	Effect of settlement agreement.
4.22.070	Percentage of fault—Determination—Limitations.
4.22.900	Effective date—1973 1st ex.s. c 138.
4.22.910	Severability—1973 1st ex.s. c 138.
4.22.911	Severability—1981 c 27.
4.22.920	Applicability—1981 c 27.
4.22.925	Applicability—1981 c 27 § 17.

Reviser's note: Section and subsection captions used in this chapter, other than RCW 4.22.020, were enacted as a part of chapter 27, Laws of 1981.

Preamble—1981 c 27: See note following RCW 7.72.010.

Product liability actions: Chapter 7.72 RCW.

4.22.005 Effect of contributory fault. In an action based on fault seeking to recover damages for injury or death to person or harm to property, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery. This rule applies whether or not under prior law the claimant's contributory fault constituted a defense or was disregarded under applicable legal doctrines, such as last clear chance. [1981 c 27 § 8.]

4.22.015 "Fault" defined. "Fault" includes acts or omissions, including misuse of a product, that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability or liability on a product liability claim. The term also includes breach of warranty, unreasonable assumption of risk, and unreasonable failure to avoid an injury or to

mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

A comparison of fault for any purpose under RCW 4.22.005 through 4.22.060 shall involve consideration of both the nature of the conduct of the parties to the action and the extent of the causal relation between such conduct and the damages. [1981 c 27 § 9.]

4.22.020 Imputation of contributory fault—Spouse or minor child of spouse—Wrongful death actions. The contributory fault of one spouse shall not be imputed to the other spouse or the minor child of the spouse to diminish recovery in an action by the other spouse or the minor child of the spouse, or his or her legal representative, to recover damages caused by fault resulting in death or in injury to the person or property, whether separate or community, of the spouse. In an action brought for wrongful death or loss of consortium, the contributory fault of the decedent or injured person shall be imputed to the claimant in that action. [1987 c 212 § 801; 1981 c 27 § 10; 1973 1st ex.s. c 138 § 2.]

Wrongful death actions: Chapter 4.20 RCW.

4.22.030 Nature of liability. Except as otherwise provided in RCW 4.22.070, if more than one person is liable to a claimant on an indivisible claim for the same injury, death or harm, the liability of such persons shall be joint and several. [1986 c 305 § 402; 1981 c 27 § 11.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.22.040 Right of contribution—Indemnity. (1) A right of contribution exists between or among two or more persons who are jointly and severally liable upon the same indivisible claim for the same injury, death or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution among liable persons is the comparative fault of each such person. However, the court may determine that two or more persons are to be treated as a single person for purposes of contribution.

(2) Contribution is available to a person who enters into a settlement with a claimant only (a) if the liability of the person against whom contribution is sought has been extinguished by the settlement and (b) to the extent that the amount paid in settlement was reasonable at the time of the settlement.

(3) The common law right of indemnity between active and passive tortfeasors is abolished: PROVIDED, That the common law right of indemnity between active and passive tortfeasors is not abolished in those cases to which a right of contribution by virtue of RCW 4.22.920(2) does not apply. [1982 c 100 § 1; 1981 c 27 § 12.]

Severability—1982 c 100: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 100 § 4.]

4.22.050 Enforcement of contribution. (1) If the comparative fault of the parties to a claim for contribution

has been established previously by the court in the original action, a party paying more than that party's equitable share of the obligation, upon motion, may recover judgment for contribution.

(2) If the comparative fault of the parties to the claim for contribution has not been established by the court in the original action, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is being sought.

(3) If a judgment has been rendered, the action for contribution must be commenced within one year after the judgment becomes final. If no judgment has been rendered, the person bringing the action for contribution either must have (a) discharged by payment the common liability within the period of the statute of limitations applicable to the claimant's right of action against him and commenced the action for contribution within one year after payment, or (b) agreed while the action was pending to discharge the common liability and, within one year after the agreement, have paid the liability and commenced an action for contribution. [1981 c 27 § 13.]

4.22.060 Effect of settlement agreement. (1) A party prior to entering into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with a claimant shall give five days' written notice of such intent to all other parties and the court. The court may for good cause authorize a shorter notice period. The notice shall contain a copy of the proposed agreement. A hearing shall be held on the issue of the reasonableness of the amount to be paid with all parties afforded an opportunity to present evidence. A determination by the court that the amount to be paid is reasonable must be secured. If an agreement was entered into prior to the filing of the action, a hearing on the issue of the reasonableness of the amount paid at the time it was entered into may be held at any time prior to final judgment upon motion of a party.

The burden of proof regarding the reasonableness of the settlement offer shall be on the party requesting the settlement.

(2) A release, covenant not to sue, covenant not to enforce judgment, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount paid pursuant to the agreement unless the amount paid was unreasonable at the time of the agreement in which case the claim shall be reduced by an amount determined by the court to be reasonable.

(3) A determination that the amount paid for a release, covenant not to sue, covenant not to enforce judgment, or similar agreement was unreasonable shall not affect the validity of the agreement between the released and releasing persons nor shall any adjustment be made in the amount paid between the parties to the agreement. [1987 c 212 § 1901; 1981 c 27 § 14.]

4.22.070 Percentage of fault—Determination—Limitations. (1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages, including the claimant or person suffering personal injury or incurring property damage, defendants, third-party defendants, entities released by the claimant, entities immune from liability to the claimant and entities with any other individual defense against the claimant. Judgment shall be entered against each defendant except those who have been released by the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages. The liability of each defendant shall be several only and shall not be joint except:

(a) A party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party.

(b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants total damages.

(2) If a defendant is jointly and severally liable under one of the exceptions listed in subsections (1)(a) or (1)(b) of this section, such defendant's rights to contribution against another jointly and severally liable defendant, and the effect of settlement by either such defendant, shall be determined under RCW 4.22.040, 4.22.050, and 4.22.060.

(3)(a) Nothing in this section affects any cause of action relating to hazardous wastes or substances or solid waste disposal sites.

(b) Nothing in this section shall affect a cause of action arising from the tortious interference with contracts or business relations.

(c) Nothing in this section shall affect any cause of action arising from the manufacture or marketing of a fungible product in a generic form which contains no clearly identifiable shape, color, or marking. [1986 c 305 § 401.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.22.900 Effective date—1973 1st ex.s. c 138. This act takes effect as of 12:01 a.m. on April 1, 1974. [1973 1st ex.s. c 138 § 3.]

4.22.910 Severability—1973 1st ex.s. c 138. If any provision of this act or the application thereof to any person or circumstance is held unconstitutional, the remainder of this act and the application of such provisions to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision. [1973 1st ex.s. c 138 § 4.]

4.22.911 Severability—1981 c 27. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the

application of the provision to other persons or circumstances is not affected. [1981 c 27 § 18.]

4.22.920 Applicability—1981 c 27. (1) *This amendatory act shall apply to all claims arising on or after July 26, 1981.

(2) Notwithstanding subsection (1) of this section, RCW 4.22.040, 4.22.050, and 4.22.060 shall also apply to all actions in which trial on the underlying action has not taken place prior to July 26, 1981, except that there is no right of contribution in favor of or against any party who has, prior to July 26, 1981, entered into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with the claimant. [1982 c 100 § 2; 1981 c 27 § 15.]

*Reviser's note: "This amendatory act" [1981 c 27] consists of chapter 7.72 RCW, RCW 4.22.005, 4.22.015, 4.22.030 through 4.22.060, 4.22.911, 4.22.920, the amendment to RCW 4.22.020, and the repeal of RCW 4.22.010.

Severability—1982 c 100: See note following RCW 4.22.040.

4.22.925 Applicability—1981 c 27 § 17. In accordance with section 15(1), chapter 27, Laws of 1981, the repeal of RCW 4.22.010 by section 17, chapter 27, Laws of 1981 applies only to claims arising on or after July 26, 1981. RCW 4.22.010 shall continue to apply to claims arising prior to July 26, 1981. [1982 c 100 § 3.]

Severability—1982 c 100: See note following RCW 4.22.040.

Chapter 4.24

SPECIAL RIGHTS OF ACTION AND SPECIAL IMMUNITIES

Sections

4.24.005	Tort actions—Attorneys' fees—Determination of reasonableness.
4.24.010	Action for injury or death of child.
4.24.020	Action by parent for seduction of child.
4.24.040	Action for negligently permitting fire to spread.
4.24.050	Kindling of fires by persons driving lumber.
4.24.060	Application of common law.
4.24.070	Recovery of money lost at gambling.
4.24.080	Action to recover leased premises used for gambling.
4.24.090	Validity of evidence of gambling debt.
4.24.115	Validity of agreement to indemnify against liability for negligence relative to construction, alteration, improvement, etc., of structure or improvement attached to real estate.
4.24.130	Action for change of name—Fees.
4.24.140	Action by another state to enforce tax liability.
4.24.141	Action by another state to enforce tax liability—"Taxes" defined.
4.24.150	Action for fines or forfeitures.
4.24.160	Action for penalty—Amount of recovery.
4.24.170	Judgment for penalty or forfeiture—Effect of collusion.
4.24.180	Disposition of fines, fees, penalties and forfeitures—Venue.
4.24.190	Action against parent for willful injury to person or property by minor—Monetary limitation—Common law liability preserved.
4.24.200	Liability of owners or others in possession of land and water areas for injuries to recreation users—Purpose.
4.24.210	Liability of owners or others in possession of land and water areas for injuries to recreation users—Limitation.
4.24.220	Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.
4.24.230	Liability for conversion of goods or merchandise from store or mercantile establishment, leaving restaurant or hotel

	or motel without paying—Adults, minors—Parents, guardians.
4.24.235	Physicians—Immunity from liability regarding safety belts.
4.24.240	Persons licensed to provide health care or related services, employees, hospitals, clinics, etc.—Professional review committee, society, examining, licensing or disciplinary board members, etc.—Immunity from civil suit arising from committee, board, society, etc., duties.
4.24.250	Health care provider filing charges or presenting evidence—Immunity—Records, members, employees, etc., of review committees or boards not subject to process.
4.24.260	Physicians, dentists or pharmacists filing charges or presenting evidence before boards—Immunity.
4.24.264	Boards of directors or officers of nonprofit corporations—Liability—Limitations.
4.24.270	Physician or hospital rendering emergency care—Immunity from civil liability.
4.24.280	Acts or omissions of physician's trained mobile intensive care paramedic—Immunity from liability.
4.24.290	Action for damages based on professional negligence of hospitals or members of healing arts—Standard of proof—Evidence—Exception.
4.24.295	Special action for injuries resulting from health care, special procedure.
4.24.300	Persons rendering emergency care or transportation—Immunity from liability—Exclusion.
4.24.310	Persons rendering emergency care or transportation—Definitions.
4.24.312	Person rendering emergency aid in hazardous materials incident—Immunity from liability—Limitations.
4.24.314	Person causing hazardous materials incident—Responsibility for incident clean-up—Liability.
4.24.316	Emergency care, rescue, assistance, or recovery services in mine rescue or recovery work—Immunity from liability.
4.24.320	Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Treble damages, attorney's fees.
4.24.350	Actions for damages which are false, unfounded, malicious, without probable cause or part of conspiracy—Action, claim, or counterclaim by judicial officer, prosecuting authority, or law enforcement officer for malicious prosecution—Damages and costs—Definitions.
4.24.360	Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—Declared void and unenforceable—Exceptions.
4.24.370	Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—"Construction contract" defined.
4.24.380	Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—Prospective application of RCW 4.24.360.
4.24.400	Building warden assisting others to evacuate building or attempting to control hazard—Immunity from liability.
4.24.405	Action for malicious harassment of another because of race, color, religion, ancestry or national origin.
4.24.410	Dog handler using police dog in line of duty—Immunity.
4.24.420	Action by person committing a felony—Defense—Actions under 42 U.S.C. Sec. 1983.
4.24.450	Liability of operators for nuclear incidents—Definitions.
4.24.460	Liability of operators for nuclear incidents—Presumption of operator negligence—Rebuttal—Recovery for negligence or against other parties not limited by section.
4.24.470	Liability of officials and members of governing body of public agency—Definitions.
4.24.480	Liability of members of state hazardous materials planning committee and local emergency planning committees.
4.24.490	Indemnification of state employees.
4.24.500	Good faith communication to government agency—Legislative findings—Purpose.
4.24.510	Good faith communication to government agency—Immunity.

- 4.24.520 Good faith communication to government agency—When agency or attorney general may defend against lawsuit—Costs and fees.
- 4.24.530 Limitations on liability for equine activities—Definitions.
- 4.24.540 Limitations on liability for equine activities—Exceptions.
- 4.24.550 Sex offenders—Release of information to public—When authorized—Immunity.
- 4.24.555 Release of information not restricted by pending appeal, petition, or writ.
- 4.24.560 Defense to action for injury caused by indoor air pollutants.
- 4.24.570 Acts against animals in research or educational facilities.
- 4.24.575 Acts against animals kept for agricultural or veterinary purposes.
- 4.24.580 Acts against animal facilities—Injunction.
- 4.24.590 Liability of foster parents.

Action for money damages due to gambling violations: RCW 9.46.200.

Arson reporting immunity act: Chapter 48.50 RCW.

Consent to treatment of minor for sexually transmitted disease, liability: RCW 70.24.110.

Food donation and distribution, limitation of liability: Chapter 69.80 RCW.

Malpractice insurance for retired physicians providing health care services: RCW 43.70.460.

Special proceedings and actions: Title 7 RCW.

4.24.005 Tort actions—Attorneys' fees—Determination of reasonableness. Any party charged with the payment of attorney's fees in any tort action may petition the court not later than forty-five days of receipt of a final billing or accounting for a determination of the reasonableness of that party's attorneys' fees. The court shall make such a determination and shall take into consideration the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) Whether the fee is fixed or contingent;
- (9) Whether the fixed or contingent fee agreement was in writing and whether the client was aware of his or her right to petition the court under this section;
- (10) The terms of the fee agreement. [1987 c 212 § 1601; 1986 c 305 § 201.]

Application—1987 c 212 § 1601: "Section 1601 of this act applies to agreements for attorneys' fees entered into after April 29, 1987." [1987 c 212 § 1602.]

Application—1986 c 305 § 201: "Section 201 of this act applies to agreements for attorney's fees entered into after June 11, 1986." [1986 c 305 § 202.]

Preamble—Report to legislature—Severability—1986 c 305: See notes following RCW 4.16.160.

4.24.010 Action for injury or death of child. The mother or father or both may maintain an action as plaintiff for the injury or death of a minor child, or a child on whom

either, or both, are dependent for support: PROVIDED, That in the case of an illegitimate child the father cannot maintain or join as a party an action unless paternity has been duly established and the father has regularly contributed to the child's support.

This section creates only one cause of action, but if the parents of the child are not married, are separated, or not married to each other damages may be awarded to each plaintiff separately, as the court finds just and equitable.

If one parent brings an action under this section and the other parent is not named as a plaintiff, notice of the institution of the suit, together with a copy of the complaint, shall be served upon the other parent: PROVIDED, That when the mother of an illegitimate child initiates an action, notice shall be required only if paternity has been duly established and the father has regularly contributed to the child's support.

Such notice shall be in compliance with the statutory requirements for a summons. Such notice shall state that the other parent must join as a party to the suit within twenty days or the right to recover damages under this section shall be barred. Failure of the other parent to timely appear shall bar such parent's action to recover any part of an award made to the party instituting the suit.

In such an action, in addition to damages for medical, hospital, medication expenses, and loss of services and support, damages may be recovered for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship in such amount as, under all the circumstances of the case, may be just. [1973 1st ex.s. c 154 § 4; 1967 ex.s. c 81 § 1; 1927 c 191 § 1; Code 1881 § 9; 1877 p 5 § 9; 1873 p 5 § 10; 1869 p 4 § 9; RRS § 184.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

4.24.020 Action by parent for seduction of child. A father or mother, may maintain an action as plaintiff for the seduction of a child, and the guardian for the seduction of a ward, though the child or the ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service. [1973 1st ex.s. c 154 § 5; Code 1881 § 10; 1877 p 5 § 10; 1869 p 4 § 10; RRS § 185.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

4.24.040 Action for negligently permitting fire to spread. If any person shall for any lawful purpose kindle a fire upon his own land, he shall do it at such time and in such manner, and shall take such care of it to prevent it from spreading and doing damage to other persons' property, as a prudent and careful man would do, and if he fails so to do he shall be liable in an action on the case to any person suffering damage thereby to the full amount of such damage. [Code 1881 § 1226; 1877 p 300 § 3; RRS § 5647.]

Reviser's note: The words "on the case" appear in the 1877 law and in the 1881 enrolled bill but were inadvertently omitted from the printed Code of 1881. See also *Pettigrew v. McCoy*, 138 Wash. 619.

Arson, reckless burning, and malicious mischief: Chapter 9A.48 RCW.

4.24.050 Kindling of fires by persons driving lumber. Persons engaged in driving lumber upon any waters or streams of this state, may kindle fires when necessary for the purposes in which they are engaged, but shall be bound to use the utmost caution to prevent the same from spreading and doing damage; and if they fail so to do, they shall be subject to all liabilities and penalties of RCW 4.24.040, 4.24.050, and 4.24.060, in the same manner as if the privilege granted by this section had not been allowed. [1983 c 3 § 4; Code 1881 § 1228; 1877 p 300 § 5; RRS § 5648.]

4.24.060 Application of common law. The common law right to an action for damages done by fires, is not taken away or diminished by RCW 4.24.040, 4.24.050, and 4.24.060, but it may be pursued; but any person availing himself of the provisions of RCW 4.24.040, shall be barred of his action at common law for the damage so sued for, and no action shall be brought at common law for kindling fires in the manner described in RCW 4.24.050; but if any such fires shall spread and do damage, the person who kindled the same and any person present and concerned in driving such lumber, by whose act or neglect such fire is suffered to spread and do damage shall be liable in an action on the case for the amount of damages thereby sustained. [1983 c 3 § 5; Code 1881 § 1229; 1877 p 300 § 6; RRS § 5649.]

4.24.070 Recovery of money lost at gambling. All persons losing money or anything of value at or on any illegal gambling games shall have a cause of action to recover from the dealer or player winning, or from the proprietor for whose benefit such game was played or dealt, or such money or things of value won, the amount of the money or the value of the thing so lost. [1957 c 7 § 2; Code 1881 § 1255; 1879 p 98 § 3; RRS § 5851.]

Gambling: Chapter 9.46 RCW.

4.24.080 Action to recover leased premises used for gambling. It shall be lawful for any person letting or renting any house, room, shop or other building whatsoever, or any boat, booth, garden, or other place, which shall, at any time, be used by the lessee or occupant thereof, or any other person, with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid and terminate such lease, or contract of occupancy, and to recover immediate possession of the premises by an action at law for that purpose. [1957 c 7 § 3; Code 1881 § 1257; 1879 p 98 § 5; RRS § 5852.]

4.24.090 Validity of evidence of gambling debt. All notes, bills, bonds, mortgages, or other securities, or other conveyances, the consideration for which shall be money, or other things of value, won by playing at any unlawful game, shall be void and of no effect, as between the parties thereto and all other persons, except holders in good faith, without notice of the illegality of such contract or conveyance. [1957 c 7 § 4; Code 1881 § 1254; 1879 p 98 § 2; RRS § 5853.]

4.24.115 Validity of agreement to indemnify against liability for negligence relative to construction, alteration, improvement, etc., of structure or improvement attached to real estate. A covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property:

(1) Caused by or resulting from the sole negligence of the indemnitee, his agents or employees is against public policy and is void and unenforceable;

(2) Caused by or resulting from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees, and (b) the indemnitor or the indemnitor's agents or employees, is valid and enforceable only to the extent of the indemnitor's negligence and only if the agreement specifically and expressly provides therefor, and may waive the indemnitor's immunity under industrial insurance, Title 51 RCW, only if the agreement specifically and expressly provides therefor and the waiver was mutually negotiated by the parties. This subsection applies to agreements entered into after June 11, 1986. [1986 c 305 § 601; 1967 ex.s. c 46 § 2.]

Preamble—Report to legislature—Severability—1986 c 305: See notes following RCW 4.16.160.

4.24.130 Action for change of name—Fees. Any person desiring a change of his or her name or that of his or her child or ward, may apply therefor to the district court of the judicial district in which he or she resides, by petition setting forth the reasons for such change; thereupon such court in its discretion may order a change of the name and thenceforth the new name shall be in place of the former.

The district court shall collect the fees authorized by RCW 36.18.010 for filing and recording a name change order, and transmit the fee and the order to the county auditor. The court may collect a reasonable fee to cover the cost of transmitting the order to the county auditor. [1992 c 30 § 1; 1991 c 33 § 5; Code 1881 § 635; 1877 p 132 § 638; RRS § 998.]

Effective date—1991 c 33: See note following RCW 3.66.020.

4.24.140 Action by another state to enforce tax liability. The courts of the state shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect to the liability for taxes lawfully imposed by the laws of this state and the officials of such state are hereby authorized to bring an action in all the courts of this state for the collection of such taxes: PROVIDED, That the courts of this state shall not recognize claims for such taxes against this state or any of its political subdivisions: PROVIDED, FURTHER, That the time limitations upon the bringing of such actions which may be imposed by the laws of such other state shall not be tolled by the absence from such state of the person from whom the taxes are sought. The certificate of the secretary

of state of such other state to the effect that such officials have the authority to collect the taxes sought to be recovered by such action shall be conclusive proof of that authority. [1951 c 166 § 1. FORMER PART OF SECTION: 1951 c 166 § 2 now codified as RCW 4.24.141.]

Limitation of actions: Chapter 4.16 RCW.

4.24.141 Action by another state to enforce tax liability—"Taxes" defined. The term "taxes" as used in RCW 4.24.140 shall include:

(1) Any and all tax assessments lawfully made whether they be based upon a return or other disclosure of the taxpayer, upon information and belief of the taxing authority, or otherwise;

(2) Any and all penalties lawfully imposed pursuant to a tax statute;

(3) Interest charges lawfully added to the tax liability which constitutes the subject of the action. [1951 c 166 § 2. Formerly RCW 4.24.140, part.]

4.24.150 Action for fines or forfeitures. Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them. [Code 1881 § 657; 1869 p 153 § 597; RRS § 963.]

Limitation of actions: Chapter 4.16 RCW.

4.24.160 Action for penalty—Amount of recovery. When an action shall be commenced for a penalty, which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense. [Code 1881 § 658; 1869 p 153 § 598; RRS § 964.]

4.24.170 Judgment for penalty or forfeiture—Effect of collusion. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant wholly or partially from the consequences contemplated by law, in case when the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person. [Code 1881 § 659; 1869 p 153 § 599; RRS § 965.]

4.24.180 Disposition of fines, fees, penalties and forfeitures—Venue. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid into the school fund of the proper county: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. Whenever, by the provisions of law, any property real or personal shall be forfeited to the state, or to any officer for its use, the action for the recovery of such property may be commenced in any county where the defendant may be found or where such property may be. [1987 c 202 § 115; 1969 ex.s. c 199 § 9; Code 1881 § 660; 1869 p 153 § 600; RRS § 966.]

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

Disposition of fines, fees, costs, penalties and forfeitures: RCW 10.82.070.

4.24.190 Action against parent for willful injury to person or property by minor—Monetary limitation—Common law liability preserved. The parent or parents of any minor child under the age of eighteen years who is living with the parent or parents and who shall willfully or maliciously destroy property, real or personal or mixed, or who shall willfully and maliciously inflict personal injury on another person, shall be liable to the owner of such property or to the person injured in a civil action at law for damages in an amount not to exceed five thousand dollars. This section shall in no way limit the amount of recovery against the parent or parents for their own common law negligence. [1992 c 205 § 116; 1977 ex.s. c 145 § 1; 1967 ex.s. c 46 § 1; 1961 c 99 § 1.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

4.24.200 Liability of owners or others in possession of land and water areas for injuries to recreation users—Purpose. The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. [1969 ex.s. c 24 § 1; 1967 c 216 § 1.]

4.24.210 Liability of owners or others in possession of land and water areas for injuries to recreation users—Limitation. (1) Except as otherwise provided in subsection (3) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an adminis-

trative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land. Nothing in this section shall prevent the liability of such a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(4) For purposes of this section, a license or permit issued for state-wide use under authority of chapter 43.51 RCW, Title 75, or Title 77 RCW is not a fee. [1992 c 52 § 1. Prior: 1991 c 69 § 1; 1991 c 50 § 1; 1980 c 111 § 1; 1979 c 53 § 1; 1972 ex.s. c 153 § 17; 1969 ex.s. c 24 § 2; 1967 c 216 § 2.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

Off-road and nonhighway vehicles: Chapter 46.09 RCW.

Snowmobiles: Chapter 46.10 RCW.

4.24.220 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense. In any civil action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the owner of the mercantile establishment, his authorized employee or agent, and that such peace officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny or shoplifting on such premises of such merchandise. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise. [1967 c 76 § 3.]

Theft and robbery: Chapter 9A.56 RCW.

4.24.230 Liability for conversion of goods or merchandise from store or mercantile establishment, leaving restaurant or hotel or motel without paying—Adults, minors—Parents, guardians. (1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof shall be liable in addition to actual damages, for a penalty to the owner or seller in the amount of the retail value thereof not to exceed one thousand dollars, plus an additional penalty of not less than one hundred dollars nor more than

two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. A customer who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. A person who shall receive any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section.

(2) The parent or legal guardian having the custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be liable as a penalty to the owner or seller for the retail value of such goods, wares, or merchandise not to exceed five hundred dollars plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. The parent or legal guardian having the custody of an unemancipated minor, who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. The parent or legal guardian having the custody of an unemancipated minor, who receives any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section. For the purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the department of social and health services.

(3) Judgments, but not claims, arising under this section may be assigned.

(4) A conviction for violation of chapter 9A.56 RCW or *RCW 9.45.040 shall not be a condition precedent to maintenance of a civil action authorized by this section.

(5) An owner or seller demanding payment of a penalty under subsection (1) or (2) of this section shall give written notice to the person or persons from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of a penalty described in subsection (1) of [or] (2) of this section. [1987 c 353 § 1; 1981 c 126 § 1; 1977 ex.s. c 134 § 1; 1975 1st ex.s. c 59 § 1.]

*Reviser's note: RCW 9.45.040 was repealed by 1987 c 456 § 32.

Obtaining food from restaurant without paying: RCW 19.48.110.

4.24.235 Physicians—Immunity from liability regarding safety belts. A licensed physician shall not be liable for civil damages resulting directly or indirectly from

providing, or refusing to provide, a written verification that a person under that physician's care is [is] unable to wear an automotive safety belt. [1986 c 152 § 2.]

Safety belts, use required: RCW 46.61.688.

4.24.240 Persons licensed to provide health care or related services, employees, hospitals, clinics, etc.—Professional review committee, society, examining, licensing or disciplinary board members, etc.—Immunity from civil suit arising from committee, board, society, etc., duties. (1)(a) A person licensed by this state to provide health care or related services, including, but not limited to, a certified acupuncturist, a physician, osteopathic physician, dentist, nurse, optometrist, *podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, including, in the event such person is deceased, his estate or personal representative;

(b) An employee or agent of a person described in subparagraph (a) of this subsection, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(c) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subparagraph (a) of this subsection, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, trustee, employee, or agent thereof acting in the course and scope of his employment, including in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

shall be immune from civil action for damages arising out of the good faith performance of their duties on such committees, where such actions are being brought by or on behalf of the person who is being evaluated.

(2) No member, employee, staff person, or investigator of a professional review committee shall be liable in a civil action as a result of acts or omissions made in good faith on behalf of the committee; nor shall any person be so liable for filing charges with or supplying information or testimony in good faith to any professional review committee; nor shall a member, employee, staff person, or investigator of a professional society, of a professional examining or licensing board, of a professional disciplinary board, of a governing board of any institution, or of any employer of professionals be so liable for good faith acts or omissions made in full or partial reliance on recommendations or decisions of a professional review committee or examining board. [1985 c 326 § 25; 1975-'76 2nd ex.s. c 56 § 4; 1975 1st ex.s. c 114 § 1; 1969 ex.s. c 157 § 1.]

***Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

4.24.250 Health care provider filing charges or presenting evidence—Immunity—Records, members, employees, etc., of review committees or boards not subject to process. Any health care provider as defined in RCW 7.70.020 (1) and (2) as now existing or hereafter

amended who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care, shall be immune from civil action for damages arising out of such activities. The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, shall not be subject to subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined above. [1981 c 181 § 1; 1979 c 17 § 1; 1977 c 68 § 1; 1975 1st ex.s. c 114 § 2; 1971 ex.s. c 144 § 1.]

4.24.260 Physicians, dentists or pharmacists filing charges or presenting evidence before boards—Immunity. Physicians licensed under chapter 18.71 RCW[,] dentists licensed under chapter 18.32 RCW and pharmacists licensed under chapter 18.64 RCW who, in good faith, file charges or present evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before the medical disciplinary board established under chapter 18.72 RCW, in a proceeding under chapter 18.32 RCW or to the board of pharmacy under RCW 18.64.160 shall be immune from civil action for damages arising out of such activities. [1975 1st ex.s. c 114 § 3; 1971 ex.s. c 144 § 2.]

4.24.264 Boards of directors or officers of nonprofit corporations—Liability—Limitations. (1) Except as provided in subsection (2) of this section, a member of the board of directors or an officer of any nonprofit corporation is not individually liable for any discretionary decision or failure to make a discretionary decision within his or her official capacity as director or officer unless the decision or failure to decide constitutes gross negligence.

(2) Nothing in this section shall limit or modify in any manner the duties or liabilities of a director or officer of a corporation to the corporation or the corporation's members. [1987 c 212 § 1101; 1986 c 305 § 903.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.24.270 Physician or hospital rendering emergency care—Immunity from civil liability. See RCW 18.71.220.

4.24.280 Acts or omissions of physician's trained mobile intensive care paramedic—Immunity from liability. See RCW 18.71.210.

4.24.290 Action for damages based on professional negligence of hospitals or members of healing arts—

Standard of proof—Evidence—Exception. In any civil action for damages based on professional negligence against a hospital which is licensed by the state of Washington or against the personnel of any such hospital, or against a member of the healing arts including, but not limited to, an acupuncturist certified under chapter 18.06 RCW, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, a chiropractor licensed under chapter 18.25 RCW, a dentist licensed under chapter 18.32 RCW, a *podiatrist licensed under chapter 18.22 RCW, or a nurse licensed under chapters 18.78 or 18.88 RCW, the plaintiff in order to prevail shall be required to prove by a preponderance of the evidence that the defendant or defendants failed to exercise that degree of skill, care, and learning possessed at that time by other persons in the same profession, and that as a proximate result of such failure the plaintiff suffered damages, but in no event shall the provisions of this section apply to an action based on the failure to obtain the informed consent of a patient. [1985 c 326 § 26; 1983 c 149 § 1; 1975 1st ex.s. c 35 § 1.]

***Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Limitations of actions against hospitals and members of healing arts: RCW 4.16.350.

4.24.295 Special action for injuries resulting from health care, special procedure. See chapter 7.70 RCW.

4.24.300 Persons rendering emergency care or transportation—Immunity from liability—Exclusion. Any person, including but not limited to a volunteer provider of emergency or medical services, who without compensation or the expectation of compensation renders emergency care at the scene of an emergency or who participates in transporting, not for compensation, therefrom an injured person or persons for emergency medical treatment shall not be liable for civil damages resulting from any act or omission in the rendering of such emergency care or in transporting such persons, other than acts or omissions constituting gross negligence or wilful or wanton misconduct. Any person rendering emergency care during the course of regular employment and receiving compensation or expecting to receive compensation for rendering such care is excluded from the protection of this subsection. [1985 c 443 § 19; 1975 c 58 § 1.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Citizen's immunity if aiding police officer: RCW 9.01.055.

4.24.310 Persons rendering emergency care or transportation—Definitions. For the purposes of RCW 4.24.300 the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Compensation" has its ordinary meaning but does not include: Nominal payments, reimbursement for expenses, or pension benefits; payments made to volunteer part-time and volunteer on-call personnel of fire departments, fire districts, ambulance districts, police departments, or any emergency response organizations; or any payment to a

person employed as a transit operator who is paid for his or her regular work, which work does not routinely include providing emergency care or emergency transportation.

(2) "Emergency care" means care, first aid, treatment, or assistance rendered to the injured person in need of immediate medical attention and includes providing or arranging for further medical treatment or care for the injured person. Except with respect to the injured person or persons being transported for further medical treatment or care, the immunity granted by RCW 4.24.300 does not apply to the negligent operation of any motor vehicle.

(3) "Scene of an emergency" means the scene of an accident or other sudden or unexpected event or combination of circumstances which calls for immediate action. [1989 c 223 § 1; 1987 c 212 § 501; 1985 c 443 § 20; 1975 c 58 § 2.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

4.24.312 Person rendering emergency aid in hazardous materials incident—Immunity from liability—Limitations. See RCW 70.136.050.

4.24.314 Person causing hazardous materials incident—Responsibility for incident clean-up—Liability.

(1) Any person transporting hazardous materials shall clean up any hazardous materials incident that occurs during transportation, and shall take such additional action as may be reasonably necessary after consultation with the designated incident command agency in order to achieve compliance with all applicable federal and state laws and regulations.

Any person transporting hazardous materials that is responsible for causing a hazardous materials incident, as defined in RCW 70.136.020, other than the operating employees of a transportation company, is liable to the state or any political subdivision thereof for extraordinary costs incurred by the state or the political subdivision in the course of protecting the public from actual or threatened harm resulting from the hazardous materials incident.

(2) Any person, other than a person transporting hazardous materials or an operating employee of a company, responsible for causing a hazardous materials incident, as defined in RCW 70.136.020, is liable to a municipal fire department or fire district for extraordinary costs incurred by the municipal fire department or fire district, in the course of protecting the public from actual or threatened harm resulting from the hazardous materials incident, until the incident oversight is assumed by the department of ecology.

(3) "Extraordinary costs" as used in this section means those reasonable and necessary costs incurred by a governmental entity in the course of protecting life and property that exceed the normal and usual expenses anticipated for police and fire protection, emergency services, and public works. These shall include, but not be limited to, overtime for public employees, unusual fuel consumption requirements, any loss or damage to publicly owned equipment, and the purchase or lease of any special equipment or services required to protect the public during the hazardous materials incident. [1989 c 406 § 1; 1984 c 165 § 3.]

4.24.316 Emergency care, rescue, assistance, or recovery services in mine rescue or recovery work—Immunity from liability. See RCW 38.52.198.

4.24.320 Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Treble damages, attorney's fees. Any person who suffers damages as a result of actions described in RCW 9A.48.080(c) or any owner of a horse, mule, cow, heifer, bull, steer, swine, or sheep who suffers damages as a result of a wilful, unauthorized act described in RCW 9A.56.080 may bring an action against the person or persons committing the act in a court of competent jurisdiction for exemplary damages up to three times the actual damages sustained, plus attorney's fees. [1979 c 145 § 1; 1977 ex.s. c 174 § 3.]

4.24.350 Actions for damages which are false, unfounded, malicious, without probable cause or part of conspiracy—Action, claim, or counterclaim by judicial officer, prosecuting authority, or law enforcement officer for malicious prosecution—Damages and costs—Definitions. (1) In any action for damages, whether based on tort or contract or otherwise, a claim or counterclaim for damages may be litigated in the principal action for malicious prosecution on the ground that the action was instituted with knowledge that the same was false, and unfounded, malicious and without probable cause in the filing of such action, or that the same was filed as a part of a conspiracy to misuse judicial process by filing an action known to be false and unfounded.

(2) In any action, claim, or counterclaim brought by a judicial officer, prosecuting authority, or law enforcement officer for malicious prosecution arising out of the performance or purported performance of the public duty of such officer, an arrest or seizure of property need not be an element of the claim, nor do special damages need to be proved. A judicial officer, prosecuting authority, or law enforcement officer prevailing in such an action may be allowed an amount up to one thousand dollars as liquidated damages, together with a reasonable attorneys' fee, and other costs of suit. A government entity which has provided legal services to the prevailing judicial officer, prosecuting authority, or law enforcement officer has reimbursement rights to any award for reasonable attorneys' fees and other costs, but shall have no such rights to any liquidated damages allowed.

(3) No action may be brought against an attorney under this section solely because of that attorney's representation of a party in a lawsuit.

(4) As used in this section:

(a) "Judicial officer" means a justice, judge, magistrate, or other judicial officer of the state or a city, town, or county.

(b) "Prosecuting authority" means any officer or employee of the state or a city, town, or county who is authorized by law to initiate a criminal or civil proceeding on behalf of the public.

(c) "Law enforcement officer" means a member of the state patrol, a sheriff or deputy sheriff, or a member of the police force of a city, town, university, or state college, or a

"wildlife agent" or "ex officio wildlife agent" as defined in RCW 77.08.010. [1984 c 133 § 2; 1977 ex.s. c 158 § 1.]

Legislative findings—1984 c 133: "The legislature finds that a growing number of unfounded lawsuits, claims, and liens are filed against law enforcement officers, prosecuting authorities, and judges, and against their property, having the purpose and effect of deterring those officers in the exercise of their discretion and inhibiting the performance of their public duties.

The legislature also finds that the cost of defending against such unfounded suits, claims and liens is severely burdensome to such officers, and also to the state and the various cities and counties of the state. The purpose of section 2 of this 1984 act is to provide a remedy to those public officers and to the public." [1984 c 133 § 1.]

Construction—1984 c 133: "The provisions of section 2 of this 1984 act are remedial and shall be liberally construed." [1984 c 133 § 3.]

Severability—1984 c 133: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 133 § 4.]

4.24.360 Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—Declared void and unenforceable—Exceptions. Any clause in a construction contract, as defined in RCW 4.24.370, which purports to waive, release, or extinguish the rights of a contractor, subcontractor, or supplier to damages or an equitable adjustment arising out of unreasonable delay in performance which delay is caused by the acts or omissions of the contractee or persons acting for the contractee is against public policy and is void and unenforceable.

This section shall not be construed to void any provision in a construction contract, as defined in RCW 4.24.370, which (1) requires notice of delays, (2) provides for arbitration or other procedure for settlement, or (3) provides for reasonable liquidated damages. [1979 ex.s. c 264 § 1.]

4.24.370 Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—"Construction contract" defined. "Construction contract" for purposes of RCW 4.24.360 means any contract or agreement for the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith. [1979 ex.s. c 264 § 2.]

4.24.380 Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—Prospective application of RCW 4.24.360. The provisions of RCW 4.24.360 shall apply to contracts or agreements entered into after September 1, 1979. [1979 ex.s. c 264 § 3.]

4.24.400 Building warden assisting others to evacuate building or attempting to control hazard—Immunity from liability. No building warden, who acts in good faith, with or without compensation, shall be personally liable for civil damages arising from his or her negligent acts or omissions during the course of assigned duties in assisting

others to evacuate industrial, commercial, governmental or multi-unit residential buildings or in attempting to control or alleviate a hazard to the building or its occupants caused by fire, earthquake or other threat to life or limb. The term "building warden" means an individual who is assigned to take charge of the occupants on a floor or in an area of a building during an emergency in accordance with a predetermined fire safety or evacuation plan; and/or an individual selected by a municipal fire chief or the director of community development, through the director of fire protection, after an emergency is in progress to assist in evacuating the occupants of such a building or providing for their safety. This section shall not apply to any acts or omissions constituting gross negligence or wilful or wanton misconduct. [1986 c 266 § 79; 1981 c 320 § 1.]

Severability—1986 c 266: See note following RCW 38.52.005.

4.24.405 Action for malicious harassment of another because of race, color, religion, ancestry or national origin. See RCW 9A.36.080.

4.24.410 Dog handler using police dog in line of duty—Immunity. (1) As used in this section:

(a) "Police dog" means a dog used by a law enforcement agency specially trained for law enforcement work and under the control of a dog handler.

(b) "Dog handler" means a law enforcement officer who has successfully completed training as prescribed by the Washington state criminal justice training commission in police dog handling.

(2) Any dog handler who uses a police dog in the line of duty in good faith is immune from civil action for damages arising out of such use of the police dog. [1989 c 26 § 1; 1982 c 22 § 1.]

4.24.420 Action by person committing a felony—Defense—Actions under 42 U.S.C. Sec. 1983. It is a complete defense to any action for damages for personal injury or wrongful death that the person injured or killed was engaged in the commission of a felony at the time of the occurrence causing the injury or death and the felony was a proximate cause of the injury or death. However, nothing in this section shall affect a right of action under 42 U.S.C. Sec. 1983. [1987 c 212 § 901; 1986 c 305 § 501.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.24.450 Liability of operators for nuclear incidents—Definitions. Unless the context clearly requires otherwise the following definitions apply throughout RCW 4.24.460:

(1) "Nuclear incident" means any occurrence within this state causing, within or without this state, bodily injury, sickness, disease or death; loss or damage to property; or loss of use of property arising out of the resultant radioactive, toxic, explosive, or other hazardous properties of radioactive wastes being stored in or being transported to or from a waste repository in this state.

(2) "Operator" means the entity or entities that have been given responsibility for constructing, operating, or monitoring waste repositories or transporting radioactive

waste and may include the United States and its federal agencies.

(3) "Radioactive waste" includes, but is not limited to, high-level radioactive waste, low-level radioactive waste, transuranic radioactive waste, spent nuclear fuel, and radioactive defense waste. It does not include de minimus radioactive waste.

(4) "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(5) "Waste repository" means any system which is intended or may be used for the disposal or storage of radioactive waste including permanent disposal systems, interim storage systems, monitored retrievable storage systems, defense waste storage systems, test and evaluation facilities, or similar systems. [1985 c 275 § 1.]

4.24.460 Liability of operators for nuclear incidents—Presumption of operator negligence—Rebuttal—Recovery for negligence or against other parties not limited by section. (1) Operators are liable for failure to exercise ordinary and reasonable care to protect persons and property subject to injury in nuclear incidents. In addition, operators are liable for operational expenses and emergency purchases incurred by local or state governments in responding to nuclear incidents.

(2) If a nuclear incident occurs, there is a presumption that the operator of a waste repository was negligent in constructing, operating, or monitoring the waste repository, or in transporting radioactive waste, and that the operator was an actual cause of the nuclear incident. The presumption may be rebutted by a clear and convincing showing by the operator that the nuclear incident was not the result of the operator's negligence and that the operator's negligence was not an actual cause of the nuclear incident.

(3) This section does not limit the recovery of parties injured by a nuclear incident against the operators of a waste repository under theories of negligence in selecting contractors, failure to retain adequate controls over the waste repository, vicarious liability for contractors, failure to take reasonable precautionary measures with respect to inherently dangerous activities, and other negligence theories. This section does not limit the recovery of parties injured by a nuclear incident against parties other than operators of a waste facility. [1985 c 275 § 2.]

4.24.470 Liability of officials and members of governing body of public agency—Definitions. (1) An appointed or elected official or member of the governing body of a public agency is immune from civil liability for damages for any discretionary decision or failure to make a discretionary decision within his or her official capacity, but liability shall remain on the public agency for the tortious conduct of its officials or members of the governing body.

(2) For purposes of this section:

(a) "Public agency" means any state agency, board, commission, department, institution of higher education, school district, political subdivision, or unit of local government of this state including but not limited to municipal

corporations, quasi-municipal corporations, special purpose districts, and local service districts.

(b) "Governing body" means the policy-making body of a public agency. [1987 c 212 § 401.]

Actions against local government for tortious conduct: Chapter 4.96 RCW.

4.24.480 Liability of members of state hazardous materials planning committee and local emergency planning committees. Any person who is appointed by the state emergency response commission under the authority of Sec. 301(c) of Title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Sec. 11001) to serve on the state hazardous materials planning committee or a local emergency planning committee who, in good faith, assists in the development or review of local plans to respond to hazardous materials incidents is not liable for civil damages as a result of any act or omission in the development, review, or implementation of such plans unless the act or omission constitutes gross negligence or wilful misconduct. [1988 c 42 § 15.]

Severability—1988 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 42 § 19.]

4.24.490 Indemnification of state employees. (1) The state shall indemnify and hold harmless its employees in the amount of any judgment obtained or fine levied against an employee in any state or federal court, or in the amount of the settlement of a claim, or shall pay the judgment, fine, or settlement, if the act or omission that gave rise to the civil or criminal liability was in good faith and occurred while the employee was acting within the scope of his or her employment or duties and the employee is being represented in accordance with RCW 4.92.070.

(2) For purposes of this section "state employee" means a member of the civil service or an exempt person under chapter 41.06 RCW, or higher education personnel under chapter 28B.16 RCW. [1989 c 413 § 3.]

4.24.500 Good faith communication to government agency—Legislative findings—Purpose. Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies. [1989 c 234 § 1.]

4.24.510 Good faith communication to government agency—Immunity. A person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reason-

able attorneys' fees incurred in establishing the defense. [1989 c 234 § 2.]

4.24.520 Good faith communication to government agency—When agency or attorney general may defend against lawsuit—Costs and fees. In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under RCW 4.24.510 may intervene in and defend against any suit precipitated by the communication to the agency. In the event that a local governmental agency does not intervene in and defend against a suit arising from any communication protected under *this act, the office of the attorney general may intervene in and defend against the suit. An agency prevailing upon the defense provided for in RCW 4.24.510 shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish the defense provided for in RCW 4.24.510, the party bringing the action shall be entitled to recover from the agency costs and reasonable attorney's fees incurred in proving the defense inapplicable or invalid. [1989 c 234 § 4.]

***Reviser's note:** "This act" [1989 c 234] consists of the enactment of RCW 4.24.500, 4.24.510, and 4.24.520, and a vetoed section.

4.24.530 Limitations on liability for equine activities—Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply to RCW 4.24.500, 4.24.510, and section 3, chapter 292, Laws of 1989.

(1) "Equine" means a horse, pony, mule, donkey, or hinny.

(2) "Equine activity" means: (a) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, endurance trail riding and western games, and hunting; (b) equine training and/or teaching activities; (c) boarding equines; (d) riding, inspecting, or evaluating an equine belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine; and (e) rides, trips, hunts, or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor.

(3) "Equine activity sponsor" means an individual, group or club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for, an equine activity including but not limited to: Pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college sponsored classes and programs, therapeutic riding programs, and, operators, instructors, and promoters of equine facilities, including but not limited to stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is held.

(4) "Participant" means any person, whether amateur or professional, who directly engages in an equine activity,

whether or not a fee is paid to participate in the equine activity.

(5) "Engages in an equine activity" means a person who rides, trains, drives, or is a passenger upon an equine, whether mounted or unmounted, and does not mean a spectator at an equine activity or a person who participates in the equine activity but does not ride, train, drive, or ride as a passenger upon an equine.

(6) "Equine professional" means a person engaged for compensation (a) in instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine, or, (b) in renting equipment or tack to a participant. [1989 c 292 § 1.]

Application—1989 c 292 §§ 1 and 2: "Sections 1 and 2 of this act apply only to causes of action filed on or after July 23, 1989." [1989 c 292 § 3.]

4.24.540 Limitations on liability for equine activities—Exceptions. (1) Except as provided in subsection (2) of this section, an equine activity sponsor or an equine professional shall not be liable for an injury to or the death of a participant engaged in an equine activity, and, except as provided in subsection (2) of this section, no participant nor participant's representative may maintain an action against or recover from an equine activity sponsor or an equine professional for an injury to or the death of a participant engaged in an equine activity.

(2)(a) RCW 4.24.530 and 4.24.540 do not apply to the horse racing industry as regulated in chapter 67.16 RCW.

(b) Nothing in subsection (1) of this section shall prevent or limit the liability of an equine activity sponsor or an equine professional:

(i) If the equine activity sponsor or the equine professional:

(A) Provided the equipment or tack and the equipment or tack caused the injury; or

(B) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity, determine the ability of the equine to behave safely with the participant, and determine the ability of the participant to safely manage the particular equine;

(ii) If the equine activity sponsor or the equine professional owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known to or should have been known to the equine activity sponsor or the equine professional and for which warning signs have not been conspicuously posted;

(iii) If the equine activity sponsor or the equine professional commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission caused the injury;

(iv) If the equine activity sponsor or the equine professional intentionally injures the participant;

(v) Under liability provisions as set forth in the products liability laws; or

(vi) Under liability provisions in chapter 16.04, *16.13, or *16.16 RCW. [1989 c 292 § 2.]

***Reviser's note:** Chapters 16.13 and 16.16 RCW were each recodified and/or repealed in their entirety by 1989 c 286. For disposition

of chapters 16.13 and 16.16 RCW, see Table of Disposition of Former RCW Sections, Volume 0.

Application—1989 c 292 §§ 1 and 2: See note following RCW 4.24.530.

4.24.550 Sex offenders—Release of information to public—When authorized—Immunity. (1) Public agencies are authorized to release relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection.

(2) An elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary decision to release relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The authorization and immunity in this section applies to information regarding: (a) A person convicted of, or juvenile found to have committed, a sex offense as defined by RCW 9.94A.030; (b) a person found not guilty of a sex offense by reason of insanity under chapter 10.77 RCW; (c) a person found incompetent to stand trial for a sex offense and subsequently committed under chapter 71.05 or 71.34 RCW; (d) a person committed as a sexual psychopath under chapter 71.06 RCW; or (e) a person committed as a sexually violent predator under chapter 71.09 RCW. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

(3) Except as otherwise provided by statute, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information as provided in subsection (2) of this section.

(4) Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as otherwise provided by statute. [1990 c 3 § 117.]

Finding—Policy—1990 c 3 § 117: "The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sexual predators to public agencies and under limited circumstances, the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

Therefore, this state's policy as expressed in RCW 4.24.550 is to require the exchange of relevant information about sexual predators among public agencies and officials and to authorize the release of necessary and relevant information about sexual predators to members of the general public." [1990 c 3 § 116.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Release of information regarding

convicted sex offenders: RCW 9.94A.153, 9.95.145.

juveniles found to have committed sex offenses: RCW 13.40.217.

persons in custody of department of social and health services: RCW 10.77.207, 71.05.427, 71.06.135, 71.09.120.

4.24.555 Release of information not restricted by pending appeal, petition, or writ. An offender's pending appeal, petition for personal restraint, or writ of habeas corpus shall not restrict the agency's, official's, or employee's authority to release relevant information concerning an offender's prior criminal history. However, the agency must release the latest dispositions of the charges as provided in chapter 10.97 RCW, the Washington state criminal records privacy act. [1990 c 3 § 118.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

4.24.560 Defense to action for injury caused by indoor air pollutants. It is a defense in a civil action brought for damages for injury caused by indoor air pollutants in a residential structure on which construction was begun on or after July 1, 1991, that the builder or design professional complied in good faith, without negligence or misconduct, with:

- (1) Building product safety standards, including labeling;
- (2) Restrictions on the use of building materials known or believed to contain substances that contribute to indoor air pollution; and
- (3) The ventilation and radon resistive construction requirements adopted under RCW 19.27.190. [1992 c 132 § 2; 1990 c 2 § 8.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

4.24.570 Acts against animals in research or educational facilities. (1) Joint and several liability for damages shall apply to persons and organizations that commit an intentional tort by (a) taking, releasing, destroying, contaminating, or damaging any animal or animals kept in a research or educational facility, where the animal or animals are used or to be used for medical research or other research purposes, or for educational purposes; or (b) destroying or damaging any records, equipment, research product, or other thing pertaining to such animal or animals.

(2) Any person or organization that plans or assists in the development of a plan to commit an intentional tort covered by subsection (1) of this section is liable for damages to the same extent as a person who has committed the tort. However, a person or organization that assists in the development of a plan is not liable under this subsection, if, at the time of providing the assistance the person or organization does not know, or have reason to know, that the assistance is promoting the commission of the tort. Membership in a liable organization does not in itself establish the member's liability under this subsection. The common law defense of prior renunciation is allowed in actions brought under this subsection.

(3) In any case where damages are awarded under this section, the court shall award to the plaintiff all costs of the litigation, including reasonable attorneys' fees, investigation costs, and court costs, and shall impose on any liable party a civil fine of not to exceed one hundred thousand dollars to be paid to the plaintiff. [1991 c 325 § 3.]

Severability—1991 c 325: See note following RCW 9.08.080.

Criminal acts against animal facilities: RCW 9.08.080, 9.08.090.

4.24.575 Acts against animals kept for agricultural or veterinary purposes. (1) Joint and several liability for damages shall apply to persons and organizations that commit an intentional tort by taking, releasing, destroying or damaging any animal or animals kept by a person for agricultural production purposes or by a veterinarian for veterinary purposes; or by destroying or damaging any farm or veterinary equipment or supplies pertaining to such animal or animals.

(2) Any person or organization that plans or assists in the development of a plan to commit an intentional tort covered by subsection (1) of this section is liable for damages to the same extent as a person who has committed the tort. However, a person or organization that assists in the development of a plan is not liable under this subsection, if, at the time of providing the assistance the person or organization does not know, or have reason to know, that the assistance is promoting the commission of the tort. Membership in a liable organization does not in itself establish the member's liability under this subsection. The common law defense of prior renunciation is allowed in actions brought under this subsection.

(3) In any case where damages are awarded under this section, the court shall award to the plaintiff all costs of the litigation, including reasonable attorneys' fees, investigation costs, and court costs, and shall impose on any liable party a civil fine of not to exceed one hundred thousand dollars to be paid to the plaintiff.

(4) "Agricultural production," for purposes of this section, means all activities associated with the raising of animals for agricultural purposes, including but not limited to animals raised for wool or fur. Agricultural production also includes the exhibiting or marketing of live animals raised for agricultural purposes. [1991 c 325 § 4.]

Severability—1991 c 325: See note following RCW 9.08.080.

Criminal acts against animal facilities: RCW 9.08.080, 9.08.090.

4.24.580 Acts against animal facilities—Injunction.

Any individual having reason to believe that he or she may be injured by the commission of an intentional tort under RCW 4.24.570 or 4.24.575 may apply for injunctive relief to prevent the occurrence of the tort. Any individual who owns or is employed at a research or educational facility or an agricultural production facility where animals are used for research, educational, or agricultural purposes who is harassed, or believes that he or she is about to be harassed, by an organization, person, or persons whose intent is to stop or modify the facility's use or uses of an animal or animals, may apply for injunctive relief to prevent the harassment.

For the purposes of this section:

(1) "Agricultural production" means all activities associated with the raising of animals for agricultural purposes, including but not limited to animals raised for wool or fur. Agricultural production also includes the exhibiting or marketing of live animals raised for agricultural purposes; and

(2) "Harassment" means any threat, without lawful authority, that the recipient has good reason to fear will be carried out, that is knowingly made for the purpose of stopping or modifying the use of animals, and that either (a) would cause injury to the person or property of the recipient,

or result in the recipient's physical confinement or restraint, or (b) is a malicious threat to do any other act intended to substantially cause harm to the recipient's mental health or safety. [1991 c 325 § 5.]

Severability—1991 c 325: See note following RCW 9.08.080.

4.24.590 Liability of foster parents. In actions for personal injury or property damage commenced by foster children or their parents against foster parents licensed pursuant to chapter 74.15 RCW, the liability of foster parents for the care and supervision of foster children shall be the same as the liability of biological and adoptive parents for the care and supervision of their children. [1991 c 283 § 3.]

Findings—Effective date—1991 c 283: See notes following RCW 74.14B.080.

Chapter 4.28

COMMENCEMENT OF ACTIONS

Sections

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nonadmitted foreign corporation: RCW 23B.18.040.

nonresident motor vehicle operator: RCW 46.64.040.

Sheriff's fees for service of process and other official services: RCW 36.18.040.

4.28.011 Tolling statute of limitations—Action deemed commenced, when. See RCW 4.16.170.

4.28.020 Jurisdiction acquired, when. From the time of the commencement of the action by service of summons, or by the filing of a complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings. [1984 c 76 § 2; 1895 c 86 § 4; 1893 c 127 § 15; RRS § 238.]

4.28.080 Summons, how served. The summons shall be served by delivering a copy thereof, as follows:

(1) If the action be against any county in this state, to the county auditor or, during normal office hours, to the deputy auditor, or in the case of a charter county, summons may be served upon the agent, if any, designated by the legislative authority.

(2) If against any town or incorporated city in the state, to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.

(3) If against a school or fire district, to the superintendent or commissioner thereof or by leaving the same in his or her office with an assistant superintendent, deputy commissioner, or business manager during normal business hours.

(4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.

(6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance within this state.

(7) If against a foreign or alien insurance company, as provided in chapter 48.05 RCW.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

(9) If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section, to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

(10) If the suit be against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with

whom he resides, or in whose service he is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) If against a foreign or alien steamship company or steamship charterer, to any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the state of Washington.

(14) If against a self-insurance program regulated by chapter 48.62 RCW, as provided in chapter 48.62 RCW.

(15) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his usual abode with some person of suitable age and discretion then resident therein.

Service made in the modes provided in this section shall be taken and held to be personal service. [1991 sp.s. c 30 § 28; 1987 c 361 § 1; 1977 ex.s. c 120 § 1; 1967 c 11 § 1; 1957 c 202 § 1; 1893 c 127 § 7; RRS § 226, part. FORMER PART OF SECTION: 1897 c 97 § 1 now codified in RCW 4.28.081.]

Rules of court: Service of process—CR 4(d), (e).

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Severability—1977 ex.s. c 120: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 120 § 3.]

Service of process on

foreign corporation: RCW 23B.15.100 and 23B.15.310.

foreign savings and loan association: RCW 33.32.050.

nonadmitted foreign corporation: RCW 23B.18.040.

nonresident motor vehicle operator: RCW 46.64.040.

4.28.081 Summons, how served—When corporation in hands of receiver. Whenever any domestic or foreign corporation, which has been doing business in this state, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof. [1897 c 97 § 1; RRS § 226, part. Formerly RCW 4.28.080(13).]

4.28.090 Service on corporation without officer in state upon whom process can be served. Whenever any corporation, created by the laws of this state, or late territory of Washington, does not have an officer in this state upon whom legal service of process can be made, an action or proceeding against the corporation may be commenced in any county where the cause of action may arise, or the corporation may have property, and service may be made upon the corporation by depositing a copy of the summons, writ, or other process, in the office of the secretary of state, which shall be taken, deemed and treated as personal service on the corporation: PROVIDED, A copy of the summons, writ, or other process, shall be deposited in the post office, postage paid, directed to the secretary or other proper officer of the corporation, at the place where the main business of the corporation is transacted, when the place of business is known to the plaintiff, and be published at least once a week for six weeks in a newspaper of general circulation at the seat of government of this state, before the service shall be

deemed perfect. [1985 c 469 § 1; 1893 c 127 § 8; RRS § 227.]

4.28.100 Service of summons by publication—When authorized. When the defendant cannot be found within the state, and upon the filing of an affidavit of the plaintiff, his agent, or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or cannot be found therein, and that he has deposited a copy of the summons (substantially in the form prescribed in RCW 4.28.110) and complaint in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in any of the following cases:

(1) When the defendant is a foreign corporation, and has property within the state;

(2) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent;

(3) When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action;

(4) When the action is for divorce in the cases prescribed by law;

(5) When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;

(6) When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same;

(7) When the action is against any corporation, whether private or municipal, organized under the laws of the state, and the proper officers on whom to make service do not exist or cannot be found;

(8) When the action is brought under RCW 4.08.160 and 4.08.170 to determine conflicting claims to property in this state. [1981 c 331 § 13; 1953 c 102 § 1. Prior: 1929 c 81 § 1; 1915 c 45 § 1; 1893 c 127 § 9; RRS § 228.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

4.28.110 Manner of publication and form of summons. The publication shall be made in a newspaper of general circulation in the county where the action is brought once a week for six consecutive weeks: PROVIDED, That publication of summons shall not be made until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication. The summons must be subscribed by the plaintiff or his attorney or attorneys. The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired, to appear and answer the complaint within sixty days from the date of the first publication of the summons; and the summons for publication shall also contain a brief

statement of the object of the action. The summons for publication shall be substantially as follows:

In the superior court of the State of Washington for the county of

., Plaintiff,
vs. No.
., Defendant.

The State of Washington to the said (naming the defendant or defendants to be served by publication):

You are hereby summoned to appear within sixty days after the date of the first publication of this summons, to wit, within sixty days after the day of, 1. . . ., and defend the above entitled action in the above entitled court, and answer the complaint of the plaintiff, and serve a copy of your answer upon the undersigned attorneys for plaintiff, at his (or their) office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which has been filed with the clerk of said court. (Insert here a brief statement of the object of the action.)

.,
Plaintiff's Attorneys.
P.O. Address
County
Washington.

[1985 c 469 § 2; 1895 c 86 § 2; 1893 c 127 § 10; RRS § 233.]

Publication of legal notices: Chapter 65.16 RCW.

4.28.120 Publication of notice in eminent domain proceedings. If a party having or claiming a share or interest in or lien upon any property sought to be appropriated for public use be unknown, and such fact be made to appear by affidavit filed in the office of the clerk of the court, the notice required by law in such cases may be served by publication as in the case of nonresident owners, and such notice shall be directed by name to every owner of a share or interest in or lien upon the property sought to be so appropriated, and generally to all persons unknown having or claiming an interest or estate in the property or any portion thereof, and all such unknown parties shall in all papers and proceedings be designated as "unknown owners," and shall be bound by the provisions and be entitled to the benefits of the judgment the same as if they had been known and duly named. [1895 c 140 § 1; RRS § 239.]

Eminent domain: Title 8 RCW.

Publication of legal notices: Chapter 65.16 RCW.

4.28.140 Affidavit as to unknown heirs. Upon presenting an affidavit to the court or judge, showing to his satisfaction that the heirs of such deceased person are proper parties to the action, and that their names and residences cannot with use of reasonable diligence be ascertained, such court or judge may grant an order that service of the summons in such action be made on such "Unknown heirs" by publication thereof in the same manner as in actions against nonresident defendants. [1903 c 144 § 2; RRS § 230.]

Rules of court: Cf. CR 10(a).

4.28.150 Title of cause—Unknown claimants—Service by publication. In any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien, or interest in the lands in controversy, the following, viz.: "Also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein." And service of summons may be had upon all such unknown persons or parties defendant by publication as provided by law in case of nonresident defendants. [1903 c 144 § 3; RRS § 231.]

Publication of legal notices: Chapter 65.16 RCW.

4.28.160 Rights of unknown claimants and heirs—Effect of judgment—Lis pendens. All such unknown heirs of deceased persons, and all such unknown persons or parties, so served by publication as in RCW 4.28.150, provided, shall have the same rights as are provided by law in case of all other defendants upon whom service is made by publication, and the action shall proceed against such unknown heirs, or unknown persons or parties, in the same manner as against defendants, who are named, upon whom service is made by publication, and with like effect; and any such unknown heirs or unknown persons or parties who have or claim any right, estate, lien, or interest in the said real property in controversy, at the time of the commencement of the action, duly served as aforesaid, shall be bound and concluded by the judgment in such action, if the same is in favor of the plaintiff therein as effectually as if the action was brought against such defendant by his or her name and constructive service of summons obtained: PROVIDED, HOWEVER, That such judgment shall not bind such unknown heirs, or unknown persons or parties, defendant, unless the plaintiff shall file a notice of lis pendens in the office of the auditor of each county in which said real estate is located, in the manner provided by law, before commencing the publication of said summons. [1903 c 144 § 4; RRS § 232.]

4.28.180 Personal service out of state. Personal service of summons or other process may be made upon any party outside the state. If upon a citizen or resident of this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the force and effect of personal service within this state; otherwise it shall have the force and effect of service by publication. The summons upon the party out of the state shall contain the same and be served in like manner as personal summons within the state, except it shall require the party to appear and answer within sixty days after such personal service out of the state. [1959 c 131 § 1; 1895 c 86 § 3; 1893 c 127 § 11; RRS § 234.]

Rules of court: Cf. CR 4(e), CR 12(a), CR 82(a).

Service of process on nonresident motor vehicle operator: RCW 46.64.040.

4.28.185 Personal service out of state—Acts submitting person to jurisdiction of courts—Saving. (1) Any person, whether or not a citizen or resident of this state, who

in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

- (a) The transaction of any business within this state;
- (b) The commission of a tortious act within this state;
- (c) The ownership, use, or possession of any property whether real or personal situated in this state;
- (d) Contracting to insure any person, property or risk located within this state at the time of contracting;
- (e) The act of sexual intercourse within this state with respect to which a child may have been conceived;
- (f) Living in a marital relationship within this state notwithstanding subsequent departure from this state, as to all proceedings authorized by chapter 26.09 RCW, so long as the petitioning party has continued to reside in this state or has continued to be a member of the armed forces stationed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in RCW 4.28.180, with the same force and effect as though personally served within this state.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

(4) Personal service outside the state shall be valid only when an affidavit is made and filed to the effect that service cannot be made within the state.

(5) In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there may be taxed and allowed to the defendant as part of the costs of defending the action a reasonable amount to be fixed by the court as attorneys' fees.

(6) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law. [1977 c 39 § 1; 1975-'76 2nd ex.s. c 42 § 22; 1959 c 131 § 2.]

Rules of court: Cf. CR 4(e), CR 12(a), CR 82(a).

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Uniform parentage act: Chapter 26.26 RCW.

4.28.200 Right of one constructively served to appear and defend or reopen. If the summons is not served personally on the defendant in the cases provided in RCW 4.28.110 and 4.28.180, he or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action and, except in an action for divorce, the defendant or his representative may in like manner be allowed to defend after judgment, and within one year after the rendition of such judgment, on such terms as may be just; and if the defense is successful, and the judgment, or any part thereof, has been collected or otherwise enforced, such restitution may thereupon be compelled as the court directs. [1893 c 127 § 12; RRS § 235.]

4.28.210 Appearance, what constitutes. A defendant appears in an action when he answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his appearance. After appearance a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made upon him. Every such appearance made in an action shall be deemed a general appearance, unless the defendant in making the same states that the same is a special appearance. [1893 c 127 § 16; RRS § 241.]

Rules of court: Demurrers abolished—CR 7(c).

4.28.290 Assessment of damages without answer. A defendant who has appeared may, without answering, demand in writing an assessment of damages, of the amount which the plaintiff is entitled to recover, and thereupon such assessment shall be had or any such amount ascertained in such manner as the court on application may direct, and judgment entered by the clerk for the amount so assessed or ascertained. [1893 c 127 § 25; RRS § 251.]

4.28.320 Lis pendens in actions affecting title to real estate. In an action affecting the title to real property the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a writ of attachment of property shall be issued, or at any time afterwards, the plaintiff or a defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief at the time of filing his answer, or at any time afterwards, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: PROVIDED, HOWEVER, That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, at its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be made by an indorsement to that effect on the margin of the record. [1893 c 127 § 17; RRS § 243.]

4.28.325 Lis pendens in actions in United States district courts affecting title to real estate. In an action in

a United States district court for any district in the state of Washington affecting the title to real property in the state of Washington, the plaintiff, at the time of filing the complaint, or at any time afterwards, or a defendant, when he sets up an affirmative cause of action in his answer, or at any time afterward, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: PROVIDED, HOWEVER, That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be made by an indorsement to that effect on the margin of the record. [1963 c 137 § 1.]

4.28.330 Notice to alien property custodian. In any court or administrative action or proceeding within this state, involving property within this state or any interest therein, in which service of process is required to be made upon or notice thereof given to any person who is in a designated enemy country or enemy-occupied territory, in addition to the service of process upon or giving of notice to the person as required by any law, statute or rule applicable to the action or proceeding, a copy of the process or notice shall be sent by registered mail to the alien property custodian, Washington, District of Columbia. [1943 c 62 § 1; Rem. Supp. 1943 § 254-1.]

4.28.340 Notice to alien property custodian—Definitions. For the purposes of RCW 4.28.330 through 4.28.350:

- (1) "Person" includes any individual, partnership, association and corporation;
- (2) "Designated enemy country" means any foreign country as to which the United States has declared the existence of a state of war and any other country with which the United States is at war in the future;
- (3) "Enemy-occupied territory" means any place under the control of any designated enemy country or any place with which, by reason of the existence of a state of war, the

United States does not maintain postal communication. [1943 c 62 § 2; Rem. Supp. 1943 § 254-2.]

4.28.350 Notice to alien property custodian—Duration. RCW 4.28.330 and 4.28.340 shall remain in force only so long as a state of war shall exist between the United States and the designated enemy country involved in the action or proceeding described in RCW 4.28.330. [1943 c 62 § 3; Rem. Supp. 1943 § 254-3.]

4.28.360 Personal injury action—Complaint not to include statement of damages—Request for statement. In any civil action for personal injuries, the complaint shall not contain a statement of the damages sought but shall contain a prayer for damages as shall be determined. A defendant in such action may at any time request a statement from the plaintiff setting forth separately the amounts of any special damages and general damages sought. Not later than fifteen days after service of such request to the plaintiff, the plaintiff shall have served the defendant with such statement. [1975-'76 2nd ex.s. c 56 § 2.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

Actions and procedure for injuries resulting from health care: Chapter 7.70 RCW.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

Chapter 4.32 PLEADINGS

Sections

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| 4.32.070 | Objection may be taken by answer. |
| 4.32.120 | Setoff against beneficiary of trust estate. |
| 4.32.130 | Setoff in probate actions brought by personal representatives. |
| 4.32.140 | Setoff in probate actions against personal representatives. |
| 4.32.150 | Setoff must be pleaded. |
| 4.32.170 | Answer may be stricken. |
| 4.32.250 | Effect of minor defects in pleading. |

4.32.070 Objection may be taken by answer. When any of the matters enumerated in *RCW 4.32.050 do not appear upon the face of the complaint, the objection may be taken by answer. [Code 1881 § 79; 1877 p 18 § 79; 1854 p 139 § 42; RRS § 261.]

***Reviser's note:** RCW 4.32.050 was repealed by 1984 c 76 § 11.

4.32.120 Setoff against beneficiary of trust estate. If the plaintiff be a trustee to any other, or if the action be in a name of the plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested. [Code 1881 § 498; 1877 p 107 § 502; RRS § 267.]

4.32.130 Setoff in probate actions brought by personal representatives. In actions brought by executors and administrators, demands against their testators and

intestates, and belonging to defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased. [Code 1881 § 499; 1877 p 107 § 503; RRS § 268.]

4.32.140 Setoff in probate actions against personal representatives. In actions against executors and administrators and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates or those whom they represent, in the same manner as the person so represented would have been entitled to set off the same, in an action against them. [Code 1881 § 501; 1877 p 107 § 505; RRS § 270.]

4.32.150 Setoff must be pleaded. To entitle a defendant to a setoff he must set the same forth in his answer. [Code 1881 § 502; 1877 p 108 § 506; RRS § 271.]

4.32.170 Answer may be stricken. Sham, frivolous and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose. [Code 1881 § 85; 1877 p 19 § 85; 1869 p 21 § 83; 1854 p 140 § 47; RRS § 275.]

4.32.250 Effect of minor defects in pleading. A notice or other paper is valid and effectual though the title of the action in which it is made is omitted, or it is defective either in respect to the court or parties, if it intelligently refers to such action or proceedings; and in furtherance of justice upon proper terms, any other defect or error in any notice or other paper or proceeding may be amended by the court, and any mischance, omission or defect relieved within one year thereafter; and the court may enlarge or extend the time, for good cause shown, within which by statute any act is to be done, proceeding had or taken, notice or paper filed or served, or may, on such terms as are just, permit the same to be done or supplied after the time therefor has expired. [1988 c 202 § 2; 1893 c 127 § 24; RRS § 250.]

Rules of court: Cf. CR 6(b), RAP 5.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

Chapter 4.36

GENERAL RULES OF PLEADING

Sections

4.36.070	Pleading judgments.
4.36.080	Conditions precedent, how pleaded.
4.36.120	Libel or slander, how pleaded.
4.36.130	Answer in justification and mitigation.
4.36.140	Answer in action to recover property distrained.
4.36.170	Material allegation defined.
4.36.210	Variance in action to recover personal property.
4.36.240	Harmless error disregarded.

4.36.070 Pleading judgments. In pleading a judgment or other determination of a court or office of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such

allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction. [Code 1881 § 96; 1877 p 21 § 96; 1854 p 142 § 58; RRS § 287.]

Rules of court: Cf. CR 9(e).

4.36.080 Conditions precedent, how pleaded. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. [Code 1881 § 97; 1877 p 21 § 97; 1854 p 142 § 59; RRS § 288.]

Rules of court: Cf. CR 9(c).

4.36.120 Libel or slander, how pleaded. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff, of the defamatory matter out of which the cause arose, but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish on trial that it was so published or spoken. [Code 1881 § 99; 1877 p 22 § 99; 1854 p 142 § 61; RRS § 292.]

Rules of court: Cf. CR 8.

4.36.130 Answer in justification and mitigation. In an action mentioned in RCW 4.36.120, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he proves the justification or not, he may give in evidence the mitigating circumstances. [Code 1881 § 100; 1877 p 22 § 100; 1854 p 143 § 62; RRS § 293.]

4.36.140 Answer in action to recover property distrained. In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing the damage thereon, shall be good, without setting forth the title to such real property. [Code 1881 § 101; 1877 p 22 § 101; 1854 p 143 § 63; RRS § 295.]

4.36.170 Material allegation defined. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient. [Code 1881 § 104; 1877 p 22 § 104; 1854 p 143 § 65; RRS § 298.]

4.36.210 Variance in action to recover personal property. Where the plaintiff in an action to recover the possession of personal property on a claim of being the owner thereof, shall fail to establish on trial such ownership, but shall prove that he is entitled to the possession thereof, by virtue of a special property therein, he shall not thereby

be defeated of his action, but shall be permitted to amend, on reasonable terms his complaint, and be entitled to judgment according to the proof in the case. [Code 1881 § 108; 1877 p 23 § 108; 1869 p 27 § 106; 1856 p 10 § 11; RRS § 302.]

4.36.240 Harmless error disregarded. The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect. [Code 1881 § 113; 1877 p 24 § 113; 1854 p 144 § 71; RRS § 307.]

Rules of court: Cf. RAP 2.4(a), 18.22.

Chapter 4.40 ISSUES

Sections

4.40.010	Issues defined—Kinds.
4.40.050	Trial of issue of law.
4.40.060	Trial of certain issues of fact—Jury.
4.40.070	Trial of other issues of fact.

4.40.010 Issues defined—Kinds. Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other, they are of two kinds—first, of law; and second, of fact. [1893 c 127 § 28; Code 1881 § 200; 1877 p 42 § 204; 1854 p 163 § 179; RRS § 309.]

4.40.050 Trial of issue of law. An issue of law shall be tried by the court, unless it is referred as provided by the statutes relating to referees. [1893 c 127 § 32; Code 1881 § 204; 1877 p 42 § 208; 1854 p 164 § 183; RRS § 313.]

Trial before referee: Chapter 4.48 RCW.

4.40.060 Trial of certain issues of fact—Jury. An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived, as provided by law, or a reference ordered, as provided by statute relating to referees. [1893 c 127 § 33; Code 1881 § 204; 1877 p 42 § 208; 1873 p 52 § 206; 1869 p 50 § 208; 1854 p 164 § 183; RRS § 314.]

4.40.070 Trial of other issues of fact. Every other issue of fact shall be tried by the court, subject, however, to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury, or referred. [1893 c 127 § 34; RRS § 315.]

Chapter 4.44 TRIAL

Sections

4.44.020	Notice of trial—Note of issue.
4.44.025	Priority permitted for aged or ill parties in civil cases.
4.44.060	Proceedings in trial by court—Findings deemed verdict.
4.44.070	Findings and conclusions, how made.
4.44.080	Questions of law to be decided by court.

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4.44.095	Right to jury trial upon an issue of fact in an action at law.
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4.44.160	General causes of challenge.
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4.44.210	Peremptory challenges, how taken.
4.44.220	Order of taking challenges.
4.44.230	Exceptions to challenges—Determination.
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4.44.270	View of premises by jury.
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4.44.300	Care of jury while deliberating.
4.44.310	Expense of keeping jury.
4.44.330	Discharge of jury without verdict.
4.44.340	Effect of discharge of jury.
4.44.350	Court recess while jury is out.
4.44.360	Proceedings when jury have agreed.
4.44.370	Manner of giving verdict.
4.44.380	Number of jurors required to render verdict.
4.44.390	Jury may be polled.
4.44.400	Correction of informal verdict—Polling jury.
4.44.410	General or special verdicts.
4.44.420	Verdict in action for specific personal property.
4.44.440	Special verdict controls.
4.44.450	Jury to assess amount of recovery.
4.44.460	Receiving verdict and discharging jury.
4.44.470	Court may fix amount of bond in civil actions.
4.44.480	Deposits in court—Order.
4.44.490	Deposits in court—Enforcement of order.
4.44.500	Deposits in court—Custody of money deposited.

District court, civil trial: Chapter 12.12 RCW.

Juries

crimes relating to: Chapter 9.51 RCW.

generally: Chapter 2.36 RCW.

4.44.020 Notice of trial—Note of issue. At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least three days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least three days before the day of setting such causes for trial file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue.

In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least three days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court.

When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice on his part. [1893 c 127 § 35; RRS § 319.]

Rules of court: Cf. CR 40(a).

4.44.025 Priority permitted for aged or ill parties in civil cases. When setting civil cases for trial, unless otherwise provided by statute, upon motion of a party, the court may give priority to cases in which a party is frail and over seventy years of age or is afflicted with a terminal illness. [1991 c 197 § 1.]

4.44.060 Proceedings in trial by court—Findings deemed verdict. The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the facts shall be deemed a verdict, and may be set aside in the same manner and for the same reason as far as applicable, and a new trial granted. [Code 1881 § 247; 1877 p 51 § 251; 1869 p 60 § 251; RRS § 368.]

4.44.070 Findings and conclusions, how made. Any party may, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or at the option of the court, oral, and entered in the judge's minutes. [Code 1881 § 222; 1877 p 47 § 226; 1869 p 56 § 226; RRS § 341.]

Rules of court: Cf. CR 52(a).

4.44.080 Questions of law to be decided by court. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. [Code 1881 § 223; 1877 p 47 § 227; 1869 p 56 § 227; RRS § 342.]

Rules of court: Cf. ER 104 and ER 1008.

4.44.090 Questions of fact for jury. All questions of fact other than those mentioned in RCW 4.44.080, shall be decided by the jury, and all evidence thereon addressed to them. [Code 1881 § 224; 1877 p 47 § 228; 1869 p 56 § 228; RRS § 343.]

Rules of court: Cf. ER 1008.

Charging juries: State Constitution Art. 4 § 16.

Right to trial by jury: State Constitution Art. 1 § 21; RCW 4.48.010.

4.44.095 Right to jury trial upon an issue of fact in an action at law. See RCW 4.48.010.

4.44.110 Jury fee part of taxable costs. The jury fee paid by the party demanding a trial by jury shall be a part of

the taxable costs in such action. [1961 c 304 § 3; 1903 c 43 § 2; RRS § 317.]

4.44.120 Impanelling jury—Number. When the action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned, who have appeared and not been excused, and deposit them in a box. He shall draw the required number of names for purposes of voir dire examination. Any necessary additions to the panel shall be drawn from the clerk's list of qualified jurors. The clerk shall thereupon prepare separate ballots and deposit them in the trial jury box, and draw such ballots separately therefrom, as in the case of the regular panel. The jury shall consist of six persons, unless the parties in their written demand for jury demand that the jury be twelve in number or consent to a less number. The parties may consent to a jury less than six in number but not less than three, and such consent shall be entered by the clerk on the minutes of the trial. [1972 ex.s. c 57 § 3; Code 1881 § 206; 1877 p 43 § 210; 1869 p 51 § 210; 1854 p 164 § 185; RRS § 323.]

Rules of court: Cf. CR 48.

Juries, district courts: Chapter 12.12 RCW.

4.44.130 Challenges—Kind and number. Either party may challenge the jurors. The challenge shall be to individual jurors, and be peremptory or for cause. Each party shall be entitled to three peremptory challenges. When there is more than one party on either side, the parties need not join in a challenge for cause; but, they shall join in a peremptory challenge before it can be made. If the court finds that there is a conflict of interests between parties on the same side, the court may allow each conflicting party up to three peremptory challenges. [1969 ex.s. c 37 § 1; Code 1881 § 207; 1877 p 43 § 211; 1854 p 165 § 186; RRS § 324.]

4.44.140 Peremptory challenges defined. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him. [Code 1881 § 208; 1877 p 43 § 212; 1869 p 51 § 212; RRS § 325.]

4.44.150 Challenges for cause defined. A challenge for cause is an objection to a juror, and may be either:

(1) General; that the juror is disqualified from serving in any action; or

(2) Particular; that he is disqualified from serving in the action on trial. [Code 1881 § 209; 1877 p 43 § 213; 1869 p 51 § 213; RRS § 326.]

4.44.160 General causes of challenge. General causes of challenge are:

(1) A want of any of the qualifications prescribed for a juror, as set out in RCW 2.36.070.

(2) Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him or her incapable of performing the duties of a juror in any action. [1992 c 93 § 6; 1975 1st ex.s. c 203 § 2; Code 1881 § 210; 1877 p 44 § 214; 1869 p 52 § 214; RRS § 327.]

Qualifications of jurors: RCW 2.36.070.

4.44.170 Particular causes of challenge. Particular causes of challenge are of three kinds:

(1) For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

(2) For the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.

(3) For the existence of a defect in the functions or organs of the body which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the party challenging. [1975 1st ex.s. c 203 § 3; Code 1881 § 211; 1877 p 44 § 215; 1869 p 52 § 215; RRS § 329.]

Reviser's note: The word "code" appeared in Code 1881 § 211.

Qualification of jurors: RCW 2.36.070.

4.44.180 Implied bias defined. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

(1) Consanguinity or affinity within the fourth degree to either party.

(2) Standing in the relation of guardian and ward, attorney and client, master and servant or landlord and tenant, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages, of the adverse party, or being surety or bail in the action called for trial, or otherwise, for the adverse party.

(3) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the state against either party, upon substantially the same facts or transaction.

(4) Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always, the interest of the juror as a member or citizen of the county or municipal corporation. [Code 1881 § 212; 1877 p 44 § 216; 1869 p 52 § 216; 1854 p 165 § 187; RRS § 330.]

4.44.190 Challenge for actual bias. A challenge for actual bias may be taken for the cause mentioned in RCW 4.44.170(2). But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially. [Code 1881 § 213; 1877 p 44 § 217; 1869 p 53 § 217; RRS § 331.]

4.44.210 Peremptory challenges, how taken. The jurors having been examined as to their qualifications, first by the plaintiff and then by the defendant, and passed for

cause, the peremptory challenges shall be conducted as follows, to wit:

The plaintiff may challenge one, and then the defendant may challenge one, and so alternately until the peremptory challenges shall be exhausted. The panel being filled and passed for cause, after said challenge shall have been made by either party, a refusal to challenge by either party in the said order of alternation, shall not defeat the adverse party of his full number of challenges, but such refusal on the part of the plaintiff to exercise his challenge in proper turn, shall conclude him as to the jurors once accepted by him, and if his right be not exhausted, his further challenges shall be confined, in his proper turn, to talesmen only. [Code 1881 § 215; 1877 p 45 § 219; 1869 p 53 § 219; RRS § 333.]

4.44.220 Order of taking challenges. The challenges of either party shall be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

(1) For general disqualification.

(2) For implied bias.

(3) For actual bias.

(4) Peremptory. [Code 1881 § 216; 1877 p 45 § 220; 1869 p 53 § 220; RRS § 334.]

4.44.230 Exceptions to challenges—Determination. The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the facts. [Code 1881 § 217; 1877 p 45 § 221; 1869 p 53 § 221; RRS § 335.]

4.44.240 Trial of challenge. Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent may be examined as a witness by either party. If a challenge be determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if determined or found otherwise, it shall be disallowed. [Code 1881 § 218; 1877 p 45 § 222; 1869 p 54 § 222; RRS § 336.]

4.44.250 Challenge, exception, denial may be oral. The challenge, the exception and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side. [Code 1881 § 219; 1877 p 45 § 223; 1869 p 54 § 223; RRS § 337.]

4.44.260 Oath of jurors. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them, will well, and truly try, the matter in issue between the plaintiff and defendant, and a true verdict give, according to the law and evidence as given them on the trial. [Code 1881 § 220; 1877 p 46 § 224; 1869 p 54 § 224; RRS § 338.]

Oaths and mode of administering: State Constitution Art. 1 § 6.

4.44.270 View of premises by jury. Whenever in the opinion of the court it is proper that the jury should have a view of real property which is the subject of litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place which shall be shown to them by the judge or by a person appointed by the court for that purpose. While the jury are thus absent no person other than the judge, or person so appointed, shall speak to them on any subject connected with the trial. [Code 1881 § 225; 1877 p 47 § 229; 1869 p 56 § 229; RRS § 344.]

4.44.280 Admonitions to jurors. The jurors may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them. [1957 c 7 § 5; Code 1881 § 226; 1877 p 47 § 230; 1869 p 56 § 230; RRS § 345.]

Care of jury while deliberating: RCW 4.44.300.

4.44.290 Procedure when juror becomes ill. If after the formation of the jury, and before verdict, a juror become sick so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn and the trial begin anew; or the jury may be discharged and a new jury then or afterwards formed. [Code 1881 § 227; 1877 p 48 § 231; 1869 p 56 § 231; RRS § 347.]

4.44.300 Care of jury while deliberating. After hearing the charge, the jury may either decide in the jury box or retire for deliberation. If they retire, they must be kept together in a room provided for them, or some other convenient place under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the best of his ability, keep the jury thus separate from other persons, without drink, except water, and without food, except [as] ordered by the court. He must not suffer any communication to be made to them, nor make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on. [Code 1881 § 229; 1877 p 48 § 233; 1869 p 57 § 233; 1854 p 166 § 194; RRS § 349.]

Rules of court: Cf. CR 47(i), 51(h).

Admonitions to jury, separation: RCW 4.44.280.

4.44.310 Expense of keeping jury. If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court orders them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county. [Code 1881 § 230; 1877 p 48 § 234; 1869 p 57 § 234; RRS § 350.]

4.44.330 Discharge of jury without verdict. The jury may be discharged by the court on account of the

sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing. [Code 1881 § 233; 1877 p 48 § 237; 1869 p 58 § 237; RRS § 353.]

4.44.340 Effect of discharge of jury. In all cases where a jury are discharged or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial or after the cause is submitted to them, the action shall thereafter be for trial anew. [1891 c 60 § 2; Code 1881 § 234; 1877 p 49 § 238; 1869 p 58 § 238; RRS § 354.]

4.44.350 Court recess while jury is out. While the jury is absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. [1957 c 9 § 2; Code 1881 § 235; 1877 p 49 § 239; 1869 p 58 § 239; 1854 p 166 § 197; RRS § 355.]

4.44.360 Proceedings when jury have agreed. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear, the rest shall be discharged without giving a verdict. [Code 1881 § 236; 1877 p 49 § 240; 1869 p 58 § 240; RRS § 356.]

4.44.370 Manner of giving verdict. If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the foreman answers in the affirmative, he shall on being required declare the same. [Code 1881 § 237; 1877 p 49 § 241; 1869 p 58 § 241; RRS § 357.]

4.44.380 Number of jurors required to render verdict. In all trials by juries of six in the superior court, except criminal trials, when five of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the foreman, and the verdict shall stand as the verdict of the whole jury, and have all the force and effect of a verdict agreed to by six jurors. In cases where the jury is twelve in number, a verdict reached by ten shall have the same force and effect as described above, and the same procedures shall be followed. [1972 ex.s. c 57 § 4; 1895 c 36 § 1; RRS § 358.]

Trial by jury: State Constitution Art. 1 § 21.

4.44.390 Jury may be polled. When the verdict is returned into court either party may poll the jury, and if the number of jurors required for verdict answer that it is the verdict said verdict shall stand. In case the number of jurors required for verdict do not answer in the affirmative the jury shall be returned to the jury room for further deliberation. [1972 ex.s. c 57 § 6; 1895 c 36 § 2; RRS § 359.]

4.44.400 Correction of informal verdict—Polling jury. When a verdict is given and before it is filed, the jury may be polled at the request of either party, for which

purpose each shall be asked whether it is his verdict; if any juror answer in the negative the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out. [Code 1881 § 238; 1877 p 49 § 242; 1869 p 58 § 242; RRS § 360.]

Reviser's note: For later enactment regarding the polling of a jury, see RCW 4.44.390.

4.44.410 General or special verdicts. The verdict of a jury is either general or special. [1984 c 76 § 4; Code 1881 § 240; 1877 p 49 § 244; 1869 p 59 § 244; 1854 p 167 § 198; RRS § 362.]

Rules of court: See CR 49.

4.44.420 Verdict in action for specific personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claims a return thereof, the jury shall assess the value of the property if their verdict be in favor of the plaintiff, or if they find in favor of the defendant and that he is entitled to a return thereof, they may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property. [Code 1881 § 241; 1877 p 50 § 245; 1869 p 59 § 245; 1854 p 167 § 199; RRS § 363.]

4.44.440 Special verdict controls. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly. [Code 1881 § 243; 1877 p 50 § 247; 1869 p 60 § 247; 1854 p 167 § 201; RRS § 365.]

Rules of court: Cf. CR 49(b).

4.44.450 Jury to assess amount of recovery. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a setoff for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the pleadings. [1891 c 60 § 3; Code 1881 § 244; 1877 p 50 § 248; 1869 p 60 § 248; 1854 p 167 § 202; RRS § 366.]

4.44.460 Receiving verdict and discharging jury. When the verdict is given and is such as the court may receive, and if no juror disagrees or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given. [Code 1881 § 239; 1877 p 49 § 243; 1869 p 59 § 243; RRS § 361.]

4.44.470 Court may fix amount of bond in civil actions. Whenever by statute a bond or other security is required for any purpose in an action or other proceeding in a court of record and if the party shall apply therefor, the

court shall have power to prescribe the amount of the bond or other security notwithstanding any requirement of the statute; and in every such case money in an amount prescribed by the court may be deposited with the clerk in lieu of a bond. After a bond or other security shall have been given, the court in its discretion may require additional security either on its own motion or upon motion of an interested party or person. The courts shall exercise care to require adequate though not excessive security in every instance. [1927 c 272 § 1; RRS § 958-4.]

Suretyship: Chapters 19.72, 48.28 RCW.

4.44.480 Deposits in court—Order. When it is admitted by the pleading or examination of a party, that he has in his possession, or under his control, any money, or other thing capable of delivery, which being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court. [Code 1881 § 195; 1877 p 41 § 199; 1869 p 49 § 203; 1854 p 163 § 174; RRS § 745.]

Rules of court: Cf. CR 67.

4.44.490 Deposits in court—Enforcement of order. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it, in conformity with the direction of the court. [Code 1881 § 196; 1877 p 41 § 200; 1869 p 49 § 200; 1854 p 163 § 175; RRS § 746.]

Rules of court: Cf. CR 67.

4.44.500 Deposits in court—Custody of money deposited. Money deposited, or paid into a court in an action, shall not be loaned out, unless, with the consent of all parties having an interest in, or making claim to the same. [Code 1881 § 197; 1877 p 41 § 201; 1869 p 49 § 201; 1854 p 163 § 176; RRS § 747.]

Rules of court: Cf. CR 67.

Chapter 4.48

TRIAL BEFORE REFEREE

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4.48.010 Reference by consent—Right to jury trial—Referee may not preside—Parties' written consent constitutes waiver of right. The court shall order all or any of the issues in a civil action, whether of fact or law, or both, referred to a referee upon the written consent of the parties which is filed with the clerk. Any party shall have the right in an action at law, upon an issue of fact, to demand a trial by jury. No referee appointed under this chapter may preside over a jury trial. The written consent of the parties constitutes a waiver of the right of trial by jury by any party having the right. [1984 c 258 § 512; Code 1881 § 248; 1854 p 168 § 206; RRS § 369. Formerly RCW 4.44.100, part, and 4.48.010.]

Rules of court: Cf. CR 38(a).

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.020 Reference without consent. Where the parties do not consent, the court may upon the application of either party, direct a reference in all cases formerly cognizable in chancery in which reference might be made:

(1) When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or,

(2) When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or,

(3) When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or,

(4) When it is necessary for the information of the court in a special proceeding. [1984 c 258 § 513; Code 1881 § 249; 1877 p 51 § 253; 1869 p 61 § 253; 1854 p 168 § 207; RRS § 370.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.030 To whom reference may be ordered. A reference may be ordered to any person or persons not exceeding three, agreed upon by the parties. If the reference is not agreed to by the parties, the court may appoint one or more persons, not exceeding three. [1984 c 258 § 514; Code 1881 § 250; 1877 p 51 § 254; 1869 p 61 § 254; 1854 p 168 § 208; RRS § 371.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.040 Qualifications of referees. A person appointed by the court as a referee or who serves as a referee with the consent of the parties shall be:

- (1) Qualified as a juror as provided by statute.
- (2) Competent as juror between the parties.

(3) A duly admitted and practicing attorney. [1984 c 258 § 515; Code 1881 § 251; 1877 p 51 § 255; 1859 p 61 § 255; 1854 p 169 § 209; RRS § 372.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.050 Challenges to referees. If a referee is appointed by the court, each party shall have the same right to challenge the appointment. Challenges shall be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge. [1984 c 258 § 516; Code 1881 § 252; 1877 p 52 § 256; 1869 p 61 § 256; RRS § 373.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.060 Trial procedure—Powers of referee—Referee to provide clerical personnel. (1) Subject to the limitations and directions prescribed in the order of reference, the trial conducted by a referee shall be conducted in the same manner as a trial by the court. Unless waived in whole or in part, the referee shall apply the rules of pleading, practice, procedure, and evidence used in the superior courts of this state. The referee shall have the same power to grant adjournments, administer oaths, preserve order, punish all violations thereof upon such trial, compel the attendance of witnesses, and to punish them for nonattendance or refusal to be sworn or testify, as is possessed by the court.

(2) A referee appointed under RCW 4.48.010 shall provide clerical personnel necessary for the conduct of the proceeding, including a court reporter. [1984 c 258 § 517; Code 1881 § 253; 1877 p 52 § 257; 1869 p 62 § 257; 1854 p 169 § 210; RRS § 374.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.070 Referee's report—Contents—Evidence, filing of, frivolous. The report of a referee appointed by the court under RCW 4.48.020 shall state the facts found, and when the order of reference includes an issue of law, it shall state the conclusions of law separately from the facts. The referee shall file with the report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial and the party offering the same excepts to the decision rejecting such evidence at the time, the exceptions shall be noted by the referees and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous and inadmissible, require the party at whose instance it was taken and reported, to pay all costs and disbursements thereby incurred. [1984 c 258 § 518; Code 1881 § 254; 1877 p 52 § 258; 1869 p 62 § 258; 1854 p 169 § 210; RRS § 375.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.080 Proceedings on filing of report. The report of a referee appointed by the court under RCW 4.48.020 shall be filed with the clerk within twenty days after the trial concludes. Either party may, within such time as may be

prescribed by the rules of court, or by special order, move to set the same aside, or for judgment thereon, or such order or proceeding as the nature of the case may require. [1984 c 258 § 519; 1957 c 9 § 3; Code 1881 § 255; 1877 p 52 § 259; 1869 p 62 § 259; RRS § 376.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.090 Judgment on referee's report. The court may affirm or set aside the report of a referee appointed under RCW 4.48.020 either in whole or in part. If it affirms the report it shall give judgment accordingly. If the report be set aside, either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside, to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of the jury. [1984 c 258 § 520; Code 1881 § 256; 1877 p 52 § 260; 1869 p 62 § 260; RRS § 377.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.100 Compensation of referee—Trial expense—Obligation of parties, when. (1) The compensation of a referee appointed under RCW 4.48.020 shall be the same as that established for a superior court judge pro tempore under RCW 2.08.180.

(2) If a referee is appointed pursuant to RCW 4.48.010, the referee's compensation shall be at the rate prescribed by subsection (1) of this section, unless otherwise agreed to by the parties.

(3) Payment of the compensation of a referee appointed under RCW 4.48.010 and the expense of the trial before the referee shall be the obligation of the parties. The obligation shall be borne equally unless the parties agree to a different allocation. [1984 c 258 § 524; Code 1881 § 514; 1877 p 109 § 518; 1854 p 202 § 376; RRS § 483.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Supplemental proceedings, fees of referees: RCW 6.32.280.

4.48.110 Referee's proposed report—Copies—Objections, etc.—Request for hearing—Final report—Additional items to be filed—Exception—Copies. (1) Within twenty days after the conclusion of a trial before a referee appointed under RCW 4.48.010, unless a later time is agreed to by the parties, the referee shall mail to each party a copy of the referee's proposed written report. The proposed report shall contain the findings of fact and conclusions of law by the referee and the judgment of the referee.

(2) Within ten days after receipt of the copy of the proposed report, any party may serve written objections and suggested modifications or corrections to the proposed report on the referee and the other parties. The referee shall without delay consider the objections and suggestions and prepare a final written report. If requested by any party, the referee shall conduct a hearing on the proposed report and any suggested corrections or modifications before preparing the final written report.

(3) Upon completion of the final written report, the referee shall file with the clerk of the superior court:

(a) Copies of all original papers in the action filed with the referee;

(b) Exhibits offered and received or rejected during the trial;

(c) The transcript of the proceedings in the trial; and
(d) The final written report containing the findings of fact and conclusions of law by the referee and the judgment of the referee.

(4) The presiding judge of the superior court may allow the referee to file the final written report under subsection (3) of this section without any of the items listed in subsection (3) (a) through (c) of this section. However, the presiding judge shall require the referee to file those items if a timely notice of appeal of the judgment is filed.

(5) When the referee files the written report under subsection (3) of this section, the referee shall also mail to each party a copy of the report. [1984 c 258 § 521.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.120 Termination of referral—Judgment—Review of referee's decision. (1) Upon receipt by the clerk of the court of the final written report filed under RCW 4.48.110, the referral of the action shall terminate and the presiding judge of the superior court shall order the judgment contained in the report entered as the judgment of the court in the action. Subsequent motions and other post trial proceedings in the action may be conducted and disposed of by the referee upon order of the presiding judge, in the discretion of the presiding judge, or may otherwise be assigned by the presiding judge.

(2) The decision of a referee entered as provided in this section may be reviewed in the same manner as if the decision was made by the court. [1984 c 258 § 522.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.130 Notice of trial before referee. (1) If an action is to be tried by a referee appointed under RCW 4.48.010, at least five days before the date set for the trial the referee shall advise the clerk of the court of the time and place set for the trial. The clerk shall post in a conspicuous place in the courthouse a notice that includes the names of the parties to the action, the time and place set for the trial, the name of the referee, and a statement that the proceeding is being held before a referee agreed to by the parties under chapter 4.48 RCW.

(2) A person interested in attending a trial before a referee appointed under RCW 4.48.010 [4.48.010] is entitled to do so as in a trial of a civil action in superior court. Upon request by any person, the referee shall give the person notice of the time and place set for the trial. [1984 c 258 § 523.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 4.52 AGREED CASES

Sections

- 4.52.010 Controversy may be submitted without action.
4.52.020 Judgment to be rendered as in other cases.
4.52.030 Enforcement of judgment—Appeal.

4.52.010 Controversy may be submitted without action. Parties to a question in difference which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon as if an action were pending. [Code 1881 § 298; 1877 p 61 § 302; 1869 p 73 § 300; RRS § 378.]

4.52.020 Judgment to be rendered as in other cases. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceedings prior to the trial. The case, the submission and a copy of the judgment shall constitute the judgment roll. [Code 1881 § 299; 1877 p 61 § 303; 1869 p 74 § 301; RRS § 379.]

4.52.030 Enforcement of judgment—Appeal. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal. [Code 1881 § 300; 1877 p 61 § 304; 1869 p 74 § 302; RRS § 380.]

Chapter 4.56 JUDGMENTS—GENERALLY

Sections

- 4.56.050 Effect of judgment against executor or administrator.
4.56.060 Judgment in case of setoff—When equal or less than plaintiff's debt.
4.56.070 Judgment in case of setoff—When exceeds plaintiff's debt—Effect of contract assignment.
4.56.075 Judgment in case of setoff—When exceeds plaintiff's debt or affirmative relief required.
4.56.080 Judgment in action to recover personal property.
4.56.090 Assignment of judgment—Filing.
4.56.100 Satisfaction of judgments for payment of money.
4.56.110 Interest on judgments.
4.56.115 Interest on judgments against state, political subdivisions or municipal corporations—Torts.
4.56.120 Judgment of dismissal or nonsuit, grounds, effect—Other judgments on merits.
4.56.150 Challenge to legal sufficiency of evidence—Judgment in bar or of nonsuit.
4.56.190 Lien of judgment.
4.56.200 Commencement of lien on real estate.
4.56.210 Cessation of lien—Extension prohibited—Exception.
4.56.250 Claims for noneconomic damages—Limitation.
4.56.260 Award of future economic damages—Proposal for periodic payments—Security—Satisfaction of judgment.

Enforcement of judgments: Title 6 RCW.

Judgments, financial support of child: RCW 13.34.170.

Liens, cessation, financial support of child: RCW 13.34.170.

Pleading judgments: RCW 4.36.070.

(1992 Ed.)

Time limit for decision: State Constitution Art. 4 § 20.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

4.56.050 Effect of judgment against executor or administrator. When a setoff shall be established in an action brought by executors or administrators, and a balance found due to the defendant, the judgment rendered thereon against the plaintiff shall have the same effect as if the action had been originally commenced by the defendant. [Code 1881 § 500; 1877 p 107 § 504; RRS § 269.]

Rules of court: Cf. CR 54(b).

4.56.060 Judgment in case of setoff—When equal or less than plaintiff's debt. If the amount of the setoff, duly established, be equal to the plaintiff's debt or demand, judgment shall be rendered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only. [Code 1881 § 503; 1877 p 108 § 507; RRS § 271 1/2.]

Rules of court: Cf. CR 54(b).

4.56.070 Judgment in case of setoff—When exceeds plaintiff's debt—Effect of contract assignment. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof, but no such judgment shall be rendered against the plaintiff when the contract, which is the subject of the action, shall have been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff in the action. [Code 1881 § 504; 1877 p 108 § 508; RRS § 272. FORMER PART OF SECTION: Code 1881 § 303; RRS § 433 now codified as RCW 4.56.075.]

Rules of court: Cf. CR 54(b).

4.56.075 Judgment in case of setoff—When exceeds plaintiff's debt or affirmative relief required. If a setoff established at the trial, exceeds the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appears that the defendant is entitled to any affirmative relief, judgment shall be given accordingly. [Code 1881 § 303; 1877 p 62 § 307; 1869 p 74 § 305; 1854 p 173 § 231; RRS § 433. Formerly RCW 4.56.070, part.]

Rules of court: Cf. CR 54(b).

4.56.080 Judgment in action to recover personal property. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. [Code 1881 § 304; 1877 p 62 § 308; 1869 p 75 § 306; 1854 p 173 § 232; RRS § 434.]

4.56.090 Assignment of judgment—Filing. When any judgment has been assigned, the assignment may be

filed in the office of the county clerk in the county where the judgment is recorded and a certified copy thereof may be filed in any county where an abstract of such judgment has been filed and from the time of such filing shall be notice of such assignment: PROVIDED, That such assignment of a judgment or such certified copy thereof, may not be filed unless it is properly acknowledged before an officer qualified by law to take acknowledgment of deeds. [1935 c 22 § 1, part; 1929 c 60 § 5, part; RRS § 447. Prior: 1893 c 42 § 6.]

Reviser's note: Part relating to the clerk's record index of judgments codified as RCW 4.64.070.

4.56.100 Satisfaction of judgments for payment of money. When any judgment for the payment of money only shall have been paid or satisfied, the clerk of the court in which such judgment was rendered shall note upon the record in the execution docket satisfaction thereof giving the date of such satisfaction upon either the payment to such clerk of the amount of such judgment, costs and interest and any accrued costs by reason of the issuance of any execution, or the filing with such clerk of a satisfaction entitled in such action and identifying the same executed by the judgment creditor or his attorney of record in such action or his assignee acknowledged as deeds are acknowledged. Every satisfaction of judgment and every partial satisfaction of judgment which provides for the payment of money shall clearly designate the judgment creditor and his or her attorney if any, the judgment debtor, the amount or type of satisfaction, whether the satisfaction is full or partial, the cause number, and the date of entry of the judgment. A certificate by such clerk of the entry of such satisfaction by him may be filed in the office of the clerk of any county in which an abstract of such judgment has been filed. When so satisfied by the clerk or the filing of such certificate the lien of such judgment shall be discharged. [1983 c 28 § 1; 1929 c 60 § 6; RRS § 454. Prior: 1893 c 42 § 7.]

4.56.110 Interest on judgments. Interest on judgments shall accrue as follows:

(1) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: PROVIDED, That said interest rate is set forth in the judgment.

(2) All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.

(3) Except as provided under subsections (1) and (2) of this section, judgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof: PROVIDED, That in any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. [1989 c 360 § 19; 1983 c 147 § 1; 1982 c 198 § 1; 1980 c 94 § 5; 1969 c 46 § 1; 1899 c 80 § 6; 1895 c 136 § 4; RRS § 457.]

Application—1983 c 147: "The 1983 amendments of RCW 4.56.110 and 4.56.115 apply only to judgments entered after July 24, 1983." [1983 c 147 § 3.]

Effective date—1980 c 94: See note following RCW 4.84.250.

4.56.115 Interest on judgments against state, political subdivisions or municipal corporations—Torts. Judgments founded on the tortious conduct of the state of Washington or of the political subdivisions, municipal corporations, and quasi municipal corporations of the state, whether acting in their governmental or proprietary capacities, shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof: PROVIDED, That in any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. [1983 c 147 § 2; 1975 c 26 § 1.]

Application—1983 c 147: See note following RCW 4.56.110.

4.56.120 Judgment of dismissal or nonsuit, grounds, effect—Other judgments on merits. An action in the superior court may be dismissed by the court and a judgment of nonsuit rendered in the following cases:

(1) Upon the motion of the plaintiff, (a) when the case is to be or is being tried before a jury, at any time before the court announces its decision in favor of the defendant upon a challenge to the legal sufficiency of the evidence, or before the jury retire to consider their verdict, (b) when the action, whether for legal or equitable relief, is to be or is being tried before the court without a jury, at any time before the court has announced its decision: PROVIDED, That no action shall be dismissed upon the motion of the plaintiff, if the defendant has interposed a setoff as a defense, or seeks affirmative relief growing out of the same transaction, or sets up a counterclaim, either legal or equitable, to the specific property or thing which is the subject matter of the action.

(2) Upon the motion of either party, upon the written consent of the other.

(3) When the plaintiff fails to appear at the time of trial and the defendant appears and asks for a dismissal.

(4) Upon its own motion, when, upon the trial and before the final submission of the case, the plaintiff abandons it.

(5) Upon its own motion, on the refusal or neglect of the plaintiff to make the necessary parties defendants, after having been ordered so to do by the court.

(6) Upon the motion of some of the defendants, when there are others whom the plaintiff fails to prosecute with diligence.

(7) Upon its own motion, for disobedience of the plaintiff to an order of the court concerning the proceedings in the action.

(8) Upon the motion of the defendant, when, upon the trial, the plaintiff fails to prove some material fact or facts necessary to sustain his action, as alleged in his complaint. When judgment of nonsuit is given, the action is dismissed, but such judgment shall not have the effect to bar another action for the same cause. In every case, other than those mentioned in this section, the judgment shall be rendered

upon the merits and shall bar another action for the same cause. [1929 c 89 § 1; RRS §§ 408, 409, 410. Formerly RCW 4.56.120, 4.56.130, and 4.56.140. Prior: Code 1881 §§ 286, 287, 288; 1877 p 58 §§ 290, 291, 292; 1869 p 69 §§ 288, 289, 290; 1854 p 171 §§ 223, 224.]

Rules of court: Cf. CR 41(a), (b).

4.56.150 Challenge to legal sufficiency of evidence—Judgment in bar or of nonsuit. In all cases tried in the superior court with a jury, the defendant, at the close of the plaintiff's evidence, or either party, at the close of all the evidence, may challenge the legal sufficiency of the evidence to warrant a verdict in favor of the adverse party, and if the court shall decide as a matter of law the evidence does not warrant a verdict, it shall thereupon discharge the jury from further consideration of the case and enter a judgment in accordance with its decision, which judgment if it be in favor of the defendant shall be a bar to another action by the plaintiff for the same cause: PROVIDED, That in case the defendant challenge the legal sufficiency of the evidence at the close of plaintiff's case, and the court shall decide that it is insufficient merely for failure of proof of some material fact, or facts, and that there is reasonable ground to believe that such proof can be supplied in a subsequent action, the court may discharge the jury and enter a judgment of nonsuit as provided in RCW 4.56.120: AND PROVIDED, FURTHER, That nothing in this section shall be construed to authorize the court to discharge the jury and determine disputed questions of fact. [1929 c 89 § 2; 1895 c 40 § 1; RRS § 410-1.]

Rules of court: Cf. CR 50(a).

4.56.190 Lien of judgment. The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered. As used in this chapter, real estate shall not include the vendor's interest under a real estate contract for judgments rendered after August 23, 1983. If a judgment debtor owns real estate, subject to execution, jointly or in common with any other person, the judgment shall be a lien on the interest of the defendant only.

Personal property of the judgment debtor shall be held only from the time it is actually levied upon. [1987 c 442 § 1103; 1987 c 202 § 116; 1983 1st ex.s. c 45 § 5; 1980 c 105 § 3; 1971 c 81 § 16; 1929 c 60 § 1; RRS § 445. Prior: 1893 c 42 § 9; Code 1881 § 321; 1869 p 78 § 317; 1860 p 51 § 234; 1857 p 11 § 15; 1854 p 175 § 240.]

Reviser's note: This section was amended by 1987 c 202 § 116 and by 1987 c 442 § 1103, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—1987 c 442 § 1104: "The amendment of RCW 4.56.190 by this act applies only to judgments entered after July 26, 1987." [1987 c 442 § 1104.]

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

Application—1980 c 105: See note following RCW 4.16.020.

Repeal and saving—1929 c 60: "That chapter XXVIII (28), sections 320, 321, 322, and chapter XXIX (29), sections 323 and 324, and section 753 of the Code of Washington Territory of 1881; an act entitled 'An Act relating to the filing and recording of transcripts of judgments rendered in this state by the district or circuit courts of the United States', approved February 19, 1890, Laws of 1889/90, pages 97 to 98; section 5 of chapter XXXVIII (38) of the Laws of 1891, pages 77 to 78; chapter LXXXIV (84) of the Laws of 1891, pages 165 to 166; chapter XLII (42) of the Laws of 1893 pages 65 to 67, and chapter XXXIX (39) of the Laws of 1897, pages 52 to 53, chapter XI of the Laws of 1897, page 10, (sections 445, 446, 447, 450, 451, 452, 453, 454, 455, 456, 458, 459, 460, 461, 462 and 463 of Remington's Compiled Statutes; sections 8111, 8112, 8113, 8114, 8115, 8116, 8117, 8118, 8119, 8120, 8121, 8125, 8126, 8163, 8164 and 8165 of Pierce's Code) are hereby repealed: PROVIDED, That such repeal shall not be construed as affecting any rights acquired or the validity of any act done or proceeding had or pending under the provisions of any of said acts repealed." [1929 c 60 § 9.]

Entry of judgments—Superior court—District court—Small claims: RCW 6.01.020.

Execution of judgments: RCW 6.17.020.

4.56.200 Commencement of lien on real estate. The lien of judgments upon the real estate of the judgment debtor shall commence as follows:

(1) Judgments of the district court of the United States rendered in the county in which the real estate of the judgment debtor is situated, and judgments of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry thereof;

(2) Judgments of the district court of the United States rendered in any county in this state other than that in which the real estate of the judgment debtor to be affected is situated, judgments of the supreme court of this state, judgments of the court of appeals of this state, and judgments of the superior court for any county other than that in which the real estate of the judgment debtor to be affected is situated, from the time of the filing of a duly certified abstract of such judgment with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, as provided in this act;

(3) Judgments of a district court of this state rendered in the county in which the real estate of the judgment debtor is situated, from the time of the filing of a duly certified transcript of the docket of the district court with the county clerk of the county in which such judgment was rendered, and upon such filing said judgment shall become to all intents and purposes a judgment of the superior court for said county; and

(4) Judgments of a district court of this state rendered in any other county in this state than that in which the real estate of the judgment debtor to be affected is situated, a transcript of the docket of which has been filed with the county clerk of the county where such judgment was rendered, from the time of filing, with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, of a duly certified abstract of the record of said judgment in the office of the county clerk of the county in which the certified transcript of the docket of said judgment of said district court was originally filed. [1987 c 202 § 117; 1971 c 81 § 17; 1929 c 60 § 2; RRS § 445-1.]

Reviser's note: The words at the end of subsection (2) reading "as provided in this act" appeared in chapter 60, Laws of 1929 which is codified as RCW 4.56.090, 4.56.100, 4.56.190 through 4.56.210, 4.64.070, 4.64.090, 4.64.110 and 4.64.120.

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

Entry of verdict in execution docket—Effect—Cessation of lien: RCW 4.64.020, 4.64.100.

4.56.210 Cessation of lien—Extension prohibited—Exception. (1) Except as provided in subsection (2) of this section, after the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.

(2) An underlying judgment or judgment lien entered after *the effective date of this act for accrued child support shall continue in force for ten years after the eighteenth birthday of the youngest child named in the order for whom support is ordered. All judgments entered after *the effective date of this act shall contain the birth date of the youngest child for whom support is ordered. [1989 c 360 § 2; 1979 ex.s. c 236 § 1; 1929 c 60 § 7; RRS §§ 459, 460. Formerly RCW 4.56.210 and 4.56.220. Prior: 1897 c 39 §§ 1, 2.]

***Reviser's note:** For "the effective date of this act," see note following RCW 4.16.020.

Entry of judgments—Superior court—District court—Small claims: RCW 6.01.020.

4.56.250 Claims for noneconomic damages—Limitation. (1) As used in this section, the following terms have the meanings indicated unless the context clearly requires otherwise.

(a) "Economic damages" means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities.

(b) "Noneconomic damages" means subjective, nonmonetary losses, including, but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship.

(c) "Bodily injury" means physical injury, sickness, or disease, including death.

(d) "Average annual wage" means the average annual wage in the state of Washington as determined under RCW 50.04.355.

(2) In no action seeking damages for personal injury or death may a claimant recover a judgment for noneconomic damages exceeding an amount determined by multiplying 0.43 by the average annual wage and by the life expectancy of the person incurring noneconomic damages, as the life expectancy is determined by the life expectancy tables adopted by the insurance commissioner. For purposes of determining the maximum amount allowable for noneconomic damages, a claimant's life expectancy shall not be less than fifteen years. The limitation contained in this subsection applies to all claims for noneconomic damages made by a claimant who incurred bodily injury. Claims for

loss of consortium, loss of society and companionship, destruction of the parent-child relationship, and all other derivative claims asserted by persons who did not sustain bodily injury are to be included within the limitation on claims for noneconomic damages arising from the same bodily injury.

(3) If a case is tried to a jury, the jury shall not be informed of the limitation contained in subsection (2) of this section. [1986 c 305 § 301.]

Reviser's note: As to the constitutionality of this section, see *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636 (1989).

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.56.260 Award of future economic damages—Proposal for periodic payments—Security—Satisfaction of judgment. (1) In an action based on fault seeking damages for personal injury or property damage in which a verdict or award for future economic damages of at least one hundred thousand dollars is made, the court or arbitrator shall, at the request of a party, enter a judgment which provides for the periodic payment in whole or in part of the future economic damages. With respect to the judgment, the court or arbitrator shall make a specific finding as to the dollar amount of periodic payments intended to compensate the judgment creditor for the future economic damages.

(2) Prior to entry of judgment, the court shall request each party to submit a proposal for periodic payment of future economic damages to compensate the claimant. Proposals shall include provisions for: The name of the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, the number of payments or the period of time over which the payments shall be made, modification for hardship or unforeseen circumstances, posting of adequate security, and any other factor the court deems relevant under the circumstances. After each party has submitted a proposal, the court shall select the proposal, with any changes the court deems proper, which in the discretion of the court and the interests of justice best provides for the future needs of the claimant and enter judgment accordingly.

(3) If the court enters a judgment for periodic payments and any security required by the judgment is not posted within thirty days, the court shall enter a judgment for the payment of future damages in a lump sum.

(4) If at any time following entry of judgment for periodic payments, a judgment debtor fails for any reason to make a payment in a timely fashion according to the terms of the judgment, the judgment creditor may petition the court for an order requiring payment by the judgment debtor of the outstanding payments in a lump sum. In calculating the amount of the lump sum judgment, the court shall total the remaining periodic payments due and owing to the judgment creditor converted to present value. The court may also require payment of interest on the outstanding judgment.

(5) Upon the death of the judgment creditor, the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages. Money damages awarded for loss of future earnings shall not be reduced or payments terminated by reason of the death of the judgment creditor.

(6) Upon satisfaction of a periodic payment judgment, any obligation of the judgment debtor to make further payments shall cease and any security posted pursuant to this section shall revert to the judgment debtor. [1986 c 305 § 801.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Chapter 4.60

JUDGMENT BY CONFESSION

Sections

4.60.010	Judgment on confession authorized.
4.60.020	Confession by public and private corporations and minors.
4.60.030	Confession by person jointly liable.
4.60.040	Confession, how made.
4.60.050	Judgment by confession without suit.
4.60.060	Statement in writing—Requisites.
4.60.070	Judgment on confession—Entry—Execution.

Damages, assessment without answer: RCW 4.28.290.

4.60.010 Judgment on confession authorized. On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint. [Code 1881 § 291; 1877 p 60 § 295; 1869 p 72 § 293; 1854 p 172 §§ 226-228; RRS § 413.]

4.60.020 Confession by public and private corporations and minors. When the action is against the state, a county or other public corporation therein, or a private corporation, or a minor, the confession shall be made by the person who at the time sustains the relation to such state, corporation, county or minor, as would authorize the service of a notice [summons] upon him; or in the case of a minor, if a guardian for the action has been appointed, then by such guardian; in all other cases the confession shall be made by the defendant in person. [Code 1881 § 292; 1877 p 60 § 296; 1869 p 72 § 294; RRS § 414.]

4.60.030 Confession by person jointly liable. When the action is upon a contract and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants, against all the defendants thus jointly liable, whether such defendants have been served or not, to be enforced only against their joint property and against the joint and separate property of the defendant making the confession. [Code 1881 § 293; 1877 p 60 § 297; 1869 p 72 § 295; RRS § 415.]

4.60.040 Confession, how made. The confession and assent thereto shall be in writing and subscribed by the parties making the same, and acknowledged by each before some officer authorized to take acknowledgments of deeds. [Code 1881 § 294; 1877 p 60 § 298; 1869 p 72 § 296; RRS § 416.]

4.60.050 Judgment by confession without suit. A judgment by confession may be entered without action,

either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. [Code 1881 § 295; 1877 p 60 § 299; 1869 p 73 § 297; RRS § 417.]

4.60.060 Statement in writing—Requisites. A statement in writing shall be made, signed by the defendant and verified by his oath, to the following effect:

(1) It shall authorize the entry of judgment for a specified sum.

(2) If it be for money due or to become due, it shall state concisely the facts out of which the indebtedness arose, and shall show that the sum confessed to be due, is justly due or to become due.

(3) If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same. [Code 1881 § 296; 1877 p 61 § 300; 1869 p 73 § 298; RRS § 418.]

4.60.070 Judgment on confession—Entry—Execution. The statement must be presented to the superior court or a judge thereof, and if the same be found sufficient, the court or judge shall indorse thereon an order that judgment be entered by the clerk; whereupon it may be filed in the office of the clerk, who shall enter a judgment for the amount confessed, with costs. Execution may be issued and enforced thereon in the same manner as upon judgments in other cases. [Code 1881 § 297; 1877 p 61 § 301; 1869 p 73 § 299; RRS § 419.]

Chapter 4.64

ENTRY OF JUDGMENTS

Sections

4.64.010	Time of entering judgment—Motions—Filing—Recording.
4.64.020	Entry of verdict in execution docket—Effect.
4.64.030	Entry of judgment in execution docket—Summary of judgment for payment of money.
4.64.060	Execution docket.
4.64.070	Clerk's record index to execution docket.
4.64.080	Entries in execution docket.
4.64.090	Abstract of judgment.
4.64.100	Abstract of verdict—Cessation of lien, certificate.
4.64.110	Transcript of district court docket.
4.64.120	Entry of abstract or transcript of judgment.

4.64.010 Time of entering judgment—Motions—Filing—Recording.

Reviser's note: RCW 4.64.010 was both amended and repealed during the 1984 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

4.64.020 Entry of verdict in execution docket—Effect. (1) The clerk on the return of a verdict shall forthwith enter it in the execution docket, specifying the amount, the names of the parties to the action, and the names of the party or parties against whom the verdict is rendered; such entry shall be indexed in the record index and shall conform as near as may be to entries of judgments required to be made in the execution docket.

(2) Beginning at eight o'clock a.m. the day after the entry of a verdict as herein provided, it shall be notice to all the world of the rendition thereof, and any person subsequently acquiring title to or a lien upon the real property of the party or parties against whom the verdict is returned shall be deemed to have acquired such title or lien with notice, and such title or lien shall be subject and inferior to any judgment afterwards entered on the verdict. [1987 c 442 § 1109; 1927 c 176 § 1; 1921 c 65 § 2; RRS § 431-1.]

Rules of court: Cf. CR 58(b).

4.64.030 Entry of judgment in execution docket—Summary of judgment for payment of money. The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

On the first page of each judgment which provides for the payment of money, the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees, if known at the time of the entry of the judgment. If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. This information is included in the judgment to assist the county clerk in his or her record-keeping function. [1987 c 442 § 1107; 1984 c 128 § 6; 1983 c 28 § 2; Code 1881 § 305; 1877 p 62 § 309; 1869 p 75 § 307; RRS § 435.]

Rules of court: Cf. CR 58(a), CR 58(b), CR 78 (e).

4.64.060 Execution docket. Every county clerk shall keep in the clerk's office a record, to be called the execution docket, which shall be a public record and open during the usual business hours to all persons desirous of inspecting it. [1987 c 442 § 1105; 1967 ex.s. c 34 § 1; Code 1881 § 307; 1877 p 62 § 311; 1869 p 75 § 309; 1854 p 173 § 234; RRS § 444.]

4.64.070 Clerk's record index to execution docket. The clerk shall keep a proper record index to the execution docket, both direct and inverse, of all judgments, abstracts and transcripts of judgments in the clerk's office. The index shall refer to each party against whom the judgment is rendered or whose property is affected by it, and shall, together with the execution docket, be open to public inspection during regular office hours. [1987 c 442 § 1106; 1935 c 22 § 1, part; 1929 c 60 § 5, part; RRS § 446. Prior: 1893 c 42 § 6.]

Reviser's note: Part relating to assignment of judgment codified as RCW 4.56.090.

4.64.080 Entries in execution docket. When entering a judgment in the execution docket, the clerk shall leave space on the same page, if practicable, in which the clerk shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in the case until its final satisfaction, including when and to what county an execution is issued, when returned, and the return or the substance thereof. When the execution is levied on personal property

which is returned unsold, the entry shall be: "levied (noting the date) on property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate on any judgment the minutes of which are entered in the execution docket, the entry shall be: "levied upon real estate," noting the date. When any execution issued to any other county is returned levied upon real estate in such county, the entry in the docket shall be, "levied on real estate of, in county," noting the date, county, and defendants whose estate is levied upon. When any money is paid, the amount and time when paid shall be entered. When a judgment is appealed, modified, discharged, or in any manner satisfied, the facts in respect thereto shall be entered. The parties interested may also assign or discharge such judgment on such execution docket. When the judgment is fully satisfied in any way, the clerk shall write the word "satisfied," in large letters across the face of the record of such judgment in the execution docket. [1987 c 442 § 1108; 1957 c 7 § 6; 1923 c 130 § 2; Code 1881 § 310; 1877 p 63 § 314; 1869 p 76 § 312; 1854 p 174 § 237; RRS § 448.]

4.64.090 Abstract of judgment. The abstract of a judgment shall contain (1) the name of the party, or parties, in whose favor the judgment was rendered; (2) the name of the party, or parties, against whom the judgment was rendered; (3) the date of the rendition of the judgment; (4) the amount for which the judgment was rendered, and in the following manner, viz: Principal \$. . . . ; interest \$. . . . ; costs \$. . . . ; total \$. . . . [1987 c 442 § 1113; 1957 c 7 § 8. Prior: 1929 c 60 § 3, part; 1893 c 42 § 3; RRS § 451.]

4.64.100 Abstract of verdict—Cessation of lien, certificate. The clerk shall, on request and at the expense of the party in whose favor the verdict is rendered, or the party's attorney, prepare an abstract of such verdict in substantially the same form as an abstract of a judgment and transmit such abstract to the clerk of any court in any county in the state as directed, and shall make a note on the execution docket of the name of the county to which each of such abstracts is sent. The clerk receiving such abstract shall, on payment of the statutory fee, enter and index it in the execution docket in the same manner as an abstract of judgment. The entry shall have the same effect in such county as in the county where the verdict was rendered.

Whenever the verdict, or any judgment rendered thereon, shall cease to be a lien in the county where rendered, the clerk of the court shall on request of anyone, and the payment of the cost and expense thereof, certify that the lien has ceased, and transmit such certificate to the clerk of any court to which an abstract was forwarded, and the clerk receiving the certificate, on payment of the statutory fee, shall enter it in the execution docket, and then the lien of such verdict or judgment shall cease. Nothing in this section or RCW 4.64.020 shall be construed as authorizing the issuance of an execution by a clerk in any other county than that in which the judgment is rendered. [1987 c 442 § 1110; 1984 c 76 § 5; 1921 c 65 § 3; RRS § 431-2.]

Fees of

superior court clerks: RCW 36.18.020.

supreme and appellate court clerks: RCW 2.32.070.

4.64.110 Transcript of district court docket. A transcript of the district court docket shall contain an exact copy of the district court judgment from the docket. [1987 c 202 § 118; 1957 c 7 § 9. Prior: 1929 c 60 § 3, part; 1893 c 42 § 4; RRS § 452.]

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

4.64.120 Entry of abstract or transcript of judgment. It shall be the duty of the county clerk to enter in the execution docket any duly certified transcript of a judgment of a district court of this state and any duly certified abstract of any judgment of any court mentioned in RCW 4.56.200, filed in the county clerk's office, and to index the same in the same manner as judgments originally rendered in the superior court for the county of which he or she is clerk. [1987 c 442 § 1111; 1987 c 202 § 119; 1929 c 60 § 4; RRS § 453. Prior: 1893 c 42 § 5.]

Reviser's note: This section was amended by 1987 c 202 § 119 and by 1987 c 442 § 1111, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Chapter 4.68

PROCEDURE TO BIND JOINT DEBTOR

Sections

4.68.010	Summons after judgment.
4.68.020	Contents of summons.
4.68.030	Affidavit must accompany summons.
4.68.040	Defenses.
4.68.050	Pleadings.
4.68.060	Trial.

4.68.010 Summons after judgment. When a judgment is recorded against one or more of several persons jointly indebted upon an obligation by proceeding as provided by the court by rule, such defendants who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons. [1984 c 76 § 6; Code 1881 § 314; 1877 p 64 § 318; RRS § 436.]

4.68.020 Contents of summons. The summons, as provided in RCW 4.68.010, must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner and returnable within the same time, as the original summons. It is not necessary to file a new complaint. [Code 1881 § 315; 1877 p 64 § 319; RRS § 437.]

4.68.030 Affidavit must accompany summons. The summons must be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon. [Code 1881 § 316; 1877 p 65 § 320; RRS § 438.]

4.68.040 Defenses. Upon the service of such summons and affidavit, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently to the taking of the judgment, or he may deny his liability on the obligation upon which the judgment was rendered, except a discharge from such liability by the statute of limitations. [Code 1881 § 317; 1877 p 65 § 321; RRS § 439.]

4.68.050 Pleadings. If the defendant in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was rendered, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer constitute such written allegations. [Code 1881 § 318; 1877 p 65 § 322; RRS § 440.]

4.68.060 Trial. The issue formed may be tried as in other cases, but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must not exceed the amount remaining unsatisfied on such original judgment, with interest thereon. [Code 1881 § 319; 1877 p 65 § 323; RRS § 441.]

Chapter 4.72

VACATION AND MODIFICATION OF JUDGMENTS

Sections

4.72.010	Causes for enumerated.
4.72.020	Motion to vacate—Time limitation.
4.72.030	Petition to vacate for certain causes—Time limitation.
4.72.050	Conditions precedent to vacation.
4.72.060	Grounds for vacation may first be tried.
4.72.070	Injunction to suspend proceedings.
4.72.080	Construction of chapter—Time limitations when fraud, misrepresentation concerned.
4.72.090	Judgment upon denial of application.

4.72.010 Causes for enumerated. The superior court in which a judgment or final order has been rendered, or made, shall have power to vacate or modify such judgment or order:

(1) By granting a new trial for the cause, within the time and in the manner, and for any of the causes prescribed by the rules of court relating to new trials.

(2) By a new trial granted in proceedings against defendant served by publication only as prescribed in RCW 4.28.200.

(3) For mistakes, neglect or omission of the clerk, or irregularity in obtaining a judgment or order.

(4) For fraud practiced by the successful party in obtaining the judgment or order.

(5) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings.

(6) For the death of one of the parties before the judgment in the action.

(7) For unavoidable casualty, or misfortune preventing the party from prosecuting or defending.

(8) For error in a judgment shown by a minor, within twelve months after arriving at full age. [1957 c 9 § 4; Code 1881 § 436; 1877 p 96 § 438; 1875 p 20 § 1; RRS § 464.]

Rules of court: Cf. CR 52(d), CR 60(b).

Judgment to recover realty, vacation: RCW 7.28.260.

4.72.020 Motion to vacate—Time limitation. The proceedings to vacate or modify a judgment or order for mistakes or omissions of the clerk, or irregularity in obtaining the judgment or order, shall be by motion served on the adverse party or on his attorney in the action, and within one year. [1891 c 27 § 1; Code 1881 § 438; 1877 p 97 § 440; 1875 p 21 § 3; RRS § 466.]

Rules of court: Cf. CR 60(b).

4.72.030 Petition to vacate for certain causes—Time limitation. RCW 4.72.010 (2), (3), (4), (5), (6), and (7) shall be by petition verified by affidavit, setting forth the judgment or order, the facts or errors constituting a cause to vacate or modify it, and if the party is a defendant, the facts constituting a defense to the action; and such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto be a minor or person of unsound mind, and then within one year from the removal of such disability. [1891 c 27 § 2; Code 1881 § 439; 1877 p 97 § 441; 1875 p 21 § 4; RRS § 467.]

Rules of court: Cf. CR 60(b).

4.72.050 Conditions precedent to vacation. The judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defense to the action in which the judgment is rendered; or, if the plaintiff seeks its vacation, that there is a valid cause of action; and when judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment. [Code 1881 § 441; 1877 p 97 § 443; 1875 p 22 § 6; RRS § 469.]

4.72.060 Grounds for vacation may first be tried. The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the defense or cause of action. [Code 1881 § 442; 1877 p 97 § 440; 1875 p 22 § 7; RRS § 470.]

4.72.070 Injunction to suspend proceedings. The party seeking to vacate or modify a judgment or order may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or the judge upon its being rendered probable, by affidavit or petition sworn to, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified. [Code 1881 § 443; 1877 p 97 § 445; 1875 p 22 § 8; RRS § 471.]

Rules of court: Cf. CR 62.

4.72.080 Construction of chapter—Time limitations when fraud, misrepresentation concerned. The provisions

of this chapter shall not be so construed as to affect the power of the court to vacate or modify judgments or orders as elsewhere in this code provided; nor shall the time limitations set forth in this chapter within which proceedings to vacate or modify a judgment must be started apply to a judgment heretofore or hereafter entered by consent or stipulation where the grounds to vacate or modify such judgment are based on fraud or misrepresentation, or when after the entry of the judgment either party fails to fulfill the terms and conditions on which the consent judgment or stipulation was entered; nor shall any judgment of acquittal in a criminal action be vacated under the provisions of this chapter. [1961 c 88 § 1; 1891 c 27 § 4; RRS § 472.]

Reviser's note: The words "this code" appeared in 1891 c 27 § 4.

4.72.090 Judgment upon denial of application. In all cases in which an application under this chapter to vacate or modify a judgment or order for the recovery of money is denied, if proceedings on the judgment or order shall have been suspended, judgment shall be rendered against the plaintiff [applicant] for the amount of the former judgment or order, interest and costs, together with damages at the discretion of the court, not exceeding ten percent on the amount of the judgment or order. [1891 c 27 § 5; Code 1881 § 444; 1877 p 97 § 446; 1875 p 22 § 9; RRS § 473.]

Chapter 4.76 NEW TRIALS

Sections

4.76.010	New trial defined.
4.76.030	Increase or reduction of verdict as alternative to new trial.
4.76.070	Newly discovered evidence, requirements as to.
4.76.080	Petition for new trial when discovery of grounds delayed.

4.76.010 New trial defined. A new trial is a reexamination of an issue in the same court after a trial and decision by a jury, court or referees. [Code 1881 § 275; 1877 p 56 § 279; 1869 p 67 § 277; 1854 p 170 § 215; RRS § 398.]

4.76.030 Increase or reduction of verdict as alternative to new trial. If the trial court shall, upon a motion for new trial, find the damages awarded by a jury to be so excessive or inadequate as unmistakably to indicate that the amount thereof must have been the result of passion or prejudice, the trial court may order a new trial or may enter an order providing for a new trial unless the party adversely affected shall consent to a reduction or increase of such verdict, and if such party shall file such consent and the opposite party shall thereafter appeal from the judgment entered, the party who shall have filed such consent shall not be bound thereby, but upon such appeal the court of appeals or the supreme court shall, without the necessity of a formal cross-appeal, review de novo the action of the trial court in requiring such reduction or increase, and there shall be a presumption that the amount of damages awarded by the verdict of the jury was correct and such amount shall prevail, unless the court of appeals or the supreme court shall find from the record that the damages awarded in such verdict by the jury were so excessive or so inadequate as unmistakably to indicate that the amount of the verdict must

have been the result of passion or prejudice. [1971 c 81 § 19; 1933 c 138 § 2; RRS § 399-1.]

Severability—1933 c 138: "Adjudication of invalidity of any of the sections of this act, or any part of any section, shall not impair or otherwise affect the validity of any other of said sections or remaining part of any section." [1933 c 138 § 3.]

4.76.070 Newly discovered evidence, requirements as to. If the motion be supported by affidavits and the cause be newly discovered evidence, the affidavits of any witness or witnesses, showing what their testimony will be, shall be produced or good reasons shown for their nonproduction. [1891 c 59 § 2; Code 1881 § 282; 1877 p 57 § 286; 1869 p 68 § 284; 1854 p 170 § 219; RRS § 403.]

4.76.080 Petition for new trial when discovery of grounds delayed. When the grounds for a new trial could not with reasonable diligence have been discovered before, but are discovered after the time when the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases, not later than after the discovery, on which notice shall be served and returned, and the defendant held to appear as in an original action. The facts stated in the petition shall be considered as denied without answer. The case shall be tried as other cases by ordinary proceedings, but no motion shall be filed more than one year after the final judgment was rendered. [1955 c 44 § 1; Code 1881 § 437; 1875 p 21 § 2; RRS § 465.]

Chapter 4.80 EXCEPTIONS

Sections

- 4.80.010 Exception defined.
- 4.80.020 When to be taken.
- 4.80.030 Requisites—Entry in minutes.
- 4.80.040 Manner of taking and entry.
- 4.80.140 Application of chapter.

Rules of court: Cf. CR 46.

4.80.010 Exception defined. An exception is a claim of error in a ruling or decision of a court, judge or other tribunal, or officer exercising judicial functions, made in the course of an action or proceeding or after judgment therein. [1893 c 60 § 1; RRS § 381.]

Rules of court: Cf. CR 46.

Construction—1893 c 60: "This act shall govern proceedings had after it shall take effect, in actions then pending as well as those in actions thereafter begun; but it shall not affect any right acquired or proceeding had prior to the time when it shall take effect, nor restore any right or enlarge any time then already lost or expired. And except as above provided all acts and parts of acts inconsistent with the provisions of this act are hereby repealed." [1893 c 60 § 18.] This applies to RCW 4.80.010 through 4.80.140.

4.80.020 When to be taken. It shall not be necessary or proper to take or enter an exception to any ruling or decision mentioned in RCW 4.80.010, which is embodied in a written judgment, order or journal entry in the cause. But this section shall not apply to the report of a referee or commissioner, or to findings of fact or conclusions of law in a report or decision of a referee or commissioner, or in a

decision of a court or judge upon a cause or part of a cause, either legal or equitable, tried without a jury. [1893 c 60 § 2; RRS § 382.]

Rules of court: Cf. CR 46.

4.80.030 Requisites—Entry in minutes. Exceptions to any ruling upon an objection to the admission of evidence, offered in the course of a trial or hearing, need not be formally taken, but the question put or other offer of evidence, together with the objection thereto and the ruling thereon, shall be entered by the court, judge, referee or commissioner (or by the stenographer, if one is in attendance) in the minutes of the trial or hearing, and such entry shall import an exception by the party against whom the ruling was made. [1893 c 60 § 5; RRS § 385.]

Rules of court: Cf. CR 46.

4.80.040 Manner of taking and entry. Exceptions to any ruling or decision made in the course of a trial or hearing, or in the progress of a cause, except those to which it is provided in this chapter that no exception need be taken and those to which some other mode of exception is in this chapter prescribed, may be taken by any party by stating to the court, judge, referee or commissioner making the ruling or decision, when the same is made, that such party excepts to the same; whereupon such court, judge, referee or commissioner shall note the exception in the minutes of the trial, hearing or cause, or shall cause the stenographer (if one is in attendance) so to note the same. [1893 c 60 § 6; RRS § 386.]

Rules of court: Cf. CR 46.

4.80.140 Application of chapter. This chapter shall apply to and govern all civil actions and proceedings, both legal and equitable, and all criminal causes, in the superior courts, but shall not apply to district courts or other courts of limited jurisdiction from which an appeal does not lie directly to the supreme court or court of appeals. [1987 c 202 § 120; 1971 c 81 § 21; 1893 c 60 § 17; RRS § 397, part.]

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

Chapter 4.84 COSTS

Sections

- 4.84.010 Compensation of attorneys—Costs defined.
- 4.84.020 Amount of contracted attorneys' fee to be fixed by court.
- 4.84.030 Prevailing party to recover costs.
- 4.84.040 Limitation on costs in certain actions.
- 4.84.050 Limited to one of several actions.
- 4.84.060 Costs to defendant.
- 4.84.070 Costs to defendants defending separately.
- 4.84.080 Schedule of attorneys' fees.
- 4.84.090 Cost bill—Witnesses to report attendance.
- 4.84.100 Costs on postponement of trial.
- 4.84.110 Costs where tender is made.
- 4.84.120 Costs where deposit in court is made and rejected.
- 4.84.130 Costs in appeals from district courts.
- 4.84.140 Costs against guardian of infant plaintiff.
- 4.84.150 Costs against fiduciaries.
- 4.84.160 Costs against assignee.
- 4.84.170 Costs against state or county.

- 4.84.185 Prevailing party to receive expenses for opposing frivolous action or defense.
- 4.84.190 Costs in proceedings not specifically covered.
- 4.84.200 Retaxation of costs.
- 4.84.210 Security for costs.
- 4.84.220 Bond in lieu of separate security.
- 4.84.230 Dismissal for failure to give security.
- 4.84.240 Judgment on cost bond.
- 4.84.250 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Allowed to prevailing party.
- 4.84.260 Attorneys' fees as costs in damage actions of ten thousand dollars or less—When plaintiff deemed prevailing party.
- 4.84.270 Attorneys' fees as costs in damage actions of ten thousand dollars or less—When defendant deemed prevailing party.
- 4.84.280 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Offers of settlement in determining.
- 4.84.290 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Prevailing party on appeal.
- 4.84.300 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Application.
- 4.84.320 Attorneys' fees in actions for injuries resulting from the rendering of medical and other health care.
- 4.84.330 Actions on contract or lease which provides that attorney's fees and costs incurred to enforce provisions be awarded to one of parties—Prevailing party entitled to attorney's fees—Waiver prohibited.

Deposit of jury fee taxable as costs: RCW 4.44.110.

4.84.010 Compensation of attorneys—Costs defined.

The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums by way of indemnity for the prevailing party's expenses in the action, which allowances are termed costs, including, in addition to costs otherwise authorized by law, the following expenses:

- (1) Filing fees;
- (2) Fees for the service of process;
- (3) Fees for service by publication;
- (4) Notary fees, but only to the extent the fees are for services that are expressly required by law and only to the extent they represent actual costs incurred by the prevailing party;
- (5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files;
- (6) Statutory attorney and witness fees; and
- (7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: PROVIDED, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment. [1984 c 258 § 92; 1983 1st ex.s. c 45 § 7; Code 1881 § 505; 1877 p 108 § 509; 1869 p 123 § 459; 1854 p 201 § 367; RRS § 474.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Attorney fee in appeals from board of industrial insurance appeals: RCW 51.52.130, 51.52.132.

4.84.020 Amount of contracted attorneys' fee to be fixed by court. In all cases of foreclosure of mortgages and in all other cases in which attorneys' fees are allowed, the amount thereof shall be fixed by the court at such sum as the court shall deem reasonable, any stipulations in the note, mortgage or other instrument to the contrary notwithstanding; but in no case shall said fee be fixed above contract price stated in said note or contract. [1895 c 48 § 1; 1891 c 44 § 1; 1888 p 9 § 1; 1885 p 176 § 1; RRS § 475.]

4.84.030 Prevailing party to recover costs. In any action in the superior court of Washington the prevailing party shall be entitled to his or her costs and disbursements; but the plaintiff shall in no case be entitled to costs taxed as attorneys' fees in actions within the jurisdiction of the district court when commenced in the superior court. [1987 c 202 § 121; 1890 p 337 § 1; 1883 p 42 § 1; Code 1881 §§ 506, 507; 1854 p 201 §§ 368, 369; RRS § 476.]

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

4.84.040 Limitation on costs in certain actions. In an action for an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recover less than ten dollars, he shall be entitled to no more costs or disbursements than the damage recovered. [Code 1881 § 508; 1877 p 108 § 512; 1869 p 123 § 460; 1854 p 202 § 370; RRS § 477.]

4.84.050 Limited to one of several actions. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action against several parties, who might have been joined as defendants in the same action, no costs or disbursements shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this state. [Code 1881 § 509; 1877 p 108 § 513; 1869 p 123 § 461; 1854 p 202 § 371; RRS § 478.]

4.84.060 Costs to defendant. In all cases where costs and disbursements are not allowed to the plaintiff, the defendant shall be entitled to have judgment in his favor for the same. [Code 1881 § 510; 1877 p 109 § 514; 1869 p 123 § 462; 1854 p 202 § 372; RRS § 479.]

4.84.070 Costs to defendants defending separately. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such defendants as recover judgments in their favor, or either of them. [Code 1881 § 511; 1877 p 109 § 515; 1869 p 124 § 463; 1854 p 202 § 373; RRS § 480.]

4.84.080 Schedule of attorneys' fees. When allowed to either party, costs to be called the attorney fee, shall be as follows:

(1) In all actions where judgment is rendered, one hundred twenty-five dollars.

(2) In all actions where judgment is rendered in the supreme court or the court of appeals, after argument, one hundred twenty-five dollars. [1985 c 240 § 1; 1981 c 331 § 3; 1975-'76 2nd ex.s. c 30 § 2; Code 1881 § 512; 1877 p 108 § 516; 1869 p 124 § 464; 1854 p 202 § 374; RRS § 481.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Costs: RCW 4.84.190.

Transmission of record on change of venue—Costs, attorney's fees: RCW 4.12.090.

4.84.090 Cost bill—Witnesses to report attendance.

The prevailing party, in addition to allowance for costs, as provided in RCW 4.84.080, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The court shall allow the prevailing party all service of process charges in case such process was served by a person or persons not an officer or officers. Such service charge shall be the same as is now allowed or shall in the future be allowed as fee and mileage to an officer. The disbursements shall be stated in detail and verified by affidavit, and shall be served on the opposite party or his attorney, and filed with the clerk of the court, within ten days after the judgment: PROVIDED, The clerk of the court shall keep a record of all witnesses in attendance upon any civil action, for whom fees are to be claimed, with the number of days in attendance and their mileage, and no fees or mileage for any witness shall be taxed in the cost bill unless they shall have reported their attendance at the close of each day's session to the clerk in attendance at such trial. [1949 c 146 § 1; 1905 c 16 § 1; Code 1881 § 513; 1877 p 109 § 517; 1869 p 124 § 465; 1854 p 202 § 375; Rem. Supp. 1949 § 482.]

Witness fees and mileage: Chapter 2.40 RCW.

4.84.100 Costs on postponement of trial. When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement. [Code 1881 § 515; 1877 p 109 § 519; 1854 p 203 § 377; RRS § 484.]

4.84.110 Costs where tender is made. When in an action for the recovery of money, the defendant alleges in his answer, that, before the commencement of the action, he tendered to the plaintiff the full amount to which he is entitled, in such money as by agreement ought to be tendered, and thereupon brings into court, for the plaintiff, the amount tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant. [Code 1881 § 516; 1877 p 109 § 520; 1854 p 203 § 378; RRS § 485.]

4.84.120 Costs where deposit in court is made and rejected. If the defendant in any action pending, shall at

any time deposit with the clerk of the court, for the plaintiff, the amount which he admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of interest and cost, he shall pay all costs that may accrue from the time such money was so deposited. [Code 1881 § 517; 1877 p 110 § 521; 1854 p 203 § 379; RRS § 486.]

Conflicting claims, deposit in court, costs: RCW 4.08.170.

4.84.130 Costs in appeals from district courts. In all civil actions tried before the district court, in which an appeal shall be taken to the superior court, and the party appellant shall not recover a more favorable judgment in the superior court than before the district court, such appellant shall pay all costs. [1987 c 202 § 122; Code 1881 § 518; 1877 p 110 § 522; 1854 p 203 § 380; RRS § 487.]

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

District court appeals: Chapter 12.36 RCW.

4.84.140 Costs against guardian of infant plaintiff. When costs are adjudged against an infant plaintiff, the guardian or person by whom he appeared in the action shall be responsible therefor, and payment may be enforced by execution. [Code 1881 § 519; 1877 p 110 § 523; 1854 p 203 § 381; RRS § 488.]

4.84.150 Costs against fiduciaries. In [an] action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting in his own right, but such costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense. [Code 1881 § 520; 1877 p 110 § 524; 1854 p 203 § 382; RRS § 489.]

Actions by and against personal representatives, etc.: Chapter 11.48 RCW.

4.84.160 Costs against assignee. When the cause of action, after the commencement of the action, by assignment, or in any other manner, becomes the property of a person not a party thereto, and the prosecution or defense is thereafter continued, such person shall be liable for the costs in the same manner as if he were a party, and payment thereof may be enforced by execution. [Code 1881 § 521; 1877 p 110 § 525; 1869 p 125 § 473; 1854 p 203 § 383; RRS § 490.]

4.84.170 Costs against state or county. In all actions prosecuted in the name and for the use of the state, or in the name and for the use of any county, and in any action brought against the state or any county, and on all appeals to the supreme court or the court of appeals of the state in all actions brought by or against either the state or any county, the state or county shall be liable for costs in the same case and to the same extent as private parties. [1971 c 81 § 22; 1959 c 62 § 1; Code 1881 § 522; 1877 p 110 § 526; 1854 p 203 § 384; RRS § 491.]

4.84.185 Prevailing party to receive expenses for opposing frivolous action or defense. In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

The provisions of this section apply unless otherwise specifically provided by statute. [1991 c 70 § 1; 1987 c 212 § 201; 1983 c 127 § 1.]

Administrative law, frivolous petitions for judicial review: RCW 34.05.598.

4.84.190 Costs in proceedings not specifically covered. In all actions and proceedings other than those mentioned in this chapter [and RCW 4.48.100], where no provision is made for the recovery of costs, they may be allowed or not, and if allowed may be apportioned between the parties, in the discretion of the court. [Code 1881 § 525; 1877 p 111 § 529; 1854 p 204 § 387; RRS § 493.]

Costs: RCW 4.84.080.

4.84.200 Retaxation of costs. Any party aggrieved by the taxation of costs by the clerk of the court may, upon application, have the same retaxed by the court in which the action or proceeding is had. [Code 1881 § 526; 1877 p 111 § 530; 1854 p 204 § 388; RRS § 494.]

4.84.210 Security for costs. When a plaintiff in an action, or in a garnishment or other proceeding, resides out of the county, or is a foreign corporation, or begins such action or proceeding as the assignee of some other person or of a firm or corporation, as to all causes of action sued upon, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant or garnishee defendant. When required, all proceedings in the action or proceeding shall be stayed until a bond, executed by two or more persons, or by a surety company authorized to do business in this state be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action or proceeding, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court or judge, upon proof that the original bond is insufficient security, and proceedings in the action or proceeding stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond. [1929 c 103 § 1; Code 1881 § 527; 1877 p 111 § 531; 1854 p 204 § 389; RRS § 495.]

4.84.220 Bond in lieu of separate security. In lieu of separate security for each action or proceeding in any court, the plaintiff may cause to be executed and filed in the court a bond in the penal sum of two hundred dollars running to the state of Washington, with surety as in case of a separate bond, and conditioned for the payment of all judgments for costs which may thereafter be rendered against him in that court. Any defendant or garnishee who shall thereafter recover a judgment for costs in said court against the principal on such bond shall likewise be entitled to judgment against the sureties. Such bond shall not be sufficient unless the penalty thereof is unimpaired by any outstanding obligation at the time of the commencement of the action. [1929 c 103 § 2; RRS § 495-1.]

4.84.230 Dismissal for failure to give security. After the lapse of ninety days from the service of notice that security is required or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge may order the action to be dismissed. [1933 c 14 § 1; RRS § 495-2.]

4.84.240 Judgment on cost bond. Whenever any bond or undertaking for the payment of any costs to any party shall be filed in any action or other legal proceeding in any court in this state and judgment should be rendered for any such costs against the principal on any such bonds or against the party primarily liable therefor in whose behalf any such bond or undertaking has been filed, such judgment for costs shall be rendered against the principal on such bond or the party primarily liable therefor and at the same time also against his surety or sureties on any or all such bonds or undertakings filed in any such action or other legal proceeding. [1909 c 173 § 1; RRS § 496.]

4.84.250 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Allowed to prevailing party. Notwithstanding any other provisions of chapter 4.84 RCW and RCW 12.20.060, in any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is seven thousand five hundred dollars or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees. After July 1, 1985, the maximum amount of the pleading under this section shall be ten thousand dollars. [1984 c 258 § 88; 1980 c 94 § 1; 1973 c 84 § 1.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—1980 c 94: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1980." [1980 c 94 § 6.]

4.84.260 Attorneys' fees as costs in damage actions of ten thousand dollars or less—When plaintiff deemed prevailing party. The plaintiff, or party seeking relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250 when the recovery, exclusive of costs, is as much as or more than the amount offered in settlement by the

plaintiff, or party seeking relief, as set forth in RCW 4.84.280. [1973 c 84 § 2.]

4.84.270 Attorneys' fees as costs in damage actions of ten thousand dollars or less—When defendant deemed prevailing party. The defendant, or party resisting relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250, if the plaintiff, or party seeking relief in an action for damages where the amount pleaded, exclusive of costs, is equal to or less than the maximum allowed under RCW 4.84.250, recovers nothing, or if the recovery, exclusive of costs, is the same or less than the amount offered in settlement by the defendant, or the party resisting relief, as set forth in RCW 4.84.280. [1980 c 94 § 2; 1973 c 84 § 3.]

Effective date—1980 c 94: See note following RCW 4.84.250.

4.84.280 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Offers of settlement in determining. Offers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial. Offers of settlement shall not be served until thirty days after the completion of the service and filing of the summons and complaint. Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250. [1983 c 282 § 1; 1980 c 94 § 3; 1973 c 84 § 4.]

Effective date—1980 c 94: See note following RCW 4.84.250.

4.84.290 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Prevailing party on appeal. If the case is appealed, the prevailing party on appeal shall be considered the prevailing party for the purpose of applying the provisions of RCW 4.84.250: PROVIDED, That if, on appeal, a retrial is ordered, the court ordering the retrial shall designate the prevailing party, if any, for the purpose of applying the provisions of RCW 4.84.250.

In addition, if the prevailing party on appeal would be entitled to attorneys' fees under the provisions of RCW 4.84.250, the court deciding the appeal shall allow to the prevailing party such additional amount as the court shall adjudge reasonable as attorneys' fees for the appeal. [1973 c 84 § 5.]

4.84.300 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Application. The provisions of RCW 4.84.250 through 4.84.290 shall apply regardless of whether the action is commenced in district court or superior court except as provided in RCW 4.84.280. This section shall not be construed as conferring jurisdiction on either court. [1987 c 202 § 123; 1980 c 94 § 4; 1973 c 84 § 6.]

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

Effective date—1980 c 94: See note following RCW 4.84.250.

4.84.320 Attorneys' fees in actions for injuries resulting from the rendering of medical and other health care. See RCW 7.70.070.

4.84.330 Actions on contract or lease which provides that attorney's fees and costs incurred to enforce provisions be awarded to one of parties—Prevailing party entitled to attorney's fees—Waiver prohibited. In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he is the party specified in the contract or lease or not, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorney's fees is void.

As used in this section "prevailing party" means the party in whose favor final judgment is rendered. [1977 ex.s. c 203 § 1.]

Chapter 4.88 APPEALS

Sections

4.88.330 Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals.

Rule-making power of

court of appeals: RCW 2.06.030, 2.06.040.

supreme court: RCW 2.04.180 through 2.04.210.

4.88.330 Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals. When a party has been judicially determined to have a constitutional right to obtain a review and to be unable by reason of poverty to procure counsel to perfect the review all costs necessarily incident to the proper consideration of the review including preparation of the record, reasonable fees for court appointed counsel to be determined by the supreme court, and actual travel expenses of counsel for appearance in the supreme court or court of appeals, shall be paid by the state. Upon satisfaction of requirements established by supreme court rules and submission of appropriate vouchers to the clerk of the supreme court, payment shall be made from funds specifically appropriated by the legislature for that purpose. [1975 1st ex.s. c 261 § 2. Prior: 1972 ex.s. c 111 § 2; 1970 ex.s. c 31 § 2; 1965 c 133 § 2. Formerly RCW 10.01.112.]

Severability—1965 c 133: See note following RCW 2.32.240.

Transcript of testimony—Fee—Forma pauperis: RCW 2.32.240.

Chapter 4.92

ACTIONS AND CLAIMS AGAINST STATE

Sections

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Actions against political subdivisions, municipal corporations and quasi municipal corporations: Chapter 4.96 RCW.

Claims, reports, etc., filing and receipt: RCW 1.12.070.

Hood Canal bridge, use for sport fishing purposes—Disclaimer of liability: RCW 47.56.366.

Liability coverage of university personnel and students: RCW 28B.20.250 through 28B.20.255.

4.92.005 "Volunteer"—Definition. For the purposes of RCW 4.92.060, 4.92.070, 4.92.130, *4.92.140, and 4.92.150, volunteer is defined in RCW 51.12.035. [1985 c 217 § 6.]

*Reviser's note: RCW 4.92.140 was repealed by 1989 c 419 § 18, effective July 1, 1989.

4.92.006 Definitions. As used in this chapter:

(1) "Department" means the department of general administration.

(2) "Risk manager" means the person supervising the office of risk management in the department of general administration. [1989 c 419 § 2.]

Intent—1989 c 419: "In recent years the state of Washington has experienced significant increases in public liability claims. It is the intent of the legislature to reduce tort claim costs by restructuring Washington state's risk management program to place more accountability in state agencies, to establish an actuarially sound funding mechanism for paying legitimate claims, when they occur, and to establish an effective safety and loss control program." [1989 c 419 § 1.]

Effective date—1989 c 419: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 419 § 19.]

4.92.010 Where brought—Change of venue. Any person or corporation having any claim against the state of

Washington shall have a right of action against the state in the superior court.

The venue for such actions shall be as follows:

(1) The county of the residence or principal place of business of one or more of the plaintiffs;

(2) The county where the cause of action arose;

(3) The county in which the real property that is the subject of the action is situated;

(4) The county where the action may be properly commenced by reason of the joinder of an additional defendant; or

(5) Thurston county.

Actions shall be subject to change of venue in accordance with statute, rules of court, and the common law as the same now exist or may hereafter be amended, adopted, or altered.

Actions shall be tried in the county in which they have been commenced in the absence of a seasonable motion by or in behalf of the state to change the venue of the action. [1986 c 126 § 1; 1973 c 44 § 1; 1963 c 159 § 1; 1927 c 216 § 1; 1895 c 95 § 1; RRS § 886.]

Severability—1963 c 159: "If any provision of this act, or its application to any persons or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 159 § 12.] This applies to RCW 4.92.010, 4.92.040, and 4.92.090 through 4.92.170.

Venue: Chapter 4.12 RCW.

4.92.020 Service of summons and complaint.

Service of summons and complaint in such actions shall be served in the manner prescribed by law upon the attorney general, or by leaving the summons and complaint in the office of the attorney general with an assistant attorney general. [1986 c 126 § 2; 1927 c 216 § 2; 1895 c 95 § 2; RRS § 887.]

4.92.030 Duties of attorney general—Procedure.

The attorney general or an assistant attorney general shall appear and act as counsel for the state. The action shall proceed in all respects as other actions. Appellate review may be sought as in other actions or proceedings, but in case review is sought by the state, no bond shall be required of the appellant. [1988 c 202 § 3; 1986 c 126 § 3; 1971 c 81 § 24; 1895 c 95 § 3; RRS § 888.]

Severability—1988 c 202: See note following RCW 2.24.050.

4.92.040 Judgments—Claims to legislature against state—Payment procedure—Inapplicability to judgments and claims against housing finance commission. (1) No execution shall issue against the state on any judgment.

(2) Whenever a final judgment against the state is obtained in an action on a claim arising out of tortious conduct, the claim shall be paid from the tort claims revolving fund.

(3) Whenever a final judgment against the state shall have been obtained in any other action, the clerk of the court shall make and furnish to the risk management office a duly certified copy of such judgment; the risk management office shall thereupon audit the amount of damages and costs therein awarded, and the same shall be paid from appropriations specifically provided for such purposes by law.

(4) Final judgments for which there are no provisions in state law for payment shall be transmitted by the risk management office to the senate and house of representatives committees on ways and means as follows:

(a) On the first day of each session of the legislature, the risk management office shall transmit judgments received and audited since the adjournment of the previous session of the legislature.

(b) During each session of legislature, the risk management office shall transmit judgments immediately upon completion of audit.

(5) All claims, other than judgments, made to the legislature against the state of Washington for money or property, shall be accompanied by a statement of the facts on which such claim is based and such evidence as the claimant intends to offer in support of the claim and shall be filed with the risk management office, which shall retain the same as a record. All claims of two thousand dollars or less shall be approved or rejected by the risk management office, and if approved shall be paid from appropriations specifically provided for such purpose by law. Such decision, if adverse to the claimant in whole or part, shall not preclude the claimant from seeking relief from the legislature. If the claimant accepts any part of his or her claim which is approved for payment by the risk management office, such acceptance shall constitute a waiver and release of the state from any further claims relating to the damage or injury asserted in the claim so accepted. The risk management office shall submit to the house and senate committees on ways and means, at the beginning of each regular session, a comprehensive list of all claims paid pursuant to this subsection during the preceding year. For all claims not approved by the risk management office, the risk management office shall recommend to the legislature whether such claims should be approved or rejected. Recommendations shall be submitted to the senate and house of representatives committees on ways and means not later than the thirtieth day of each regular session of the legislature. Claims which cannot be processed for timely submission of recommendations shall be held for submission during the following regular session of the legislature. The recommendations shall include, but not be limited to:

(a) A summary of the facts alleged in the claim, and a statement as to whether these facts can be verified by the risk management office;

(b) An estimate by the risk management office of the value of the loss or damage which was alleged to have occurred;

(c) An analysis of the legal liability, if any, of the state for the alleged loss or damage; and

(d) A summary of equitable or public policy arguments which might be helpful in resolving the claim.

(5) The legislative committees to whom such claims are referred shall make a transcript, recording, or statement of the substance of the evidence given in support of such a claim. If the legislature approves a claim the same shall be paid from appropriations specifically provided for such purpose by law.

(6) Subsections (3) through (5) of this section do not apply to judgments or claims against the state housing finance commission created under chapter 43.180 RCW. [1986 c 126 § 4; 1983 c 161 § 28; 1979 ex.s. c 167 § 1;

1979 c 151 § 2; 1977 ex.s. c 144 § 1; 1963 c 159 § 6; 1895 c 95 § 4; RRS § 889.]

Severability—Effective dates—1983 c 161: See RCW 43.180.903 and 43.180.904.

4.92.045 Interest on judgments against state. See RCW 4.56.115.

4.92.050 Limitations. All provisions of law relating to the limitations of personal actions shall apply to claims against the state, but the computation of time thereunder shall not begin until RCW 4.92.010 through 4.92.050 shall have become a law. [1895 c 95 § 5; RRS § 890.]

4.92.060 Action against state officers, employees, volunteers, or foster parents—Request for defense. Whenever an action or proceeding for damages shall be instituted against any state officer, including state elected officials, employee, volunteer, or foster parent licensed in accordance with chapter 74.15 RCW, arising from acts or omissions while performing, or in good faith purporting to perform, official duties, or, in the case of a foster parent, arising from the good faith provision of foster care services, such officer, employee, volunteer, or foster parent may request the attorney general to authorize the defense of said action or proceeding at the expense of the state. [1989 c 403 § 2; 1986 c 126 § 5; 1985 c 217 § 1; 1975 1st ex.s. c 126 § 1; 1975 c 40 § 1; 1921 c 79 § 1; RRS § 890-1.]

Findings—1989 c 403: "The legislature finds and declares that foster parents are a valuable resource providing an important service to the citizens of Washington. The legislature further recognizes that the current insurance crisis has adversely affected some foster-family homes in several ways: (1) In some locales, foster parents are unable to obtain liability insurance coverage over and above homeowner's or tenant's coverage for actions filed against them by the foster child or the child's parents or legal guardian. In addition, the monthly payment made to foster-family homes is not sufficient to cover the cost of obtaining this extended coverage and there is no mechanism in place by which foster parents can recapture this cost; (2) foster parents' personal resources are at risk. Therefore, the legislature is providing relief to address these problems." [1989 c 403 § 1.]

4.92.070 Action against state officers, employees, volunteers, or foster parents—Defense by attorney general—Expense of defense. If the attorney general shall find that said officer, employee, or volunteer's acts or omissions were, or were purported to be in good faith, within the scope of that person's official duties, or, in the case of a foster parent, that the occurrence arose from the good faith provision of foster care services, said request shall be granted, in which event the necessary expenses of the defense of said action or proceeding shall be paid from the appropriations made for the support of the department to which such officer, employee, volunteer, or foster parent is attached. In such cases the attorney general shall appear and defend such officer, employee, volunteer, or foster parent, who shall assist and cooperate in the defense of such suit. However, the attorney general may not represent or provide private representation for a foster parent in an action or proceeding brought by the department of social and health services against that foster parent. [1989 c 403 § 3; 1986 c 126 § 6; 1985 c 217 § 2; 1975 1st ex.s. c 126 § 2; 1975 c 40 § 2; 1921 c 79 § 2; RRS § 890-2.]

Findings—1989 c 403: See note following RCW 4.92.060.

4.92.075 Action against state officers, employees, or volunteers—Judgment satisfied by state. When a state officer, employee, or volunteer has been represented by the attorney general pursuant to RCW 4.92.070, and the body presiding over the action or proceeding has found that the officer, employee, or volunteer was acting within the scope of his or her official duties, and a judgment has been entered against the officer, employee, or volunteer pursuant to chapter 4.92 RCW or 42 U.S.C. Sec. 1981 et seq., thereafter the judgment creditor shall seek satisfaction only from the state, and the judgment shall not become a lien upon any property of such officer, employee, or volunteer. [1989 c 413 § 2.]

4.92.080 Bond not required of state. No bond shall be required of the state of Washington for any purpose in any case in any of the courts of the state of Washington and the state of Washington shall be, on proper showing, entitled to any orders, injunctions and writs of whatever nature without bond notwithstanding the provisions of any existing statute requiring that bonds be furnished by private parties. [1935 c 122 § 1; RRS § 390-3.]

4.92.090 Tortious conduct of state—Liability for damages. The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. [1963 c 159 § 2; 1961 c 136 § 1.]

4.92.100 Tortious conduct of state—Claims—Presentment and filing—Contents. All claims against the state for damages arising out of tortious conduct shall be presented to and filed with the risk management office. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim or if the claimant is a minor, or is a nonresident of the state, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

With respect to the content of such claims this section shall be liberally construed so that substantial compliance will be deemed satisfactory. [1986 c 126 § 7; 1979 c 151 § 3; 1977 ex.s. c 144 § 2; 1967 c 164 § 2; 1963 c 159 § 3.]

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Puget Sound ferry and toll bridge system, claims against: RCW 47.60.250.

4.92.110 Tortious conduct of state—Presentment and filing of claim prerequisite to suit. No action shall be commenced against the state for damages arising out of tortious conduct until sixty days have elapsed after the claim is presented to and filed with the risk management office.

The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period. [1989 c 419 § 14; 1986 c 126 § 8; 1979 c 151 § 4; 1977 ex.s. c 144 § 3; 1963 c 159 § 4.]

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.120 Tortious conduct of state—Assignment of claims. Claims against the state arising out of tortious conduct may be assigned voluntarily, involuntarily, and by operation of law to the same extent as like claims against private persons may be so assigned. [1963 c 159 § 5.]

4.92.130 Tortious conduct of state—Liability account—Purpose. A liability account in the custody of the treasurer is hereby created as a nonappropriated account to be used solely and exclusively for the payment of liability settlements and judgments against the state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of its officers, employees, and volunteers.

(1) The purpose of the liability account is to: (a) expeditiously pay legal liabilities of the state resulting from tortious conduct; (b) promote risk control through a cost allocation system which recognizes agency loss experience, levels of self-retention, and levels of risk exposure; and (c) establish an actuarially sound system to pay incurred losses, within defined limits.

(2) The liability account shall be used to pay claims for injury and property damages exclusive of legal defense costs and agency-retained expenses otherwise budgeted.

(3) No money shall be paid from the liability account unless all proceeds available to the claimant from any valid and collectible liability insurance shall have been exhausted and unless:

(a) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or

(b) The claim has been approved for payment.

(4) The liability account shall be financed through annual premiums assessed to state agencies, based on sound actuarial principles, and shall be for liability coverage in excess of agency-budgeted self-retention levels.

(5) Annual premium levels shall be determined by the risk manager, with the consultation and advice of the risk management advisory committee and concurrence from the office of financial management. An actuarial study shall be conducted to assist in determining the appropriate level of funding.

(6) Disbursements from the liability account shall be made to the claimant, or to the clerk of the court for judgments, upon written request to the state treasurer from the risk manager.

(7) The director of the office of financial management may direct agencies to transfer moneys from other funds and accounts to the liability account if premiums are delinquent.

(8) The liability account shall not exceed fifty percent of the actuarial value of the outstanding liability as determined annually by the office of risk management. If the account exceeds the maximum amount specified in this section, premiums may be adjusted by the office of risk management in order to maintain the account balance at the maximum limits. If, after adjustment of premiums, the

account balance remains above the limits specified, the excess amount will be prorated back to the appropriate funds. [1991 sp.s. c 13 § 92; 1989 c 419 § 4; 1985 c 217 § 3; 1975 1st ex.s. c 126 § 3; 1969 c 140 § 1; 1963 c 159 § 7.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Transfer of funds—Fund abolished—1989 c 419: "Moneys in the tort claims revolving fund shall be deposited in the liability account to be used for payment of liabilities incurred before July 1, 1989. The tort claim revolving fund is abolished." [1989 c 419 § 13.]

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

Severability—1969 c 140: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 140 § 5.]

Actions against regents, trustees, etc., of institutions of higher education or educational boards, payments of obligations from fund: RCW 28B.10.842.

Department of general administration to conduct actuarial studies: RCW 43.19.19369.

4.92.135 Tort claims revolving fund. The tort claims revolving fund is created in the custody of the treasurer to be used solely and exclusively for the payment of claims arising out of tortious conduct taking place prior to July 1, 1990 and against both the state and its officers, employees, and volunteers for whom the defense of the claims was authorized under RCW 4.92.070.

Moneys paid from the revolving fund for any claim are limited to the amount by which the claim exceeds the amount available to the claimant from any valid and collectible liability insurance. Payment from the revolving fund shall not be made until the claim has been approved for payment in accordance with RCW 4.92.210. [1991 c 187 § 1.]

Intent—1991 c 187: "It is the intent of the legislature that the tort claims revolving fund created under section 1 of this act have [has] the same purpose, use, and application as the tort claims revolving fund abolished effective July 1, 1989, by the legislature in chapter 419, Laws of 1989." [1991 c 187 § 2.]

4.92.150 Compromise and settlement of claims by attorney general. After commencement of an action in a court of competent jurisdiction upon a claim against the state, or any of its officers, employees, or volunteers arising out of tortious conduct or pursuant to 42 U.S.C. Sec. 1981 et seq., or against a foster parent that the attorney general is defending pursuant to RCW 4.92.070, or upon petition by the state, the attorney general, with the prior approval of the risk management office and with the approval of the court, following such testimony as the court may require, may compromise and settle the same and stipulate for judgment against the state, the affected officer, employee, volunteer, or foster parent. [1989 c 403 § 4. Prior: 1985 c 217 § 5; 1985 c 188 § 9; 1979 ex.s. c 144 § 2; 1975 1st ex.s. c 126 § 5; 1963 c 159 § 9.]

Findings—1989 c 403: See note following RCW 4.92.060.

4.92.160 Payment of claims and judgments. Payment of claims and judgments arising out of tortious conduct or pursuant to 42 U.S.C. Sec. 1981 et seq. shall not

be made by any agency or department of state government with the exception of the risk management office, and that office shall authorize and direct the payment of moneys only from the tort claims revolving fund whenever:

(1) The head or governing body of any agency or department of state or the designee of any such agency certifies to the risk management office that a claim has been settled; or

(2) The clerk of court has made and forwarded a certified copy of a final judgment in a court of competent jurisdiction and the attorney general certifies that the judgment is final and was entered in an action on a claim arising out of tortious conduct or under and pursuant to 42 U.S.C. Sec. 1981 et seq. Payment of a judgment shall be made to the clerk of the court for the benefit of the judgment creditors. Upon receipt of payment, the clerk shall satisfy the judgment against the state. [1991 c 187 § 3; 1986 c 126 § 9; 1979 ex.s. c 144 § 3; 1979 c 151 § 5; 1975 1st ex.s. c 126 § 6; 1969 c 140 § 2; 1963 c 159 § 10.]

Intent—1991 c 187: See note following RCW 4.92.135.

Severability—1969 c 140: See note following RCW 4.92.130.

Duty of clerk to forward copy of judgment: RCW 4.92.040.

4.92.200 Actions against state on state warrant appearing to be redeemed—Claim required—Time limitation. No action shall be commenced against the state on account of any state warrant appearing to have been redeemed unless a claim has been presented and filed with the state treasurer within six years of the date of issuance of such warrant. The requirements of this section shall not extend or modify the period of limitations otherwise applicable within which an action must be commenced, but such period shall begin and shall continue to run as if no claim were required. [1975 c 48 § 1.]

State warrants: RCW 43.08.061 through 43.08.080.

4.92.210 Risk management—Review of claims—Settlements. (1) All liability claims arising out of tortious conduct or under 42 U.S.C. Sec. 1981 et seq. that the state of Washington or any of its officers, employees, or volunteers would be liable for shall be filed with the office of risk management, department of general administration, unless specifically delegated to other state agencies under state statute.

(2) A centralized claim tracking system shall be maintained to provide agencies with accurate and timely data on the status of liability claims. Information in this claim file, other than the claim itself, shall be privileged and confidential.

(3) Standardized procedures shall be established for filing, reporting, processing, and adjusting claims, which includes the use of qualified claims management personnel.

(4) All claims will be reviewed by the office of risk management to determine an initial valuation, to delegate to the appropriate office to investigate, negotiate, compromise, and settle the claim, or to retain that responsibility on behalf of and with the assistance of the affected state agency.

(5) All claims that result in a lawsuit will be forwarded to the attorney general's office. Thereafter the attorney general and the office of risk management shall collaborate in the investigation, denial, or settlement of the claim.

(6) Reserves shall be established for recognizing financial liability and monitoring effectiveness. The valuation of specific claims against the state shall be privileged and confidential.

(7) All settlements shall be approved by the responsible agencies, or their designees, prior to settlement. [1989 c 419 § 3.]

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.220 Risk management account created—Purpose. (1) A risk management account is hereby created in the treasury to be an appropriated account used exclusively for the payment of costs related to:

(a) The administration of liability, property and vehicle claims, including investigation, claim processing, negotiation and settlement, and other expenses relating to settlements and judgments against the state not otherwise budgeted; and

(b) Purchase of liability and property insurance, including catastrophic insurance, subject to policy conditions and limitations determined by the risk manager.

(2) The risk management account shall be financed through a combination of direct appropriations and assessments to state agencies. [1991 sp.s. c 13 § 91; 1989 c 419 § 5.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.230 Risk management—Advisory committee created—Duties. (1) The director of the department of general administration shall establish an ongoing risk management advisory committee. Members of the committee may include but shall not be limited to representatives of state agencies, institutions of higher education, local government, or the private sector.

(2) The director of the department of general administration shall serve as chair. The committee shall meet upon call of the chairperson and shall adopt rules for the conduct of its business.

(3) The risk management advisory committee will provide guidance in:

(a) Determining appropriate roles, responsibilities of the office of risk management, and policies regarding state-wide risk management;

(b) Establishing premiums or other cost allocation systems;

(c) Determining appropriate programs and coverages for self-insurance versus insurance;

(d) Developing risk retention pools; and

(e) Preparing recommendations for containment of risk exposures. [1989 c 419 § 7.]

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.240 Rules. The director of general administration has the power to adopt rules necessary to carry out the intent of this chapter. [1989 c 419 § 8.]

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.250 Risk management—Risk manager may delegate powers and duties. The risk manager may delegate to a state agency the authority to carry out any powers or duties of the risk manager under this chapter related to claims administration and purchase of insurance for the purpose of protecting any classes of officers, employees, or for other persons performing services for the state. Such delegation shall be made only upon a determination by the risk manager that another agency has sufficient resources to carry out the functions delegated. [1989 c 419 § 9.]

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.260 Construction. Nothing in this chapter shall be construed as amending, repealing, or otherwise affecting RCW 28B.20.250 through 28B.20.255. [1989 c 419 § 10.]

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.270 Risk management—Standard indemnification agreements. The risk manager shall develop procedures for standard indemnification agreements for state agencies to use whenever the agency agrees to indemnify, or be indemnified by, any person or party. The risk manager shall also develop guidelines for the use of indemnification agreements by state agencies. On request of the risk manager, an agency shall forward to the risk management office for review and approval any contract or agreement containing an indemnification agreement. [1989 c 419 § 15.]

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

Chapter 4.96

ACTIONS AGAINST POLITICAL SUBDIVISIONS, MUNICIPAL CORPORATIONS AND QUASI MUNICIPAL CORPORATIONS

Sections

4.96.010 Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations—Liability for damages.

4.96.020 Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations—Claims—Presentment and filing—Contents.

4.96.030 Interest on judgments against political subdivisions, municipal corporations or quasi municipal corporations.

Claims, reports, etc., filing and receipt: RCW 1.12.070.

Liability of public officials and governing body members: RCW 4.24.470.

4.96.010 Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations—Liability for damages. All political subdivisions, municipal corporations, and quasi municipal corporations of the state, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their officers, agents or employees to the same extent as if they were a private person or corporation: PROVIDED, That the filing within the time allowed by law of any claim required shall be a condition precedent to the maintaining of any action. The laws specifying the content for such claims shall be

liberally construed so that substantial compliance therewith will be deemed satisfactory. [1967 c 164 § 1.]

Purpose—1967 c 164: "It is the purpose of this act to extend the doctrine established in chapter 136, Laws of 1961, as amended, to all political subdivisions, municipal corporations and quasi municipal corporations of the state." [1967 c 164 § 17.]

Severability—1967 c 164: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 164 § 18.]

The above two annotations apply to 1967 c 164. For codification of that act, see Codification Tables, Volume 0.

4.96.020 Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations—Claims—Presentment and filing—Contents. (1) Chapter 35.31 RCW shall apply to claims against cities and towns, and chapter 36.45 RCW shall apply to claims against counties.

(2) The provisions of this subsection shall not apply to claims against cities and towns or counties but shall apply to claims against all other political subdivisions, municipal corporations, and quasi municipal corporations. Claims against such entities for damages arising out of tortious conduct shall be presented to and filed with the governing body thereof within one hundred twenty days from the date that the claim arose. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing his claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which his claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing him. No action shall be commenced against any such entity for damages arising out of tortious conduct until a claim has first been presented to and filed with the governing body thereof. The requirements of this subsection shall not affect the applicable period of limitations within which an action must be commenced, but such period shall begin and shall continue to run as if no claim were required. [1967 c 164 § 4.]

4.96.030 Interest on judgments against political subdivisions, municipal corporations or quasi municipal corporations. See RCW 4.56.115.

Title 5

EVIDENCE

Chapters

- 5.24 Uniform judicial notice of foreign laws act.
- 5.28 Oaths and affirmations.
- 5.40 Proof—General provisions.
- 5.44 Proof—Public documents.
- 5.45 Uniform business records as evidence act.
- 5.46 Uniform photographic copies of business and public records as evidence act.
- 5.48 Proof—Replacement of lost records.
- 5.52 Telegraphic communications.
- 5.56 Witnesses—Compelling attendance.
- 5.60 Witnesses—Competency.
- 5.62 Witnesses—Registered nurses.
- 5.64 Admissibility—Furnishing, offering, or promising to pay medical expenses.

Rules of court: See *Rules of Evidence (ER)*.

City codes as evidence: RCW 35.21.550.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Deposition, definitions: RCW 9A.72.010.

District courts, witnesses and depositions: Chapter 12.16 RCW.

Domestic relations, spouse as witness: RCW 26.20.071, 26.21.170.

Method for recording of instruments: RCW 65.04.030, 65.04.040.

Microfilming of records to provide continuity of civil government: Chapter 40.10 RCW.

Order for examination of judgment debtor: RCW 6.32.010.

Records of medical, dental, pharmaceutical, or hospital review boards, immunity from process: RCW 4.24.250.

Superior court records, destruction, reproduction: RCW 36.23.065 through 36.23.070.

Chapter 5.24

UNIFORM JUDICIAL NOTICE OF FOREIGN LAWS ACT

Sections

- 5.24.010 Judicial notice of Constitution and laws.
- 5.24.020 Manner of obtaining information.
- 5.24.030 Determination by court—Review.
- 5.24.040 Necessity of pleading foreign laws.
- 5.24.050 Jurisdictions excepted.
- 5.24.060 Construction of chapter.
- 5.24.070 Short title.

Rules of court: Cf. CR 9(k).

City or town ordinances, evidence: RCW 5.44.080.

Foreign statutes as evidence: RCW 5.44.050.

Uniform enforcement of foreign judgments act: Chapter 6.36 RCW.

5.24.010 Judicial notice of Constitution and laws.

Every court of this state shall take judicial notice of the Constitution, common law, civil law, and statutes of every state, territory and other jurisdiction of the United States. [1941 c 82 § 1; Rem. Supp. 1941 § 1278.]

5.24.020 Manner of obtaining information. The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information. [1941 c 82 § 2; Rem. Supp. 1941 § 1279.]

5.24.030 Determination by court—Review. The determination of such laws shall be made by the court and not by the jury and shall be reviewable. [1941 c 82 § 3; Rem. Supp. 1941 § 1280.]

5.24.040 Necessity of pleading foreign laws. This chapter shall not be construed to relieve any party of the duty of hereafter pleading such laws where required under the law and practice of this state. [1981 c 331 § 14; 1941 c 82 § 4; Rem. Supp. 1941 § 1281.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

5.24.050 Jurisdictions excepted. The law of any jurisdiction other than a state, territory or other jurisdiction of the United States shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice. [1941 c 82 § 5; Rem. Supp. 1941 § 1282.]

5.24.060 Construction of chapter. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1941 c 82 § 6; Rem. Supp. 1941 § 1283.]

5.24.070 Short title. This chapter may be cited as the "Uniform Judicial Notice of Foreign Laws Act." [1941 c 82 § 7; Rem. Supp. 1941 § 1284.]

Chapter 5.28

OATHS AND AFFIRMATIONS

Sections

- 5.28.010 Who may administer.
- 5.28.020 How administered.
- 5.28.030 Form may be varied.
- 5.28.040 Form may be adapted to religious belief.
- 5.28.050 Form of affirmation.
- 5.28.060 Affirmation equivalent to oath.

Rules of court: Cf. ER 603; CR 43(d).

Oaths and mode of administering: State Constitution Art. 1 § 6.

5.28.010 Who may administer. That every court, judge, clerk of a court, or notary public, is authorized to take testimony in any action, suit or proceeding, and such other persons in particular cases as authorized by law. Every such court or officer is authorized to administer oaths and affirmations generally, and every such other person in such

particular case as authorized. [1987 c 202 § 124; 2 H. C. § 1693; 1869 p 378 § 1; RRS § 1264.]

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

Oath of witness in superior court to be administered by judge: Rules of court: Cf. CR 43(d).

Powers of courts, judicial officers to administer oaths: RCW 2.28.010, 2.28.060.

5.28.020 How administered. An oath may be administered as follows: The person who swears holds up his hand, while the person administering the oath thus addresses him: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between and shall be the truth, the whole truth, and nothing but the truth, so help you God." If the oath be administered to any other than a witness giving testimony, the form may be changed to: "You do solemnly swear you will true answers make to such questions as you may be asked," etc. [2 H. C. § 1694; 1869 p 378 § 2; RRS § 1265.]

5.28.030 Form may be varied. Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing connected with or in addition to the usual form of administration, which, in witness' opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode. [2 H. C. § 1695; 1869 p 379 § 3; RRS § 1266.]

5.28.040 Form may be adapted to religious belief. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such. [2 H. C. § 1696; 1869 p 379 § 4; RRS § 1267.]

5.28.050 Form of affirmation. Any person who has conscientious scruples against taking an oath, may make his solemn affirmation, by assenting, when addressed, in the following manner: "You do solemnly affirm that," etc., as in RCW 5.28.020. [2 H. C. § 1697; 1869 p 379 § 5; RRS § 1268.]

5.28.060 Affirmation equivalent to oath. Whenever an oath is required, an affirmation, as prescribed in RCW 5.28.050 is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury, equally with a false oath. [2 H. C. § 1698; 1869 p 379 § 6; RRS § 1269.]

Perjury: Chapter 9A.72 RCW.

Chapter 5.40

PROOF—GENERAL PROVISIONS

Sections	
5.40.010	Pleadings do not constitute proof.
5.40.020	Written finding of presumed death as prima facie evidence.
5.40.030	Proof of missing in action, capture by enemy, etc.
5.40.040	Proof of authenticity of signature to report or of certification.
5.40.050	Breach of duty—Evidence of negligence—Negligence per se.
5.40.060	Defense to personal injury or wrongful death action—Intoxicating liquor or any drug.

Public documents, records and publications: Title 40 RCW.

[Title 5 RCW—page 2]

Stolen property as evidence: RCW 9.54.130.

Tampering with physical evidence: RCW 9A.72.150.

5.40.010 Pleadings do not constitute proof. Pleadings sworn to by either party in any case shall not, on the trial, be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party. [Code 1881 § 741; 1877 p 151 § 746; 1854 p 219 § 484; RRS § 283.]

5.40.020 Written finding of presumed death as prima facie evidence. A written finding of presumed death, made by the Secretary of War, the Secretary of the Navy, or other officer or employee of the United States authorized to make such finding, pursuant to the federal missing persons act (56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office or other place in this state as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances and place of his disappearance. [1945 c 101 § 1; Rem. Supp. 1945 § 1257-1.]

Severability—1945 c 101: "If any provision of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1945 c 101 § 4.] This applies to RCW 5.40.020 through 5.40.040.

5.40.030 Proof of missing in action, capture by enemy, etc. An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in RCW 5.40.020 or by any other law of the United States to make same, shall be received in any court, office or other place in this state as prima facie evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, as the case may be. [1945 c 101 § 2; Rem. Supp. 1945 § 1257-2.]

5.40.040 Proof of authenticity of signature to report or of certification. For the purposes of RCW 5.40.020 and 5.40.030 any finding, report or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify. [1945 c 101 § 3; Rem. Supp. 1945 § 1257-3.]

5.40.050 Breach of duty—Evidence of negligence—Negligence per se. A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact

as evidence of negligence; however, any breach of duty as provided by statute, ordinance, or administrative rule relating to electrical fire safety, the use of smoke alarms, or driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se. [1986 c 305 § 901.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

5.40.060 Defense to personal injury or wrongful death action—Intoxicating liquor or any drug. It is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault. The standard for determining whether a person was under the influence of intoxicating liquor or drugs shall be the same standard established for criminal convictions under RCW 46.61.502, and evidence that a person was under the influence of intoxicating liquor or drugs under the standard established by RCW 46.61.502 shall be conclusive proof that such person was under the influence of intoxicating liquor or drugs. [1987 c 212 § 1001; 1986 c 305 § 902.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Chapter 5.44

PROOF—PUBLIC DOCUMENTS

Sections

- 5.44.010 Court records, admissible when.
- 5.44.020 Foreign judgments for debt—Faith to be accorded.
- 5.44.030 Defenses available in suit on foreign judgment.
- 5.44.040 Certified copies of public records as evidence.
- 5.44.050 Foreign statutes as evidence.
- 5.44.060 Certified copies of recorded instruments as evidence.
- 5.44.070 Certified copies of instruments, or transcripts of county commissioners' proceedings.
- 5.44.080 City or town ordinances as evidence.
- 5.44.090 Copy of instrument restoring civil rights as evidence.
- 5.44.130 Seal, how affixed.
- 5.44.140 Proceedings for determination of family relationships—Presumption.

Rules of court: Cf. ER 803; ER 901; ER 902; ER 1005; CR 44.

5.44.010 Court records, admissible when. The records and proceedings of any court of the United States, or any state or territory, shall be admissible in evidence in all cases in this state when duly authenticated by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed. [Code 1881 § 430; 1877 p 94 § 432; 1869 p 115 § 426; 1854 p 195 § 334; RRS § 1254.]

Rules of court: Cf. CR 44(a)(1).

5.44.020 Foreign judgments for debt—Faith to be accorded. Judgment for debt rendered in any other state or any territory against any person or persons residents of this state at the time of the rendition of such judgment, shall not be of any higher character as evidence of indebtedness than the original claim or demand upon which such judgment is

rendered, unless such judgment shall be rendered upon personal service of summons, notice or other due process against the defendant therein. [1891 c 31 § 1; Code 1881 § 739; 1877 p 150 § 744; 1869 p 171 § 681; 1866 p 88 § 1; RRS § 1255.]

Rules of court: Cf. CR 44(a)(2).

Uniform enforcement of foreign judgments act: Chapter 6.36 RCW.

5.44.030 Defenses available in suit on foreign judgment. The same defense to suits on judgments rendered without such personal service may be made by the judgment debtor, which might have been set up in the original proceeding. [Code 1881 § 740; 1877 p 150 § 745; 1869 p 171 § 682; 1866 p 88 § 2; RRS § 1256.]

5.44.040 Certified copies of public records as evidence. Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state or any other state or territory of the United States, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence in the courts of this state. [1991 c 59 § 1; 1891 c 19 § 16; Code 1881 § 432; 1854 p 195 § 336; RRS § 1257.]

Rules of court: Cf. ER 803; CR 44(a)(1).

5.44.050 Foreign statutes as evidence. Printed copies of the statute laws of any state, territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this state, and on all other occasions as presumptive evidence of such laws. [Code 1881 § 435; 1877 p 95 § 437; 1869 p 116 § 431; 1854 p 196 § 339; RRS § 1259.]

Uniform judicial notice of foreign laws act: Chapter 5.24 RCW.

5.44.060 Certified copies of recorded instruments as evidence. Whenever any deed, conveyance, bond, mortgage or other writing, shall have been recorded or filed in pursuance of law, copies of record of such deed, conveyance, bond or other writing, duly certified by the officer having the lawful custody thereof, with the seal of the office annexed, if there be such seal, if there be no such seal, then with the official certificate of such officer, shall be received in evidence to all intents and purposes as the originals themselves. [Code 1881 § 431; 1877 p 95 § 433; 1869 p 115 § 427; 1854 p 195 § 335; RRS § 1260.]

Deeds as evidence: RCW 84.64.180, 84.64.190.

Instruments to be recorded or filed: RCW 65.04.030.

Record of will as evidence: RCW 11.20.060.

5.44.070 Certified copies of instruments, or transcripts of county commissioners' proceedings. Copies of all deeds or other instruments of writing, maps, documents and papers which by law are to be filed or recorded in the office of said county auditor, and all transcripts or exemplifications of the records of the proceedings of the board of county commissioners certified by said auditor under official

seal, shall be admitted as prima facie evidence in all the courts of this state. [Code 1881 § 2737; 1869 p 315 § 27; RRS § 10612.]

Certified copy of plat as evidence: RCW 58.10.020.

County commissioners' proceeding to be published: RCW 36.22.020.

5.44.080 City or town ordinances as evidence. All ordinances passed by the legislative body of any city or town shall be recorded in a book to be kept for that purpose by the city or town clerk, and when so recorded the record thereof so made shall be received in any court of the state as prima facie evidence of the due passage of such ordinance as recorded. When the ordinances of any city or town are printed by authority of such municipal corporation, the printed copies thereof shall be received as prima facie evidence that such ordinances as printed and published were duly passed. [1955 c 6 § 1; Code 1881 § 2062; RRS § 1260 1/2.]

5.44.090 Copy of instrument restoring civil rights as evidence. The secretary of state and the clerk of the superior court, shall, upon demand and the payment of the fee required by law, issue a certified copy of any such instrument restoring civil rights filed in their respective offices, and every such certified copy shall be received in evidence as proof of the fact therein stated, in any court and by all election officers. [1931 c 19 § 4; 1929 c 26 § 5; RRS § 10253.]

Restoration of civil rights: Chapter 9.96 RCW.

5.44.130 Seal, how affixed. A seal of court or public office, when required to any writ, process, or proceeding to authenticate a copy of any record or document, may be affixed by making an impression directly on the paper which shall be as valid as if made upon a wafer or on wax. [Code 1881 § 434; 1877 p 95 § 436; 1869 p 116 § 430; 1854 p 196 § 338; RRS § 1258.]

Private seals abolished: RCW 64.04.090.

Seals of courts and municipalities: State Constitution Art. 27 § 9.

Superior court seal: RCW 2.08.050.

Supreme court seal: Rules of court: SAR 1.

Telegraphic message, description of seal: RCW 5.52.060.

5.44.140 Proceedings for determination of family relationships—Presumption. In any proceeding regarding the determination of a family relationship, including but not limited to the parent and child relationship and the marriage relationship, a determination of family relationships regarding any person or persons who immigrated to the United States from a foreign country which was made or accepted by the United States immigration and naturalization service at the time of that person or persons' entry into the United States creates a rebuttable presumption that the determination is valid and that the family relationship under foreign law is as made or accepted at the time of entry. Except as provided in RCW 26.26.040 (1)(f) and (2), the presumption may be overcome by a preponderance of evidence showing that a living person other than the person named by the United States immigration and naturalization service is in the relationship in question. [1990 c 175 § 1.]

Chapter 5.45

UNIFORM BUSINESS RECORDS AS EVIDENCE ACT

Sections

- 5.45.010 "Business" defined.
- 5.45.020 Business records as evidence.
- 5.45.900 Construction—1947 c 53.
- 5.45.910 Short title.
- 5.45.920 Repeal of inconsistent provisions.

Rules of court: ER 803.

5.45.010 "Business" defined. The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not. [1947 c 53 § 1; Rem. Supp. 1947 § 1263-1. Formerly RCW 5.44.100.]

5.45.020 Business records as evidence. A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission. [1947 c 53 § 2; Rem. Supp. 1947 § 1263-2. Formerly RCW 5.44.110.]

5.45.900 Construction—1947 c 53. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1947 c 53 § 3; Rem. Supp. 1947 § 1263-3. Formerly RCW 5.44.120.]

5.45.910 Short title. This chapter may be cited as The Uniform Business Records as Evidence Act. [1947 c 53 § 4; Rem. Supp. 1947 § 1263-4.]

5.45.920 Repeal of inconsistent provisions. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed. [1947 c 53 § 5; Rem. Supp. 1947 § 1263-5.]

Chapter 5.46

UNIFORM PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

Sections

- 5.46.010 Photographic copies of business and public records as evidence.
- 5.46.900 Construction—1953 c 273.
- 5.46.910 Short title.
- 5.46.920 Repeal of inconsistent provisions.

5.46.010 Photographic copies of business and public records as evidence. If any business, institution, member of a profession or calling or any department or agency of government, in the regular course of business or activity has

kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless the same is an asset or is representative of title to an asset held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original. [1959 c 125 § 1; 1953 c 273 § 1. Formerly RCW 5.44.125.]

Photostatic or photographic copies of public or business records admissible in evidence: RCW 40.20.030.

5.46.900 Construction—1953 c 273. This chapter shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it. [1953 c 273 § 2.]

5.46.910 Short title. This chapter may be cited as the "Uniform Photographic Copies of Business and Public Records as Evidence Act." [1953 c 273 § 3.]

5.46.920 Repeal of inconsistent provisions. All acts or parts of acts which are inconsistent with the provisions of this act are repealed. [1953 c 273 § 4.]

Chapter 5.48

PROOF—REPLACEMENT OF LOST RECORDS

Sections

5.48.010	Substitution of copy authorized.
5.48.020	Methods to replace lost court records.
5.48.030	Action to replace—Procedure.
5.48.040	Hearing on application—Evidence.
5.48.050	Time for appeal extended.
5.48.051	Costs to be taxed.
5.48.060	Replacement of lost or destroyed probate records.
5.48.070	Costs—Payment of.

Records and exhibits of superior court, destruction, reproduction: RCW 36.23.065, 36.23.067, 36.23.070.

5.48.010 Substitution of copy authorized. Whenever a pleading, process, return, verdict, bill of exceptions, order, entry, stipulation or other act, file or proceeding in any action or proceeding pending in any court of this state shall have been lost or destroyed by fire or otherwise, or is withheld by any person, such court may, upon the application of any party to such action or proceeding, order a copy or substantial copy thereof to be substituted. [1890 p 337 § 1; RRS § 1270.]

5.48.020 Methods to replace lost court records.

Whenever the record required by law of the proceedings, judgment or decree in any action or other proceeding of any court in this state in which a final judgment has been rendered, or any part thereof, is lost or destroyed by fire or otherwise, such court may, upon the application of any party interested therein, grant an order authorizing such record or parts thereof to be supplied or replaced—

(1) by a certified copy of such original record, or part thereof, when the same can be obtained;

(2) by a duly certified copy of the record in the supreme court or court of appeals of such original record of any action or proceeding that may have been removed to the supreme court or court of appeals and remains recorded or filed in said courts;

(3) by the original pleadings, entries, papers and files in such action or proceeding when the same can be obtained;

(4) by an agreement in writing signed by all the parties to such action or proceeding, their representatives or attorneys, that a substituted copy of such original record is substantially correct. [1971 c 81 § 25; 1890 p 338 § 2; RRS § 1271.]

5.48.030 Action to replace—Procedure. Whenever the record required by law, or any part thereof, of the proceedings or judgment or decree in any action or other proceeding of any court in this state in which the final judgment has been rendered, is lost or destroyed by fire or otherwise, and such loss cannot be supplied or replaced as provided in RCW 5.48.020, any person or party interested therein may make a written application to the court to which said record belongs, setting forth the substance of the record so lost or destroyed, which application shall be verified in the manner provided for the verification of pleadings in a civil action, and thereupon summons shall issue and actual service, or service by publication, shall be made upon all persons interested in or affected by said original judgment or final entry in the manner provided by law for the commencement of civil actions, provided the parties may waive the issuing or service of summons and enter their appearance to such application; and upon the hearing of such application without further pleadings, if the court finds that such record has been lost or destroyed and that it is enabled by the evidence produced to find the substance or effect thereof material to the preservation of the rights of the parties thereto, it shall make an order allowing a record, which record shall recite the substance and effect of said lost or destroyed record, or part thereof, and the same shall thereupon be recorded in said court, and shall have the same effect as the original record would have if the same had not been lost or destroyed, so far as it concerns the rights of the parties so making the application, or persons or parties so served with summons, or entering their appearance, or persons claiming under them by a title acquired subsequently to the filing of the application. [1890 p 338 § 3; RRS § 1272.]

5.48.040 Hearing on application—Evidence. Upon the hearing of the application provided in RCW 5.48.030, the court may admit in evidence oral testimony and any complete or partial abstract of such record, docket entries or

indices, and any other written evidence of the contents or effect of such records and published reports concerning such actions or proceedings, when the court is of opinion that such abstracts, writings and publications were fairly and honestly made before the loss of such records occurred. [1890 p 339 § 4; RRS § 1273.]

5.48.050 Time for appeal extended. Whenever a lost or destroyed judgment or order is one to which either party has a right to a proceeding in error or of appeal, the time intervening between the filing of the application mentioned in RCW 5.48.030 and the final order of the court thereon shall be excluded in computing the time within which such proceeding or appeal may be taken as provided by law. [1890 p 339 § 5; RRS § 1274.]

Rules of court: Cf. RAP 5.2, 18.22.

5.48.051 Costs to be taxed. The costs to be taxed, upon an application to restore a lost or destroyed record, shall be the same as are provided for like service in civil actions, and may be adjudged against either or any party to such proceeding or application, or may, in the discretion of the court, be apportioned between such parties. [1890 p 339 § 6; RRS § 1275. Formerly RCW 5.48.070, part.]

5.48.060 Replacement of lost or destroyed probate records. In case of the loss or destruction by fire or otherwise of the records, or any part thereof, of any probate court or superior court having probate jurisdiction, the judge of any such court may proceed, upon its own motion, or upon application in writing of any party in interest, to restore the records, papers, and proceedings of either of said courts relating to the estates of deceased persons, including recorded wills, wills probated, or filed for probate in such courts, all marriage records and all other records and proceedings, and for the purpose of restoring said records, wills, papers or proceedings, or any part thereof, may cause citations or other process to be issued to any and all parties to be designated by him, and may compel the attendance in court of any and all witnesses whose testimony may be necessary to the establishment of any such record or part thereof, and the production of any and all written or documentary evidence which may be by him deemed necessary in determining the true import and effect of the original records, will, paper, or other document belonging to the files of said courts; and may make such orders and decrees establishing such original record, will, paper, document or proceeding, or the substance thereof, as to him shall seem just and proper. [1957 c 9 § 5; 1890 p 340 § 7; RRS § 1276.]

Reviser's note: Jurisdiction in probate matters now vested in superior courts, see state Constitution Art. 4 § 6 (Amendment 28) and Art. 27 § 10.

5.48.070 Costs—Payment of. The costs incurred in the probate and superior courts in proceedings under RCW 5.48.051 and 5.48.060 shall be paid by the party or parties interested in such proceedings, or in whose behalf such proceedings are instituted. [1890 p 340 § 8; RRS § 1277. FORMER PART OF SECTION: 1890 p 339 § 6; RRS § 1275, now codified as RCW 5.48.051.]

Reviser's note: See note following RCW 5.48.060.

Chapter 5.52

TELEGRAPHIC COMMUNICATIONS

Sections

- 5.52.010 Deemed communications in writing.
- 5.52.020 Notice by telegraph deemed actual notice.
- 5.52.030 Instrument transmitted by telegraph—Effect.
- 5.52.040 Bills and notes drawn by telegraph—Effect.
- 5.52.050 Telegraphic copies as evidence.
- 5.52.060 Seal and revenue stamp, how described.
- 5.52.070 "Telegraphic copy" or "telegraphic duplicate" defined.

Rules of court: Cf. CR 9(h).

Arrest by telegraph—Validity of telegraphic copy: RCW 10.31.060.

Divulging telegraph message: RCW 9.73.010.

False message as forgery: RCW 9A.60.020.

Interference with communication or its facilities: RCW 9A.48.070, 9A.48.080.

Tampering with telegraph message: RCW 9A.48.070, 9A.48.080.

Telecommunications companies: Chapter 80.36 RCW; state Constitution Art. 12 § 19.

5.52.010 Deemed communications in writing. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing. [Code 1881 § 2352; 1865 p 74 § 11; RRS § 11345.]

5.52.020 Notice by telegraph deemed actual notice. Whenever any notice, information or intelligence, written or otherwise, is required to be given, the same may be given by telegraph: PROVIDED, That the dispatch containing the same be delivered to the person entitled thereto, or to his agent or attorney. Notice by telegraph shall be deemed actual notice. [Code 1881 § 2353; 1865 p 74 § 12; RRS § 11346.]

5.52.030 Instrument transmitted by telegraph—Effect. Any power of attorney, or other instrument in writing, duly proved or acknowledged, and certified so as to be entitled to record may, together with the certificate of its proof or acknowledgment, be sent by telegraph, and telegraphic copy, or duplicate thereof, shall, prima facie, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original. [Code 1881 § 2354; 1865 p 74 § 13; RRS § 11347.]

5.52.040 Bills and notes drawn by telegraph—Effect. Checks, due bills, promissory notes, bills of exchange and all orders or agreements for the payment or delivery of money, or other thing of value, may be made or drawn by telegraph, and when so made or drawn, shall have the same force and effect to charge the maker, drawer, indorser or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer [drawee], indorser [indorsee], acceptor, holder or bearer thereof, and shall be entitled to the same days of grace as if duly made or drawn and delivered in writing; but it shall not be lawful for any person other than the person or drawer thereof, to cause any

such instrument to be sent by telegraph, so as to charge any person thereby, except as in RCW 5.52.050 otherwise provided. Whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath, by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same, to prove the existence and execution of the original writing from which the telegraph copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent. [Code 1881 § 2355; 1865 p 74 § 14; RRS § 11348.]

5.52.050 Telegraphic copies as evidence. Except as hereinbefore otherwise provided, any instrument in writing, duly certified, under his hand and official seal, by a notary public, commissioner of deeds, or clerk of a court of record, to be genuine, within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph and the telegraphic copy thereof shall, prima facie, only have the same force, effect and validity, in all respects whatsoever as the original, and the burden of proof shall rest with the party denying the genuineness, or due execution of the original. [Code 1881 § 2356; 1865 p 75 § 15; RRS § 11349.]

5.52.060 Seal and revenue stamp, how described. Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L.S.," or by the word "seal," and whenever any document bears a revenue stamp, it shall be sufficient to express the same in the telegraphic copy, by the word "stamp," without any other or further description thereof. [Code 1881 § 2359; 1865 p 76 § 18; RRS § 11350.]

Seal, how affixed: RCW 5.44.130.

5.52.070 "Telegraphic copy" or "telegraphic duplicate" defined. The term "telegraphic copy," or "telegraphic duplicate," whenever used in this chapter, shall be construed to mean any copy of a message, made or prepared for delivery at the office to which said message may have been sent by telegraph. [Code 1881 § 2362; 1865 p 77 § 21; RRS § 11351.]

Chapter 5.56

WITNESSES—COMPELLING ATTENDANCE

Sections

5.56.010	When witnesses must attend—Fees and allowances.
5.56.050	Person in court required to testify.
5.56.060	Result of failure to attend.
5.56.061	Failure to attend considered contempt of court.
5.56.070	Attachment of witness.
5.56.080	To whom attachment directed—Execution.
5.56.090	Testimony of prisoner, how obtained.
5.56.100	Affidavit to procure order.

Tampering with witness: RCW 9A.72.120.

5.56.010 When witnesses must attend—Fees and allowances. Any person may be compelled to attend as a witness before any court of record, judge, commissioner, or referee, in any civil action or proceeding in this state. No such person shall be compelled to attend as a witness in any civil action or proceeding unless the fees be paid or tendered him which are allowed by law for one day's attendance as a witness and for traveling to and returning from the place where he is required to attend, together with any allowance for meals and lodging theretofore fixed as specified herein: PROVIDED, That such fees be demanded by any witness residing within the same county where such court of record, judge, commissioner, or referee is located, or within twenty miles of the place where such court is located, at the time of service of the subpoena: PROVIDED FURTHER, That a party desiring the attendance of a witness residing outside of the county in which such action or proceeding is pending, or more than twenty miles of the place where such court is located, shall apply ex parte to such court, or to the judge, commissioner, referee or clerk thereof, who, if such application be granted and a subpoena issued, shall fix without notice an allowance for meals and lodging, if any to be allowed, together with necessary travel expenses, and the amounts so fixed shall be endorsed upon the subpoena and tendered to such witness at the time of the service of the subpoena: PROVIDED FURTHER, That the court shall fix and allow at or after trial such additional amounts for meals, lodging and travel as it may deem reasonable for the attendance of such witness. [1963 c 19 § 1; 1891 c 19 § 2; Code 1881 § 393; 1877 p 87 § 395; 1869 p 104 § 388; 1863 p 156 § 69; 1854 p 187 § 295; RRS § 1215.]

Rules of court: Cf. CR 4(f).

Arbitration, compelling attendance of witnesses: RCW 7.04.110.

District court, attachment, damages for nonappearance: RCW 12.16.030, 12.16.050.

Power to compel attendance of persons to testify: RCW 2.28.010, 2.28.020, 2.28.060, 2.28.070.

Salaried public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.

Witness fees and mileage: Chapter 2.40 RCW.

5.56.050 Person in court required to testify. A person present in court or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer. [Code 1881 § 397; 1877 p 88 § 399; 1869 p 106 § 392; 1854 p 188 § 299; RRS § 1219.]

5.56.060 Result of failure to attend. If any person duly served with a subpoena and obliged to attend as a witness, shall fail to do so, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action. [Code 1881 § 398; 1877 p 88 § 400; 1869 p 106 § 393; 1854 p 188 § 300; RRS § 1220, part. FORMER PART OF SECTION: Code 1881 § 399; 1877 p 88 § 401; 1869 p 106 § 394; 1854 p 188 § 301; RRS § 1220, part, now codified as RCW 5.56.061.]

Contempts: Chapter 7.21 RCW.

District court, damages for nonappearance: RCW 12.16.050.

5.56.061 Failure to attend considered contempt of court. A failure to attend as required by the subpoena, shall also be considered a contempt of court as provided in chapter 7.21 RCW. [1989 c 373 § 8; Code 1881 § 399; 1877 p 88 § 401; 1869 p 106 § 394; 1854 p 188 § 301; RRS § 1220, part. Formerly RCW 5.56.060, part.]

Rules of court: Cf. CR 45(f).

Severability—1989 c 373: See RCW 7.21.900.

Criminal contempt: RCW 9.92.040.

Power of courts and judicial officers to punish for contempt: RCW 2.28.020, 2.28.070.

5.56.070 Attachment of witness. The court, judge, or other officer, in such case, may issue an attachment to bring such witness before them to answer for contempt, and also testify as witness in the cause in which he or she was subpoenaed. [1987 c 202 § 125; Code 1881 § 400; 1877 p 88 § 402; 1869 p 106 § 395; 1854 p 188 § 302; RRS § 1221.]

Rules of court: Cf. CR 45(f).

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

District court, attachment for nonappearance: RCW 12.16.030.

5.56.080 To whom attachment directed—Execution. Such attachment may be directed to the sheriff or any deputy of any county in which the witness may be found, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he or she shows reasonable cause, to the satisfaction of the judge, for his or her omission to attend; in which case the party requiring such attachment shall pay all such costs. [1987 c 202 § 126; 1891 c 19 § 3; RRS § 1222.]

Rules of court: Cf. CR 45(f).

Reviser's note: Preliminary language of 1891 c 19 § 3 reads as follows: "The following section is enacted to follow section 400 of the said Code of 1881 [RCW 5.56.070], as that section shall be numbered in the code of procedure of this state:"

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

5.56.090 Testimony of prisoner, how obtained. If the witness be a prisoner confined in a jail or prison within this state, an order for his examination in prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued. [Code 1881 § 401; 1877 p 88 § 403; 1869 p 106 § 396; 1854 p 189 § 303; RRS § 1223.]

5.56.100 Affidavit to procure order. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. [Code 1881 § 402; 1877 p 88 § 404; 1869 p 106 § 397; 1854 p 189 § 304; RRS § 1224.]

Chapter 5.60

WITNESSES—COMPETENCY

Sections

5.60.020 Who may testify.
5.60.030 Not excluded on grounds of interest—Exception—Transaction with person since deceased.

5.60.050 Who are incompetent.
5.60.060 Who are disqualified—Privileged communications.
5.60.070 Mediation—Disclosure—Testimony.
5.60.072 Mediation by agency—Privilege and confidentiality.

Attorney as witness: Rules of court: CR 43(g); CPR 5 (DR 5-102).

Witnesses, competency: Rules of court: ER 601.

5.60.020 Who may testify. Every person of sound mind and discretion, except as hereinafter provided, may be a witness in any action, or proceeding. [1986 c 195 § 1; Code 1881 § 388; 1877 p 85 § 390; 1869 p 103 § 383; 1854 p 186 § 289; RRS § 1210.]

5.60.030 Not excluded on grounds of interest—Exception—Transaction with person since deceased. No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility: PROVIDED, HOWEVER, That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased person, or as deriving right or title by, through or from any deceased person, or as the guardian or limited guardian of the estate or person of any incompetent or disabled person, or of any minor under the age of fourteen years, then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased, incompetent or disabled person, or by any such minor under the age of fourteen years: PROVIDED FURTHER, That this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity, and have no other or further interest in the action. [1977 ex.s. c 80 § 3; 1927 c 84 § 1; Code 1881 § 389; 1877 p 85 § 391; 1873 p 106 § 382; 1869 p 183 § 384; 1867 p 88 § 1; 1854 p 186 § 290; RRS § 1211.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

5.60.050 Who are incompetent. The following persons shall not be competent to testify:

- (1) Those who are of unsound mind, or intoxicated at the time of their production for examination, and
- (2) Those who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly. [1986 c 195 § 2; Code 1881 § 391; 1877 p 86 § 393; 1869 p 103 § 386; 1863 p 154 § 33; 1854 p 186 § 293; RRS § 1213.]

5.60.060 Who are disqualified—Privileged communications. (1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be

without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 70.96A or 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.250, a physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure. [1989 c 271 § 301. Prior: 1989 c 10 § 1; 1987 c 439 § 11; 1987 c 212 § 1501; 1986 c 305 § 101; 1982 c 56 § 1; 1979 ex.s. c 215 § 2; 1965 c 13 § 7; Code 1881 § 392; 1879 p 118 § 1; 1877 p 86 § 394; 1873 p 107 § 385; 1869 p 104 § 387; 1854 p 187 § 294; RRS § 1214. Cf. 1886 p 73 § 1.]

Rules of court: Cf. CR 43(g).

Severability—1989 c 271: See note following RCW 9.94A.310.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Severability—1982 c 56: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 56 § 2.] This applies to RCW 5.60.060.

Non-support or family desertion, spouse as witness: RCW 26.20.071.

Optometrist—Client, privileged communications: RCW 18.53.200.

Psychologist—Client, privileged communications: RCW 18.83.110.

Report of abuse of children and adult dependent or developmentally disabled persons: Chapter 26.44 RCW.

Uniform reciprocal enforcement of support act—Spouse as witness: RCW 26.21.170.

5.60.070 Mediation—Disclosure—Testimony. (1) If there is a court order to mediate or a written agreement between the parties to mediate, then any communication made or materials submitted in, or in connection with, the mediation proceeding, whether made or submitted to or by the mediator, a mediation organization, a party, or any person present, are privileged and confidential and are not subject to disclosure in any judicial or administrative proceeding except:

(a) When all parties to the mediation agree, in writing, to disclosure;

(b) When the written materials or tangible evidence are otherwise subject to discovery, and were not prepared specifically for use in and actually used in the mediation proceeding;

(c) When a written agreement to mediate permits disclosure;

(d) When disclosure is mandated by statute;

(e) When the written materials consist of a written settlement agreement or other agreement signed by the parties resulting from a mediation proceeding;

(f) When those communications or written materials pertain solely to administrative matters incidental to the mediation proceeding, including the agreement to mediate; or

(g) In a subsequent action between the mediator and a party to the mediation arising out of the mediation.

(2) When there is a court order or written agreement to mediate as described in subsection (1) of this section, the mediator or a representative of a mediation organization shall not testify in any judicial or administrative proceeding unless:

(a) All parties to the mediation and the mediator agree in writing; or

(b) In an action described in subsection (1)(g) of this section. [1991 c 321 § 1.]

Severability—1991 c 321: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 321 § 3.]

5.60.072 Mediation by agency—Privilege and confidentiality. Notwithstanding the provisions of RCW 5.60.070, when any party participates in mediation conducted by a state or federal agency under the provisions of a collective bargaining law or similar statute, the agency's rules govern questions of privilege and confidentiality. [1991 c 321 § 2.]

Severability—1991 c 321: See note following RCW 5.60.070.

Chapter 5.62

WITNESSES—REGISTERED NURSES

Sections

5.62.010

Definitions.

5.62.020

Registered nurse—Privileged communications—Exceptions.

5.62.030

Nurse-patient privilege subject to limitations and exemptions of physician-patient privilege.

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

(1) "Registered nurse" means a registered nurse licensed under chapter 18.88 RCW.

(2) "Protocol" means a regimen to be carried out by a registered nurse and prescribed by a licensed physician under chapter 18.71 RCW, or a licensed osteopathic physician under chapter 18.57 RCW, which is consistent with chapter 18.88 RCW and the rules adopted under chapter 18.88 RCW.

(3) "Primary care" means screening, assessment, diagnosis and treatment for the purpose of promotion of health and detection of disease or injury, as authorized by chapter 18.88 RCW and the rules adopted under chapter 18.88 RCW. [1987 c 198 § 1; 1985 c 447 § 1.]

5.62.020 Registered nurse—Privileged communications—Exceptions. No registered nurse providing primary care or practicing under protocols, whether or not the physical presence or direct supervision of a physician is required, may be examined in a civil or criminal action as to any information acquired in attending a patient in the registered nurse's professional capacity, if the information was necessary to enable the registered nurse to act in that capacity for the patient, unless:

(1) The patient consents to disclosure or, in the event of death or disability of the patient, his or her personal representative, heir, beneficiary, or devisee consents to disclosure; or

(2) The information relates to the contemplation or execution of a crime in the future, or relates to the neglect or the sexual or physical abuse of a child, or of a vulnerable adult as defined in RCW 74.34.020, or to a person subject to proceedings under chapter 70.96A, 71.05, or 71.34 RCW. [1989 c 271 § 302; 1986 c 212 § 1; 1985 c 447 § 2.]

Severability—1989 c 271: See note following RCW 9.94A.310.

5.62.030 Nurse-patient privilege subject to limitations and exemptions of physician-patient privilege. Notwithstanding anything to the contrary in this chapter, the privilege created in this chapter is subject to the same limitations and exemptions contained in RCW 26.26.120, 26.44.060(3), and 51.04.050 as those limitations and exemptions relate to the physician/patient privilege of RCW 5.60.060. [1986 c 212 § 2; 1985 c 447 § 3.]

Chapter 5.64

ADMISSIBILITY—FURNISHING, OFFERING, OR PROMISING TO PAY MEDICAL EXPENSES

Sections

5.64.010 Personal injury action for negligence of person licensed to provide health care or related services—Evidence of furnishing or offering to pay expenses inadmissible to prove liability.

5.64.010 Personal injury action for negligence of person licensed to provide health care or related services—Evidence of furnishing or offering to pay expenses inadmissible to prove liability. In any civil action for

personal injuries which is based upon alleged professional negligence and which is against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, *podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative; evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury. [1975-'76 2nd ex.s. c 56 § 3.]

Rules of court: Cf. ER 409.

*Reviser's note: The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

Title 6

ENFORCEMENT OF JUDGMENTS

Chapters

- 6.01 General provisions.
- 6.13 Homesteads.
- 6.15 Personal property exemptions.
- 6.17 Executions.
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Alien property custodian: RCW 4.28.330.

Husband and wife, property: Chapter 26.16 RCW.

Private property, when may be taken for public debt: State Constitution Art. 11 § 13.

Railroads, personalty may be taken: State Constitution Art. 12 § 17.

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Chapter 6.01 GENERAL PROVISIONS

Sections

- 6.01.010 Application of chapters in Title 6 RCW to superior courts and district courts—Definitions.
- 6.01.020 Entry of judgment—Superior court—District court—Small claims.
- 6.01.030 Direction of writ when sheriff a party.
- 6.01.040 Execution against several persons—Contribution—Repayment.
- 6.01.050 Writ of attachment or execution against debtor in bankruptcy.
- 6.01.060 "Certified mail" defined.

6.01.010 Application of chapters in Title 6 RCW to superior courts and district courts—Definitions. Except as otherwise expressly provided, the provisions of this chapter and of chapters 6.13, 6.15, 6.17, 6.19, 6.21, 6.25, 6.26, and 6.27 RCW and chapter 6.32 RCW apply to both the superior courts and district courts of this state. If proceedings are before a district court, acts to be performed by the clerk may be performed by a district court judge if there is no clerk. As used in this title, "sheriff" includes deputies, and "execution docket" refers also to the docket of a district court. [1987 c 442 § 101.]

6.01.020 Entry of judgment—Superior court—District court—Small claims. For purposes of this title and RCW 4.56.190 and 4.56.210, a judgment of a superior court is entered when it is delivered to the clerk's office for filing. A judgment of a district court of this state is entered on the date of the entry of the judgment in the docket of the court. A judgment of a small claims department of a district court of this state is entered on the date of the entry in the docket of that department. [1987 c 442 § 102.]

Rules of court: Cf. CR 58(b).

6.01.030 Direction of writ when sheriff a party. If the sheriff is a party or otherwise interested in an action in which a writ of execution, attachment, or replevin is to be served, the writ shall be directed to the coroner of the county, or the officer exercising the powers and performing the duties of coroner if there is no coroner, and the person to whom the writ is thus directed shall perform the duties of the sheriff. [1987 c 442 § 103.]

6.01.040 Execution against several persons—Contribution—Repayment. (1) When property liable to an execution against several persons is sold on execution, if more than a due proportion of the judgment is levied upon the property of one person, or one of them pays without a sale more than his or her due proportion, that person may compel contribution from the others. When a judgment against several persons is upon an obligation or contract of one of them as security for another, if the surety pays the full amount or any part of the judgment, either by sale of the surety's property or before sale, the surety may compel repayment from the principal.

(2) In either case covered by subsection (1) of this section, the person or surety so paying shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after the payment, notice of the payment and claim to contribution or repayment is filed with the clerk of the court where the judgment was rendered.

(3) Upon filing such notice, the clerk shall make an entry thereof in the docket where the judgment is entered. [1987 c 442 § 104.]

6.01.050 Writ of attachment or execution against debtor in bankruptcy. If, before levying under a writ of attachment or execution, a sheriff receives notice that the defendant has become a debtor in a bankruptcy case, the sheriff shall immediately give written notice of that fact to the plaintiff's attorney of record, if any, otherwise to the plaintiff, and shall not be bound to levy under the writ. If, after levying on property under a writ of attachment or execution, a sheriff receives such notice, the sheriff shall give written notice of the attachment or execution, describing the property seized, to the trustee in the bankruptcy case if

there is one, otherwise to the bankruptcy court, with a copy to the plaintiff's attorney of record, if any, otherwise to the plaintiff, and shall transfer the property to the trustee on demand or as the bankruptcy court otherwise directs. If no demand is made on the sheriff for surrender of the property and the sheriff thereafter receives notice of the closing of the bankruptcy case, the sheriff shall give written notice by first class mail to the plaintiff's attorney of record, if any, otherwise to the plaintiff, requiring that the plaintiff release the property or obtain a renewal of the writ from the court, and, if the plaintiff fails to release the property or to apply for a renewal within fourteen days after the mailing of the sheriff's notice, the sheriff shall release the property to the defendant. [1988 c 231 § 2.]

Severability—1988 c 231: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 231 § 38.]

6.01.060 "Certified mail" defined. The term "certified mail," as used in this title, includes, for mailings to a foreign country, any form of mail that requires or permits a return receipt. [1988 c 231 § 1.]

Severability—1988 c 231: See note following RCW 6.01.050.

Chapter 6.13 HOMESTEADS

Sections

6.13.010	Homestead, what constitutes—"Owner," "net value" defined.
6.13.020	Homestead—What may constitute.
6.13.030	Homestead exemption limited.
6.13.040	Automatic homestead exemption—Conditions—Declaration of homestead—Declaration of abandonment.
6.13.050	Homestead presumed abandoned, when—Declaration of nonabandonment.
6.13.060	Conveyance or encumbrance by husband and wife.
6.13.070	Homestead exempt from execution, when—Presumed valid.
6.13.080	Homestead exemption, when not available.
6.13.090	Judgment against homestead owner—Lien on excess value of homestead property.
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6.13.220	Notice of application for order.
6.13.230	Petition.
6.13.240	Order—Effect.

Lien for assessments in favor of condominium association: RCW 64.34.364(2).

6.13.010 Homestead, what constitutes—"Owner," "net value" defined. (1) The homestead consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and

the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

(2) As used in this chapter, the term "owner" includes but is not limited to a purchaser under a deed of trust, mortgage, or real estate contract.

(3) As used in this chapter, the term "net value" means market value less all liens and encumbrances. [1987 c 442 § 201; 1981 c 329 § 7; 1945 c 196 § 1; 1931 c 88 § 1; 1927 c 193 § 1; 1895 c 64 § 1; Rem. Supp. 1945 § 528. Formerly RCW 6.12.010.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.020 Homestead—What may constitute. If the owner is married, the homestead may consist of the community or jointly owned property of the spouses or the separate property of either spouse: PROVIDED, That the same premises may not be claimed separately by the husband and wife with the effect of increasing the net value of the homestead available to the marital community beyond the amount specified in RCW 6.13.030 as now or hereafter amended. When the owner is not married, the homestead may consist of any of his or her property. [1987 c 442 § 202; 1981 c 329 § 8; 1977 ex.s. c 98 § 1; 1973 1st ex.s. c 154 § 6; 1895 c 64 § 2; RRS § 530. Formerly RCW 6.12.020.]

Severability—1981 c 329: See note following RCW 6.21.020.

Severability—1973 1st ex.s. c 154: See note following RCW 6.12.030.

6.13.030 Homestead exemption limited. A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, mobile home, and improvements as described in RCW 6.13.010, or (2) the sum of thirty thousand dollars, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption. [1991 c 123 § 2; 1987 c 442 § 203; 1983 1st ex.s. c 45 § 4; 1981 c 329 § 10; 1977 ex.s. c 98 § 3; 1971 ex.s. c 12 § 1; 1955 c 29 § 1; 1945 c 196 § 3; 1895 c 64 § 24; Rem. Supp. 1945 § 552. Formerly RCW 6.12.050.]

Purpose—1991 c 123: "The legislature recognizes that retired persons generally are financially dependent on fixed pension or retirement benefits and passive income from investment property. Because of this dependency, retired persons are more vulnerable than others to inflation and depletion of their assets. It is the purpose of this act to increase the protection of income of retired persons residing in the state of Washington from collection of income taxes imposed by other states." [1991 c 123 § 1.]

Severability—1981 c 329: See note following RCW 6.21.020.

Severability—1971 ex.s. c 12: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 12 § 5.] For codification of 1971 ex.s. c 12, see Codification Tables, Volume 0.

6.13.040 Automatic homestead exemption—Conditions—Declaration of homestead—Declaration of abandonment. (1) Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the property is occupied as a principal residence by the owner or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required by the following subsections are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home, from and after delivery of a declaration as prescribed in RCW 6.15.060(3)(c).

(2) An owner who selects a homestead from unimproved or improved land that is not yet occupied as a homestead must execute a declaration of homestead and file the same for record in the office of the recording officer in the county in which the land is located. However, if the owner also owns another parcel of property on which the owner presently resides or in which the owner claims a homestead, the owner must also execute a declaration of abandonment of homestead on that other property and file the same for record with the recording officer in the county in which the land is located.

(3) The declaration of homestead must contain:

(a) A statement that the person making it is residing on the premises or intends to reside thereon and claims them as a homestead;

(b) A legal description of the premises; and

(c) An estimate of their actual cash value.

(4) The declaration of abandonment must contain:

(a) A statement that premises occupied as a residence or claimed as a homestead no longer constitute the owner's homestead;

(b) A legal description of the premises; and

(c) A statement of the date of abandonment.

(5) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged. [1987 c 442 § 204; 1981 c 329 § 9. Formerly RCW 6.12.045.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.050 Homestead presumed abandoned, when—Declaration of nonabandonment. A homestead is presumed abandoned if the owner vacates the property for a continuous period of at least six months. However, if an owner is going to be absent from the homestead for more than six months but does not intend to abandon the homestead, and has no other principal residence, the owner may execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of nonabandonment of homestead and file the declaration for record in the office of the recording officer of the county in which the property is situated.

The declaration of nonabandonment of homestead must contain:

(1) A statement that the owner claims the property as a homestead, that the owner intends to occupy the property in the future, and that the owner claims no other property as a homestead;

(2) A statement of where the owner will be residing while absent from the homestead property, the estimated duration of the owner's absence, and the reason for the absence; and

(3) A legal description of the homestead property. [1987 c 442 § 205; 1981 c 329 § 14; 1895 c 64 § 7; RRS § 535. Formerly RCW 6.12.120.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.060 Conveyance or encumbrance by husband and wife. The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife, except that a husband or a wife or both jointly may make and execute powers of attorney for the conveyance or encumbrance of the homestead. [1987 c 442 § 206; 1983 c 251 § 1; 1895 c 64 § 6; RRS § 534. Formerly RCW 6.12.110.]

Husband and wife, property: Chapter 26.16 RCW.

6.13.070 Homestead exempt from execution, when—Presumed valid. (1) Except as provided in RCW 6.13.080, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030. The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in RCW 6.13.030, shall likewise be exempt for one year from receipt, and also such new homestead acquired with such proceeds.

(2) Every homestead created under this chapter is presumed to be valid to the extent of all the property claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county or district in which the homestead is situated. [1987 c 442 § 207; 1981 c 329 § 13; 1945 c 196 § 2; 1927 c 193 § 2; 1895 c 64 § 4; Rem. Supp. 1945 § 532. Formerly RCW 6.12.090.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.080 Homestead exemption, when not available. The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, materialmen's or vendor's liens upon the premises;

(2) On debts secured (a) by security agreements describing as collateral the mobile home that is claimed as a homestead or (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by the husband and wife or by any unmarried claimant;

(3) On one spouse's or the community's debts existing at the time of that spouse's bankruptcy filing where (a)

bankruptcy is filed by both spouses within a six-month period, other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay spousal maintenance; or

(5) On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first class mail, to the address of the owner's lot or unit. The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection. [1988 c 231 § 3; 1988 c 192 § 1; 1987 c 442 § 208; 1984 c 260 § 16; 1982 c 10 § 1. Prior: 1981 c 304 § 17; 1981 c 149 § 1; 1909 c 44 § 1; 1895 c 64 § 5; RRS § 533. Formerly RCW 6.12.100.]

Reviser's note: This section was amended by 1988 c 192 § 1 and by 1988 c 231 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1984 c 260: See RCW 26.18.900.

Severability—1982 c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 10 § 19.]

Severability—1981 c 304: See note following RCW 26.16.030.

6.13.090 Judgment against homestead owner—Lien on excess value of homestead property. A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recording officer of the county where the property is located. However, if a judgment of a district court of this state has been transferred to a superior court, the judgment becomes a lien from the time of recording with such recording officer a duly certified abstract of the record of such judgment as it appears in the office of the clerk in which the transfer was originally filed. [1988 c 231 § 4; 1987 c 442 § 209; 1984 c 260 § 30. Formerly RCW 6.12.105.]

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1984 c 260: See RCW 26.18.900.

6.13.100 Execution against homestead—Application for appointment of appraiser. When execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.13.080 is levied upon the homestead, the judgment creditor shall apply to the superior court of the county in which the homestead is situated for the appointment of a person to appraise the value thereof. [1987 c 442 § 210; 1895 c 64 § 9; RRS § 537. Formerly RCW 6.12.140.]

6.13.110 Application under RCW 6.13.100 must be made by verified petition—Contents. The application under RCW 6.13.100 must be made by filing a verified petition, showing:

(1) The fact that an execution has been levied upon the homestead.

(2) The name of the owner of the homestead property.

(3) That the net value of the homestead exceeds the amount of the homestead exemption. [1987 c 442 § 211; 1981 c 329 § 15; 1895 c 64 § 10; RRS § 538. Formerly RCW 6.12.150.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.120 Notice. A copy of the petition, with a notice of the time and place of hearing, must be served upon the owner and the owner's attorney of record, if any, at least ten days before the hearing. [1987 c 442 § 212; 1981 c 329 § 16; 1895 c 64 § 12; RRS § 540. Formerly RCW 6.12.170.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.130 Hearing—Appointment of appraiser. At the hearing, the judge may, upon the proof of the service of a copy of the petition and notice and of the facts stated in the petition, appoint a disinterested qualified person of the county to appraise the value of the homestead. [1987 c 442 § 213; 1984 c 118 § 1; 1895 c 64 § 13; RRS § 541. Formerly RCW 6.12.180.]

Compensation of appraiser: RCW 6.13.190.

6.13.140 Appraiser—Oath—Duties. The person appointed, before entering upon the performance of duties, must take an oath to faithfully perform the same. The appraiser must view the premises and appraise the market value thereof and, if the appraised value, less all liens and encumbrances, exceeds the homestead exemption, must determine whether the land claimed can be divided without material injury. Within fifteen days after appointment, the appraiser must make to the court a report in writing, which report must show the appraised value, less liens and encumbrances, and, if necessary, the determination whether or not the land can be divided without material injury and without violation of any governmental restriction. [1987 c 442 § 214; 1895 c 64 § 14; RRS § 542. Formerly RCW 6.12.190.]

6.13.150 Division of homestead. If, from the report, it appears to the court that the value of the homestead, less liens and encumbrances, exceeds the homestead exemption and the property can be divided without material injury and without violation of any governmental restriction, the court may, by an order, direct the appraiser to set off to the owner

so much of the land, including the residence, as will amount in net value to the homestead exemption, and the execution may be enforced against the remainder of the land. [1987 c 442 § 215; 1981 c 329 § 17; 1895 c 64 § 17; RRS § 545. Formerly RCW 6.12.220.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.160 Sale, if not divisible. If, from the report, it appears to the court that the appraised value of the homestead property, less liens and encumbrances, exceeds the amount of the homestead exemption and the property is not divided, the court must make an order directing its sale under the execution. The order shall direct that at such sale no bid may be received unless it exceeds the amount of the homestead exemption. [1987 c 442 § 216; 1981 c 329 § 18; 1895 c 64 § 18; RRS § 546. Formerly RCW 6.12.230.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.170 Application of proceeds. If the sale is made, the proceeds must be applied in the following order: First, to the amount of the homestead exemption, to be paid to the judgment debtor; second, up to the amount of the execution, to be applied to the satisfaction of the execution; third, the balance to be paid to the judgment debtor. [1987 c 442 § 217; 1981 c 329 § 19; 1895 c 64 § 20; RRS § 548. Formerly RCW 6.12.250.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.180 Money from sale protected. The money paid to the owner is entitled to the same protection against legal process and the voluntary disposition of the husband or wife which the law gives to the homestead. [1987 c 442 § 218; 1981 c 329 § 20; 1973 1st ex.s. c 154 § 10; 1895 c 64 § 21; RRS § 549. Formerly RCW 6.12.260.]

Severability—1981 c 329: See note following RCW 6.21.020.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

6.13.190 Appraiser—Compensation. The court shall determine a reasonable compensation for the appraiser. [1987 c 442 § 219; 1984 c 118 § 2; 1895 c 64 § 22; RRS § 550. Formerly RCW 6.12.270.]

6.13.200 Costs. The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in RCW 6.13.150 and 6.13.160 the amount so paid must be added as costs on execution, and collected accordingly. [1987 c 442 § 220; 1895 c 64 § 23; RRS § 551. Formerly RCW 6.12.280.]

6.13.210 Alienation in case of incompetency or disability of one spouse. In case of a homestead, if either the husband or wife shall be or become incompetent or disabled to such a degree that he or she is unable to assist in the management of his or her interest in the marital property and no guardian has been appointed, upon application of the other spouse to the superior court of the county in which the homestead is situated, and upon due proof of such incompetency or disability in the severity required above, the court

may make an order permitting the husband or wife applying to the court to sell and convey or mortgage such homestead. [1987 c 442 § 221; 1977 ex.s. c 80 § 4; 1895 c 64 § 26; RRS § 554. Formerly RCW 6.12.300.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

6.13.220 Notice of application for order. Notice of the application for such order shall be given by publication of the same in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks prior to the hearing of such application, and a copy of such notice shall be served upon the alleged incompetent husband or wife personally, and upon the nearest relative of such incompetent or disabled husband or wife other than the applicant, resident in this state, at least three weeks prior to such application being heard, and in case there be no such relative known to the applicant, a copy of such notice shall be served upon the prosecuting attorney of the county in which such homestead is situated; and it is hereby made the duty of such prosecuting attorney, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted. [1987 c 442 § 222; 1977 ex.s. c 80 § 5; 1895 c 64 § 27; RRS § 555. Formerly RCW 6.12.310.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

6.13.230 Petition. Thirty days before the hearing of any application under the provisions of this chapter, the applicant shall present and file in the court in which such application is to be heard a petition for the order mentioned, subscribed and sworn to by the applicant, setting forth the name and age of the alleged incompetent or disabled husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; such facts necessary to show that the nonpetitioning husband or wife is incompetent or disabled to the degree required under RCW 6.13.210; and such additional facts relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition. [1987 c 442 § 223; 1977 ex.s. c 80 § 6; 1895 c 64 § 28; RRS § 556. Formerly RCW 6.12.320.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

6.13.240 Order—Effect. If the court shall make the order provided for in RCW 6.13.210, the same shall be entered upon the minutes of the court, and thereafter any sale, conveyance, or mortgage made in pursuance of such order shall be as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage in fee simple. [1987 c 442 § 224; 1895 c 64 § 29; RRS § 557. Formerly RCW 6.12.330.]

Chapter 6.15

PERSONAL PROPERTY EXEMPTIONS

Sections

6.15.010	Exempt property specified.
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child support obligations and earnings of nonobligated spouse: RCW 26.16.200.
crime victims' compensation: RCW 7.68.070 and 51.32.040.
earnings, amount of exempt from garnishment of employer: RCW 6.27.150.
homesteads: Chapter 6.13 RCW.
incompetents' property: RCW 11.92.060.
industrial insurance benefits: RCW 51.32.040.
insurance, proceeds of annuity, disability, life and group life: RCW 48.18.400 through 48.18.430.
property exempt from seizure: RCW 6.32.250.
public assistance, benefits, money of recipients in institutions: RCW 74.08.210, 74.13.070.
public retirement, insurance benefits
city employees, state-wide system: RCW 41.44.240.
first class cities, personnel and police: RCW 41.28.200, 41.20.180.
fraternal benefit society benefits: RCW 48.36A.180.
judges: RCW 2.10.180, 2.12.090.
law enforcement officers and fire fighters: RCW 41.26.180.
state employees: RCW 41.40.052.
teachers: RCW 41.32.055.
volunteer fire fighters: RCW 41.24.240.
Washington state patrol: RCW 43.43.310.
unemployment compensation benefits: RCW 50.40.020.
work release participants, earnings of: RCW 72.65.060.

6.15.010 Exempt property specified. Except as provided in RCW 6.15.050, the following personal property shall be exempt from execution, attachment, and garnishment:

(1) All wearing apparel of every individual and family, but not to exceed one thousand dollars in value in furs, jewelry, and personal ornaments for any individual.

(2) All private libraries of every individual, but not to exceed fifteen hundred dollars in value, and all family pictures and keepsakes.

(3) To each individual or, as to community property of spouses maintaining a single household as against a creditor of the community, to the community:

(a) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed two thousand seven hundred dollars in value, said amount to include provisions and fuel for the comfortable maintenance of the individual or community;

(b) Other personal property, except personal earnings as provided under RCW 6.15.050(1), not to exceed one thousand dollars in value, of which not more than one hundred dollars in value may consist of cash, and of which not more

than one hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities; and

(c) Two motor vehicles used for personal transportation, not to exceed two thousand five hundred dollars in aggregate value.

(4) To each qualified individual, one of the following exemptions:

(a) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed five thousand dollars in value;

(b) To a physician, surgeon, attorney, clergyman, or other professional person, the individual's library, office furniture, office equipment and supplies, not to exceed five thousand dollars in value;

(c) To any other individual, the tools and instruments and materials used to carry on his or her trade for the support of himself or herself or family, not to exceed five thousand dollars in value.

For purposes of this section, "value" means the reasonable market value of the debtor's interest in an article or item at the time it is selected for exemption, exclusive of all liens and encumbrances thereon. [1991 c 112 § 1; 1988 c 231 § 5; 1987 c 442 § 301; 1983 1st ex.s. c 45 § 8; 1979 ex.s. c 65 § 1; 1973 1st ex.s. c 154 § 13; 1965 c 89 § 1; 1886 p 96 § 1; Code 1881 § 347; 1879 p 157 § 1; 1877 p 73 § 351; 1869 p 87 § 343; 1854 p 178 § 253; RRS § 563. Formerly RCW 6.16.020.]

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

6.15.020 Pension money exempt—Exceptions. (1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child

support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection shall not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in sections 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington or any political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. [1990 c 237 § 1; 1989 c 360 § 21; 1988 c 231 § 6. Prior: 1987 c 64 § 1; 1890 p 88 § 1; RRS § 566. Formerly RCW 6.16.030.]

Severability—1990 c 237: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 237 § 2.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.15.025 Exemption of pension or retirement plan benefits from execution for judgment for out-of-state income tax. Where a judgment is in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension

or other retirement plan, all property in this state, real or personal, tangible or intangible, of a judgment debtor shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her spouse and dependents any property exempted by this section, the same shall be exempt to the surviving spouse and dependents. [1991 c 123 § 3.]

Purpose—1991 c 123: See note following RCW 6.13.030.

6.15.030 Insurance money on exempt property exempt. If property, which by the laws of this state is exempt from execution, attachment, or garnishment, is insured and the same is lost, stolen, or destroyed, then the insurance money coming to or belonging to the person thus insured, to an amount equal to the exempt property thus destroyed, shall be exempt from execution, attachment, and garnishment. [1987 c 442 § 303; 1895 c 76 § 1; RRS § 568. Formerly RCW 6.16.050.]

6.15.035 Exemption of proceeds of life, disability insurance, and annuities. See RCW 48.18.400, 48.18.410, 48.18.420, and 48.18.430.

6.15.040 Separate property of spouse exempt. All real and personal property belonging to any married person at the time of his or her marriage, and all which he or she may have acquired subsequently to such marriage, or to which he or she shall hereafter become entitled in his or her own right, and all his or her personal earnings, and all the issues, rents and profits of such real property, shall be exempt from execution, attachment, and garnishment upon any liability or judgment against the other spouse, so long as he or she or any minor heir of his or her body shall be living: **PROVIDED,** That the separate property of each spouse shall be liable for debts owing by him or her at the time of marriage. [1987 c 442 § 304; 1973 1st ex.s. c 154 § 14; Code 1881 § 341; 1877 p 71 § 345; 1869 p 85 § 337; 1854 p 178 § 252; RRS § 570. Formerly RCW 6.16.070.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Exemption of nonobligated spouse's earnings from satisfaction of other spouse's child support obligations: RCW 26.16.200.

6.15.050 Exemptions under RCW 6.15.010—Limitations on exemptions generally. (1) Wages, salary, or other compensation regularly paid for personal services rendered by the debtor claiming the exemption shall not be claimed as exempt under RCW 6.15.010, but the same may be claimed as exempt in any bankruptcy or insolvency proceeding to the same extent as allowed under the statutes relating to garnishments.

(2) No property may be exempt under RCW 6.15.010 from execution, attachment, or garnishment issued upon a judgment for all or any part of the purchase price of the property.

(3) No property may be exempt under RCW 6.15.010 from legal process issued upon a judgment for any tax levied upon such property.

(4) Nothing in this chapter shall be so construed as to prevent a debtor from creating a security interest in personal property which might be claimed as exempt, or the enforcement of such security interest against the property.

(5) Nothing in this chapter shall be construed to exempt personal property of a nonresident of this state or of an individual who has left or is about to leave this state with the intention to defraud his or her creditors.

(6) Personal property exemptions are waived by failure to claim them prior to sale of exemptible property under execution or, in a garnishment proceeding, within the time specified in RCW 6.27.160.

(7) Personal property exemptions may not be claimed by one spouse in a bankruptcy case that is not a joint case or a joint administration of the estate with the bankruptcy estate of the other spouse where (a) bankruptcy is filed by both spouses within a six-month period, and (b) one spouse exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d). [1987 c 442 § 305; 1981 c 149 § 2; 1927 c 136 § 1; Code 1881 § 348; 1877 p 74 § 352; 1869 p 88 § 344; RRS § 571. Formerly RCW 6.16.080.]

6.15.060 Manner of claiming exemptions—Appraisal—Appraiser's fee. (1) Except as provided in subsection (2) of this section, property claimed exempt under RCW 6.15.010 shall be selected by the individual entitled to the exemption, or by the husband or wife entitled to a community exemption, in the manner described in subsection (3) of this section.

(2) If, at the time of seizure under execution or attachment of property exemptible under *RCW 6.15.010(3) (a), (b), or (c), the individual or the husband or wife entitled to claim the exemption is not present, then the sheriff or deputy shall make a selection equal in value to the applicable exemptions and, if no appraisal is required and no objection is made by the creditor as permitted under subsection (4) of this section, the officer shall return the same as exempt by inventory. Any selection made as provided shall be prima facie evidence (a) that the property so selected is exempt from execution and attachment, and (b) that the property so selected is not in excess of the values specified for the exemptions.

(3)(a) A debtor who claims personal property as exempt against execution or attachment shall, at any time before sale, deliver to the officer making the levy a list by separate items of the property claimed as exempt, together with an itemized list of all the personal property owned or claimed by the debtor, including money, bonds, bills, notes, claims and demands, with the residence of the person indebted upon the said bonds, bills, notes, claims and demands, and shall verify such list by affidavit. The officer shall immediately advise the creditor, attorney, or agent of the exemption claim and, if no appraisal is required and no objection is made by the creditor as permitted under subsection (4) of this section, the officer shall return with the process the list of property claimed as exempt.

(b) A debtor who claims personal property exempt against garnishment shall proceed as provided in RCW 6.27.160.

(c) A debtor who claims as a homestead, under chapter 6.13 RCW, a mobile home that is not yet occupied as a homestead and that is located on land not owned by the debtor shall claim the homestead as against a specific levy by delivering to the sheriff who levied on the mobile home, before sale under the levy, a declaration of homestead that contains (i) a declaration that the debtor owns the mobile home, intends to reside therein, and claims it as a homestead, and (ii) a description of the mobile home, a statement where it is located or was located before the levy, and an estimate of its actual cash value.

(4)(a) Except as provided in (b) of this subsection, a creditor, or the agent or attorney of a creditor, who wishes to object to a claim of exemption shall proceed as provided in RCW 6.27.160 and shall give notice of the objection to the officer not later than seven days after the officer's giving notice of the exemption claim.

(b) A creditor, or the agent or attorney of the creditor, who wishes to object to a claim of exemption made to a levying officer, on the ground that the property claimed exceeds exemptible value, may demand appraisal. If the creditor, or the agent or attorney of the creditor, demands an appraisal, two disinterested persons shall be chosen to appraise the property, one by the debtor and the other by the creditor, agent or attorney, and these two, if they cannot agree, shall select a third; but if either party fails to choose an appraiser, or the two fail to select a third, or if one or more of the appraisers fail to act, the court shall appoint one or more as the circumstances require. The appraisers shall forthwith proceed to make a list by separate items, of the personal property selected by the debtor as exempt, which they shall decide as exempt, stating the value of each article, and annexing to the list their affidavit to the following effect: "We solemnly swear that to the best of our judgment the above is a fair cash valuation of the property therein described," which affidavit shall be signed by two appraisers at least, and be certified by the officer administering the oaths. The list shall be delivered to the officer holding the execution or attachment and be annexed to and made part of the return, and the property therein specified shall be exempt from levy and sale, but the other personal estate of the debtor shall remain subject to execution, attachment, or garnishment. Each appraiser shall be entitled to fifteen dollars or such larger fee as shall be fixed by the court, to be paid by the creditor if all the property claimed by the debtor shall be exempt; otherwise to be paid by the debtor.

(c) If, within seven days following the giving of notice to a creditor of an exemption claim, the officer has received no notice from the creditor of an objection to the claim or a demand for appraisal, the officer shall release the claimed property to the debtor. [1988 c 231 § 7; 1987 c 442 § 306; 1973 1st ex.s. c 154 § 15; Code 1881 § 349; 1877 p 74 § 353; 1869 p 88 § 346; RRS § 572. Formerly RCW 6.16.090.]

***Reviser's note:** RCW 6.15.010(3) (a), (b), and (c) was redesignated RCW 6.15.010(3) (a) and (b) by 1991 c 112 § 1.

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

6.15.070 Procedure if value of property claimed exempt exceeds exemptible value. If from an appraisal it appears that the value of the property claimed exempt, exclusive of liens and encumbrances, exceeds the exemptible value and the property is indivisible, the property shall be put up for sale on execution, but at the sale no bid may be received unless it exceeds the exempt value. The proceeds of a sale in excess of the exempt value shall be paid, first, to the debtor to the extent of the exempt amount; second, up to the amount of the execution, to the satisfaction of the execution; third, the balance to be paid to the debtor. A judgment creditor who is the successful bidder at the sale must pay the exempt amount in cash. [1987 c 442 § 307.]

Chapter 6.17 EXECUTIONS

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6.17.010 Application of chapter to district courts. Unless otherwise expressly provided, all provisions of this chapter governing execution against personal property apply to proceedings before district courts of this state, but the district courts shall not have power to issue writs of execution against real property or any interest in real property or against a vendor's interest in a real estate contract. [1987 c 442 § 401.]

6.17.020 Execution authorized within ten years—Exception. (1) Except as provided in subsection (2) of this section, the party in whose favor a judgment of a court of record of this state or a district court of this state has been or may be rendered, or the assignee, may have an execution issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment.

(2) After *the effective date of this act, a party who obtains a judgment or order of a court of record of any state, or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, may have an execution issued upon that judgment or order at any time

within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered. [1989 c 360 § 3; 1987 c 442 § 402; 1980 c 105 § 4; 1971 c 81 § 26; 1929 c 25 § 2; RRS § 510. Prior: 1888 p 94 § 1; Code 1881 § 325; 1877 p 67 § 328; 1869 p 79 § 320; 1854 p 175 § 242. Formerly RCW 6.04.010.]

Rules of court: Cf. CR 58(b), 62(a), and 69(a); JCR 54.

*Reviser's note: For "the effective date of this act," see note following RCW 4.16.020.

Application—1980 c 105: See note following RCW 4.16.020.

Entry of judgment: RCW 6.01.020.

Execution on part of claim in receiver's action: RCW 7.60.050.

6.17.030 Execution in name of assignee or personal representative. When a judgment recovered in any court of this state has been assigned, execution may issue in the name of the assignee after the assignment has been recorded in the execution docket by the clerk of the court in which the judgment was recovered. When the person in whose name execution might have issued has died, execution may issue in the name of the executor, administrator or legal representative of such deceased person after letters testamentary or of administration or other sufficient proof has been filed in the cause and recorded in the execution docket by the clerk of the court in which the judgment was entered. [1987 c 442 § 403; 1957 c 8 § 2; 1929 c 25 § 7; RRS § 519. Prior: Code 1881 § 334; 1877 p 70 § 338; 1869 p 84 § 330. Formerly RCW 6.04.070.]

6.17.040 Stay of execution—Bond—Time periods. In addition to any stay of execution provided by court rule, stay of execution shall be allowed on judgments of the courts of this state for the following periods upon the judgment debtor filing with the clerk of the court in which the judgment was entered a bond in double the amount of the judgment and costs, with surety to the satisfaction of the clerk, conditioned to pay the judgment, interests, costs, and increased costs, at the expiration of the stay period. If execution is issued before elapse of the stay period, the judgment debtor may nevertheless stay execution for the balance of the period by filing the required bond.

(1) In the supreme court and the court of appeals, the period of stay, measured from date of entry of judgment, shall be:

- (a) On all sums under five thousand dollars, thirty days;
- (b) On all sums over five and under fifteen thousand dollars, sixty days; and
- (c) On all sums over fifteen thousand dollars, ninety days.

(2) On judgments rendered in the superior court or a district court of this state, the period of stay shall be:

- (a) On all sums under three thousand dollars, two months;
- (b) On all sums over three thousand and under ten thousand dollars, five months; and
- (c) On all sums over ten thousand dollars, six months. [1987 c 442 § 404.]

Rules of court: Cf. CR 62(a).

6.17.050 Stay of execution—Judgment against surety on bond if not paid. If execution of a judgment is stayed as permitted by RCW 6.17.040 and the judgment is not satisfied at expiration of the stay period, at any time thereafter the judgment creditor may, upon motion supported by an affidavit that the judgment or any part of it is unpaid and stating how much still remains due, have judgment against the surety on the bond for the balance remaining due, and have an execution on the judgment against the surety, on which stay shall not be allowed. [1987 c 442 § 405.]

6.17.060 Kinds of execution. There shall be three kinds of executions: First, against the property of the judgment debtor; second, for the delivery of the possession of real or personal property or such delivery with damages for withholding the same; and third, commanding the enforcement of or obedience to any other order of the court. In all cases there shall be an order to collect the costs. [1987 c 442 § 406; 1929 c 25 § 3; RRS § 511. Prior: Code 1881 § 327; 1877 p 68 § 331; 1854 p 176 § 244. Formerly RCW 6.04.020.]

6.17.070 Execution in particular cases. When any judgment of a court of this state requires the payment of money or the delivery of real or personal property, it may be enforced by execution. When a judgment of a court of record requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given or the person or officer who is required by the judgment or by law to obey the same, and a writ may be issued commanding the person or officer to obey or enforce the judgment. Refusal to do so may be punished by the court as for contempt. [1987 c 442 § 407; 1957 c 8 § 1; 1929 c 25 § 1; RRS § 512. Prior: Code 1881 § 326; 1877 p 68 § 330; 1854 p 176 § 244. Formerly RCW 6.04.030.]

6.17.080 Enforcement of judgment against county or other public corporation. No execution may issue for collection of a judgment for the recovery of money or damages against a county or other public corporation. Any such judgment may be enforced as follows:

(1) The judgment creditor may at any time when execution might issue on a like judgment against a private person, and after acknowledging satisfaction of the judgment as in ordinary cases, obtain from the clerk a certified transcript of the judgment. The clerk shall include in the transcript a copy of the memorandum of acknowledgment of satisfaction and the entry thereof as the basis for an order on the treasurer for payment. Unless the transcript contains such memorandum, no order upon the treasurer shall issue thereon.

(2) The judgment creditor shall present the certified transcript showing satisfaction of the judgment to the officer of the county or other public corporation who is authorized to draw orders on its treasury.

(3) The officer shall draw an order on the treasurer for the amount of the judgment, in favor of the judgment creditor. The order shall be presented for payment and paid with like effect and in like manner as other orders upon the treasurer. If the proper officer of the county or other public corporation fails or refuses to draw the order for payment of

the judgment as provided in this section, a writ of mandamus may be issued in the original case to compel performance of the duty. [1987 c 442 § 408; Code 1881 § 664; 1877 p 137 § 667; 1869 p 154 § 604; RRS § 953. Formerly RCW 6.04.140.]

6.17.090 Property liable to execution. All property, real and personal, of the judgment debtor that is not exempted by law is liable to execution. [1987 c 442 § 409; 1929 c 25 § 6; RRS § 518. Prior: Code 1881 § 333; 1877 p 70 § 337; 1854 p 177 § 251. Formerly RCW 6.04.060.]

6.17.100 Affidavit of judgment creditor—Filing required before issuance of writ—Contents. (1) Before a writ of execution may issue on any real property, the judgment creditor must file with the court an affidavit as described in subsection (4) of this section and must mail a copy of the affidavit to the judgment debtor at the debtor's last known address.

(2) If the affidavit attests that the premises are occupied or otherwise claimed as a homestead by the judgment debtor, the execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.13.080 must comply with RCW 6.13.100 through 6.13.170.

(3) The term "due diligence," as used in subsection (4) of this section, includes but is not limited to the creditor or the creditor's representative personally visiting the premises, contacting the occupants and inquiring about their relationship to the judgment debtor, contacting immediate neighbors of the premises, and searching the records of the auditor of the county in which the property is located to determine if a declaration of homestead or nonabandonment has been recorded by the judgment debtor. An examination of the debtor in supplemental proceedings on the points to be covered in the affidavit constitutes "due diligence."

(4) The affidavit required by this section shall include:

(a) A statement that the judgment creditor has exercised due diligence to ascertain whether the judgment debtor has sufficient nonexempt personal property to satisfy the judgment with interest and believes that there is not sufficient nonexempt personal property belonging to the judgment debtor to so satisfy the judgment. A list of personal property located shall be attached with an indication of any items that the judgment creditor believes to be exempt.

(b) A statement that the judgment creditor has exercised due diligence to ascertain whether the property is occupied or otherwise claimed by the judgment debtor as a homestead as defined in chapter 6.13 RCW.

(c) A statement based on belief whether the judgment debtor is currently occupying the property as the judgment debtor's principal residence and whether there is a declaration of homestead or nonabandonment of record. If the affidavit alleges that the property is not occupied or claimed as a homestead, the creditor must list the facts relied upon to reach that conclusion.

(d) If the judgment debtor is not occupying the property and there is no declaration of nonabandonment of record, a statement based on belief whether the judgment debtor has been absent for a period of at least six months, with facts relied upon to reach that conclusion, and, if known, the

judgment debtor's current address. [1988 c 231 § 8; 1987 c 442 § 410; 1981 c 329 § 4. Formerly RCW 6.04.035.]

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1981 c 329: See note following RCW 6.21.020.

6.17.110 Form and contents of writ. (1) The writ of execution shall be issued in the name of the state of Washington, sealed with the seal of the court, and subscribed by the clerk of the court in which the judgment was entered or to which it has been transferred, and shall be directed to the sheriff of the county in which the property is situated. The writ shall intelligibly refer to the judgment, stating the court, the county where the judgment was rendered, the names of the parties, the amount of the judgment if it be for money, and the amount actually due thereon; and if the judgment has been recorded, the writ shall so indicate and shall state the recording number.

(2) Before an execution is delivered on a judgment of a district court of this state, the amount of the judgment, or damages and costs, and the fees due to each person separately shall be entered in the docket and on the back of the execution. In any proceeding to enforce a judgment certified to a district court from the small claims department under RCW 12.40.110, the execution shall include the amount of the judgment owed plus reasonable costs and reasonable attorneys' fees incurred by the judgment creditor in seeking enforcement of the judgment in district court.

(3) A writ shall require substantially as follows:

(a) If the execution is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of the personal property of the debtor unless an affidavit has been filed with the court pursuant to RCW 6.17.100, in which case it shall require that the judgment be satisfied out of the real property of the debtor.

(b) If the execution is against real or personal property in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, it shall require the officer to satisfy the judgment out of such property.

(c) If the execution is for the delivery of real or personal property, it shall particularly describe the property and state its value and require the officer to deliver possession of it to the party entitled thereto, and may, at the same time, require the officer to satisfy any charges, damages, or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered. If the property described in the execution cannot be delivered, and if sufficient personal property cannot be found to satisfy the judgment, it shall be satisfied out of the real property of the party against whom the judgment was rendered.

(d) If the execution is to enforce obedience to any order, it shall particularly command what is required to be done or to be omitted.

(e) If the nature of the case requires it, the execution may embrace two or more of the requirements of this section.

(f) In all cases the execution shall require the collection of all interest, costs, and increased costs thereon. [1988 c 231 § 9; 1987 c 442 § 411; 1981 c 329 § 5; 1929 c 25 § 4; RRS § 513. Prior: Code 1881 § 324; 1877 p 68 § 332;

1869 p 81 § 324; 1854 p 176 § 246. Formerly RCW 6.04.040.]

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1981 c 329: See note following RCW 6.21.020.

6.17.120 Sheriff's duty on receiving writ—Order of executing writs. The sheriff or other officer shall indorse upon the writ of execution in ink, the day, hour, and minute when the writ first came into his or her hands, and the execution shall be returned with a report of proceedings under the writ within sixty days after its date to the clerk who issued it. When there are several writs of execution or of execution and attachment against the same debtor, they shall be executed in the order in which they were received by the sheriff. [1987 c 442 § 412; 1983 1st ex.s. c 45 § 1; 1929 c 25 § 5; RRS § 515. Prior: Code 1881 § 330; 1877 p 69 § 334; 1869 p 83 § 226; 1854 p 177 § 248. Formerly RCW 6.04.050.]

6.17.130 Sheriff's execution and service of writ—Sale date—Notice to judgment debtor. When the writ of execution is against the property of the judgment debtor, the sheriff shall set the date of sale and serve on the debtor, in the same manner as service of a summons in a civil action, or cause to be transmitted by both regular mail and certified mail, return receipt requested, a copy of the writ, together with copies of RCW 6.13.010, 6.13.030, and 6.13.040 if real property is to be levied on, or copies of RCW 6.15.010 and 6.15.060 if personal property is to be levied on, and shall at the time of service, or with the mailing, notify the judgment debtor of the date of sale. If service on the judgment debtor must be effected by publication, only the following notice need be published under the caption of the case:

To, Judgment Debtor:

A writ of execution has been issued in the above-captioned case, directed to the sheriff of county, commanding the sheriff as follows:

"WHEREAS, . . . [Quoting body of writ of execution]."

The sale date has been set for YOU MAY HAVE A RIGHT TO EXEMPT PROPERTY from the sale under statutes of this state, including sections 6.13.010, 6.13.030, 6.13.040, 6.15.010, and 6.15.060 of the Revised Code of Washington, in the manner described in those statutes.

[1988 c 231 § 10; 1987 c 442 § 413; 1984 c 276 § 7; 1983 c 3 § 6; 1981 c 193 § 1; Code 1881 § 355; 1877 p 76 § 358; 1869 p 91 § 351; RRS § 578. Formerly RCW 6.04.100.]

Rules of court: CR 4.

Severability—1988 c 231: See note following RCW 6.01.050.

Application—1984 c 276: See note following RCW 6.21.020.

6.17.140 Sheriff's execution of writ—Satisfaction of judgment—Proceeds to clerk. The sheriff shall, at a time as near before or after service of the writ on, or mailing of the writ to, the judgment debtor as is possible, execute the writ as follows:

(1) If property has been attached, the sheriff shall indorse on the execution, and pay to the clerk forthwith, if he or she has not already done so, the amount of the proceeds of sales of perishable property or debts due the defendant previously received, sufficient to satisfy the judgment.

(2) If the judgment is not then satisfied, and property has been attached and remains in custody, the sheriff shall sell the same, or sufficient thereof to satisfy the judgment. When property has been attached and it is probable that such property will not be sufficient to satisfy the judgment, the sheriff may, on instructions from the judgment creditor, levy on other property of the judgment debtor without delay.

(3) If then any portion of the judgment remains unsatisfied, or if no property has been attached or the same has been discharged, the sheriff shall levy on the property of the judgment debtor, sufficient to satisfy the judgment, in the manner described in RCW 6.17.160.

(4) If, after the judgment is satisfied, any property remains in custody, the sheriff shall deliver it to the judgment debtor.

(5) Until a levy, personal property shall not be affected by the execution.

(6) When property has been sold or debts received on execution, the sheriff shall pay the proceeds to the clerk who issued the writ, for satisfaction of the judgment as commanded in the writ or for return of any excess proceeds to the judgment debtor. No sheriff or other officer may retain any moneys collected on execution more than twenty days before paying the same to the clerk of the court who issued the writ. [1988 c 231 § 11; 1987 c 442 § 414.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.17.150 Clerk's duty on receipt of execution proceeds. Upon receipt of proceeds from the sheriff on execution, the clerk shall notify the party to whom the same is payable, and pay over the amount to that party as required by law. If any proceeds remain after satisfaction of the judgment, the clerk shall pay the excess to the judgment debtor. [1987 c 442 § 415.]

6.17.160 Sheriff's execution of writ—Manner of levy. The sheriff to whom the writ is directed and delivered shall execute the same without delay as follows:

(1) Real property, including a vendee's interests under a real estate contract, shall be levied on by recording a copy of the writ, together with a description of the property attached, with the recording officer of the county in which the real estate is situated.

(2) Personal property, capable of manual delivery, shall be levied on by taking into custody.

(3) Shares of stock and other investment securities shall be levied on in accordance with the requirements of RCW 62A.8-317.

(4) A fund in court shall be levied on by leaving a copy of the writ with the clerk of the court with notice in writing specifying the fund.

(5) A franchise granted by a public or quasi-public corporation shall be levied on by (a) serving a copy of the writ on, or mailing it to, the judgment debtor as required by RCW 6.17.130 and (b) filing a copy of the writ in the office

of the auditor of the county in which the franchise was granted together with a notice in writing that the franchise has been levied on to be sold, specifying the time and place of sale, the name of the owner, the amount of the judgment for which the franchise is to be sold, and the name of the judgment creditor.

(6) A vendor's interest under a real estate contract shall be levied on by (a) recording a copy of the writ, with descriptions of the contract and of the real property covered by the contract, with the recording officer of the county in which the real estate is located and (b) serving a copy of the writ, with a copy of the descriptions, on, or mailing the same to, the judgment debtor and the vendee under the contract in the manner as described in RCW 6.17.130.

(7) Other intangible personal property may be levied on by serving a copy of the writ on, or mailing it to, the judgment debtor in the manner as required by RCW 6.17.130, together with a description of the property. If the property is a claim on which suit has been commenced, a copy of the writ and of the description shall also be filed with the clerk of the court in which the suit is pending. [1988 c 231 § 12; 1987 c 442 § 416; 1927 c 100 § 1; 1886 p 42 § 13; RRS § 659. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.130.]

Severability—1988 c 231: See note following RCW 6.01.050.

Sheriff's fees for service of process and other official services: RCW 36.18.040.

6.17.170 Levy on jointly owned real estate. If a judgment debtor owns real estate jointly or in common with any other person, only the debtor's interest may be levied on and sold on execution, and the sheriff's notice of sale shall describe the extent of the debtor's interest to be sold as accurately as possible. [1987 c 442 § 417.]

6.17.180 Levy on jointly owned personal property. When a judgment debtor owns personal property jointly or in common with any other person, only the debtor's interest may be levied on and sold on execution, and the sheriff's notice of sale shall describe the extent of the debtor's interest as accurately as possible.

If the debtor's interest cannot be separately levied on, the sheriff shall take possession of the property unless the other person having an interest gives the sheriff a sufficient bond, with surety, conditioned to hold and manage the property according to law; and the sheriff shall then proceed to sell the interest of the defendant in such property. This section shall not be construed so as to deprive the joint or common owner of any interest in the property. [1987 c 442 § 418; 1957 c 8 § 3; Code 1881 § 752; 1877 p 152 § 757; 1869 p 174 § 694; 1854 p 220 § 499; RRS § 580. Formerly RCW 6.04.120.]

6.17.190 Retention of property by judgment debtor—On bond or approval of judgment creditor. (1) After levy of execution upon personal property, the sheriff may permit the judgment debtor to retain possession of the property or any part of it until the day of sale, upon the debtor executing a written bond to the sheriff with sufficient

surety, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale, and for nondelivery thereof, an action may be maintained upon such bond by the sheriff or the judgment creditor, or the judgment creditor may, on motion supported by affidavit that the property has not been delivered and the judgment remains unpaid, stating the amount unpaid, have judgment against the surety on the bond for the balance remaining due.

(2) In the alternative, the sheriff may appoint the judgment debtor as an agent to keep the property, without bond, upon written approval by the judgment creditor. [1988 c 231 § 13; 1987 c 442 § 419; Code 1881 § 358; 1877 p 77 § 361; 1869 p 92 § 354; 1854 p 182 § 268; RRS § 581. Formerly RCW 6.04.130.]

Severability—1988 c 231: See note following RCW 6.01.050.

Chapter 6.19

ADVERSE CLAIMS TO PROPERTY LEVIED ON

Sections

6.19.010	Definitions.
6.19.020	Application of chapter—Common law or other remedies not superseded.
6.19.030	Affidavit of adverse claimant—Bond—Hearing.
6.19.040	Justification of sureties.
6.19.050	Filing of affidavit by sheriff—Designation of parties—Trial.
6.19.060	Judgment—Costs.

6.19.010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Adverse claimant" means a person, other than the judgment debtor or defendant, who claims title or right to possession of property levied on.

(2) "Levying creditor" means the judgment creditor or plaintiff who obtained the writ of execution or attachment under which levy was made. [1987 c 442 § 501.]

6.19.020 Application of chapter—Common law or other remedies not superseded. An adverse claimant may assert a claim under the procedures provided in this chapter whether the levy was made under a writ of execution or of attachment and whether the writ was issued by a superior court or a district court of this state, but this chapter does not supersede common law or other remedies available to an adverse claimant before or after levy or sale. [1987 c 442 § 502.]

6.19.030 Affidavit of adverse claimant—Bond—Hearing. (1) An adverse claimant to property levied on may demand and receive the property from the sheriff who made the levy, upon making and delivering to the sheriff an affidavit that the property is owned by the claimant or that the claimant has a right to the immediate possession thereof, stating on oath the value thereof, and giving to the sheriff a bond, with sureties in double the value of such property. The bond shall be conditioned that the claimant will appear in the court specified in RCW 6.19.050 after the bond is accepted by the sheriff, and make good the claim in the affidavit or will return the property or pay its value to the sheriff.

(2) Without giving a bond, an adverse claimant who delivers to the sheriff an affidavit as described in subsection (1) of this section may, on motion made within seven days after delivering the affidavit, appear in the court specified in RCW 6.19.050, with notice to the sheriff and to the attorney of record for the levying creditor, if any, otherwise to the levying creditor, and set a hearing at which the probable validity of the claim stated in the affidavit can be considered. If the court, after the hearing, finds that the claim is probably valid, it shall direct the sheriff to release the claimed property to the claimant; otherwise, the court shall direct the sheriff to continue to hold the property unless the claimant gives a bond as provided in subsection (1) of this section. [1987 c 442 § 503; 1891 c 40 § 1; Code 1881 § 350; 1877 p 75 § 354; 1869 p 89 § 347; 1854 p 179 § 256; RRS § 573. Formerly RCW 6.20.010.]

6.19.040 Justification of sureties. If the adverse claimant posts a bond and the sheriff requires it, the sureties shall justify as in other cases, and in case they do not so justify when required, the sheriff shall retain the property; if the sheriff does not require the sureties to justify, he or she shall stand good for their sufficiency. The sheriff shall date and indorse acceptance upon the bond. [1987 c 442 § 504; 1957 c 8 § 5; Code 1881 § 351; 1877 p 75 § 354; 1869 p 89 § 347; 1854 p 179 § 256; RRS § 574. Formerly RCW 6.20.020.]

6.19.050 Filing of affidavit by sheriff—Designation of parties—Trial. The sheriff shall immediately return the affidavit of an adverse claimant and the bond and justification, if any, to the office of the clerk of the court that issued the writ, unless the property was seized in another county, then to the clerk of the superior court of the county in which the property was seized or, if the levy was made under a writ of a district court of this state, then to a district court, to be selected by the sheriff, in the county in which the property was seized, and this case shall stand for trial in said court. The adverse claimant shall be the plaintiff, and the sheriff and the levying creditor shall be the defendants. The sheriff or levying creditor or both of them may respond to the affidavit, but no further pleadings are required, and any party may cause the matter to be noted for trial. [1987 c 442 § 505; 1891 c 40 § 2; Code 1881 § 352; 1877 p 75 § 355; 1869 p 90 § 348; 1854 p 179 § 257; RRS § 575. Formerly RCW 6.20.030.]

6.19.060 Judgment—Costs. If the claimant makes good on all or any part of the claim to title to the property or right to possession, judgment shall be entered for the claimant to the extent the claim has been established. If the claimant has given a bond, the bond shall be canceled or, if the claimant makes good on only a portion of the claim, a like proportion of the bond shall be canceled. If the claimant has not given a bond and the sheriff has retained possession of the property, judgment shall be entered in favor of the claimant for return of the property or its value.

If the claimant does not maintain the claim, judgment shall be rendered against the claimant. If the claimant has retained possession of the property pending trial on the claim, the judgment shall be entered against the claimant

and, if the claimant has given a bond, against the sureties for the return of the property or for the value of the property or of the portion of the property for which the claim is not maintained, or for such lesser amount as shall not exceed the amount due on the original execution or attachment.

When the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs; when the claimant recovers all the property, judgment shall be given in favor of the claimant for costs; when the claimant recovers a portion of the property only, the costs shall be apportioned. When the claimant prevails, the costs may be taxed against the levying creditor or, if the court finds that the sheriff attached or levied upon the property without the exercise of due caution, the court may require the sheriff to pay the costs or any portion thereof. [1987 c 442 § 506; Code 1881 § 354; 1877 p 76 § 357; 1869 p 90 § 350; 1854 p 179 § 259; RRS § 577. Formerly RCW 6.20.050.]

Chapter 6.21

SALES UNDER EXECUTION

Sections

6.21.010	Application of chapter to district courts.
6.21.020	Notice of sale—Personal property.
6.21.030	Notice of sale—Real property—Form for publication.
6.21.040	Notice of sale of real property—Form of notice to judgment debtor.
6.21.050	Time and place of sale—Postponements.
6.21.060	Amount of property to be sold—Officers and deputies may not purchase.
6.21.070	Manner of sale of personal property—Bill of sale—Sheriff's deed if real estate contract.
6.21.080	Redemption rights—Sale of short term leasehold and vendor's interest under real estate contract absolute.
6.21.090	Manner of selling real estate—Sale by lot, acre—Measurement.
6.21.100	Sale of real property to highest bidder—Sheriff's return and certificate of sale.
6.21.110	Confirmation of sale—Objections—Resale—Distribution of sale proceeds—Filing of certificate.
6.21.120	Sheriff's deed to real property sold.
6.21.130	Effect of reversal of judgment on sale of real property.

6.21.010 Application of chapter to district courts. All the provisions of this chapter governing sales of personal property, except vendors' interests under real estate contracts, shall apply to proceedings before district courts. [1987 c 442 § 601.]

6.21.020 Notice of sale—Personal property. Before the sale of personal property under execution, order of sale or decree, notice thereof shall be given as follows:

(1) The judgment creditor shall, not less than thirty days prior to the day of sale, cause a copy of the notice of sale to be transmitted both by regular mail and by certified mail, return receipt requested, to the judgment debtor at the debtor's last known address, and by regular mail to the attorney of record for the judgment debtor, if any. The judgment creditor shall file an affidavit with the court showing compliance with the requirements of this subsection.

(2) The sheriff shall post typed or printed notice of the time and place of the sale in three public places in the county in which the sale is to take place, for a period of not less than four weeks prior to the day of sale. [1988 c 231

§ 14; 1987 c 442 § 602; 1984 c 276 § 1; 1981 c 329 § 1; 1935 c 35 § 1; RRS § 582. Prior: 1927 c 69 § 1; 1903 c 179 § 1; 1899 c 53 § 3; 1897 c 91 § 1. Formerly RCW 6.24.010.]

Severability—1988 c 231: See note following RCW 6.01.050.

Application—1984 c 276: "The 1984 amendments to RCW 6.04.100, 6.24.010, 6.24.015, 6.24.100, 6.24.140, 6.24.145, and 6.24.180 shall apply to all executions under chapter 6.24 RCW commenced after the effective date of this act [June 7, 1984]." [1984 c 276 § 8.]

Severability—1981 c 329: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 329 § 24.]

6.21.030 Notice of sale—Real property—Form for publication. Before the sale of real property under execution, order of sale, or decree, notice of the sale shall be given as follows:

(1) The judgment creditor shall:

(a) Not less than thirty days prior to the date of sale, cause a copy of the notice in the form provided in RCW 6.21.040 to be (i) served on the judgment debtor or debtors and each of them in the same manner as a summons in a civil action, or (ii) transmitted both by regular mail and by certified mail, return receipt requested, to the judgment debtor or debtors, and to each of them separately if there is more than one judgment debtor, at each judgment debtor's last known address; and

(b) Not less than thirty days prior to the date of sale, mail a copy of the notice of sale to the attorney of record for the judgment debtor, if any; and

(c) File an affidavit with the court that the judgment creditor has complied with the notice requirements of this section.

(2) The sheriff shall:

(a) For a period of not less than four weeks prior to the date of sale, post a notice in the form provided in RCW 6.21.040, particularly describing the property, in two public places in the county in which the property is located, one of which shall be at the courthouse door, where the property is to be sold, and in case of improved real estate, one of which shall be at the front door of the principal building constituting such improvement; and

(b) Publish a notice of the sale once a week, consecutively, for the same period, in any daily or weekly legal newspaper of general circulation published in the county in which the real property to be sold is situated, but if there is more than one legal newspaper published in the county, then the plaintiff or moving party in the action, suit, or proceeding has the exclusive right to designate in which of the qualified newspapers the notice shall be published, and if there is no qualified legal newspaper published in the county, then the notice shall be published in a qualified legal newspaper published in a contiguous county, as designated by the plaintiff or moving party. The published notice shall be in substantially the following form:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR COUNTY

Plaintiff, } CAUSE NO.
vs. } SHERIFF'S PUBLIC NOTICE OF SALE OF REAL PROPERTY
Defendant. }

TO: [Judgment Debtor]
The Superior Court of County has directed the undersigned Sheriff of County to sell the property described below to satisfy a judgment in the above-entitled action. If developed, the property address is:

The sale of the above-described property is to take place:
Time:
Date:
Place:

The judgment debtor can avoid the sale by paying the judgment amount of \$. . . . , together with interest, costs, and fees, before the sale date. For the exact amount, contact the sheriff at the address stated below:

. SHERIFF-DIRECTOR, COUNTY, WASHINGTON.

By, Deputy
Address
City
Washington 9. . . .
Phone (. . .)

[1987 c 442 § 603.]

6.21.040 Notice of sale of real property—Form of notice to judgment debtor. The notice of sale shall be printed or typed and shall be in substantially the following form, except that if the sale is not pursuant to a judgment of foreclosure of a mortgage or a statutory lien, the notice shall also contain a statement that the sheriff has been informed that there is not sufficient personal property to satisfy the judgment and that if the judgment debtor or debtors do have sufficient personal property to satisfy the judgment, the judgment debtor or debtors should contact the sheriff's office immediately:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR COUNTY

Plaintiff, } CAUSE NO.
vs. } SHERIFF'S NOTICE TO JUDGMENT DEBTOR OF SALE OF REAL PROPERTY
Defendant. }

TO: [Judgment Debtor]
The Superior Court of County has directed the undersigned Sheriff of County to sell the property described below to satisfy a judgment in the above-entitled action. The property to be sold is described on the reverse side of this notice. If developed, the property address is:

The sale of the above-described property is to take place:
Time:
Date:
Place:

The judgment debtor can avoid the sale by paying the judgment amount of \$. . . . , together with interest, costs, and fees, before the sale date. For the exact amount, contact the sheriff at the address stated below:

This property is subject to: (check one)
[] 1. No redemption rights after sale.
[] 2. A redemption period of eight months which will expire at 4:30 p.m. on the day of, 19. . .
[] 3. A redemption period of one year which will expire at 4:30 p.m. on the day of, 19. . .

The judgment debtor or debtors or any of them may redeem the above described property at any time up to the end of the redemption period by paying the amount bid at the sheriff's sale plus additional costs, taxes, assessments, certain other amounts, fees, and interest. If you are interested in redeeming the property contact the undersigned sheriff at the address stated below to determine the exact amount necessary to redeem.

IMPORTANT NOTICE: IF THE JUDGMENT DEBTOR OR DEBTORS DO NOT REDEEM THE PROPERTY BY 4:30 p.m. ON THE DAY OF, 19. . . , THE END OF THE REDEMPTION PERIOD, THE PURCHASER AT THE SHERIFF'S SALE WILL BECOME THE OWNER AND MAY EVICT THE OCCUPANT FROM THE PROPERTY UNLESS THE OCCUPANT IS A TENANT HOLDING UNDER AN UNEXPIRED LEASE. IF THE PROPERTY TO BE SOLD IS OCCUPIED AS A PRINCIPAL RESIDENCE BY THE JUDGMENT DEBTOR OR DEBTORS AT THE TIME OF SALE, HE, SHE, THEY, OR ANY OF THEM MAY HAVE THE RIGHT TO RETAIN POSSESSION DURING THE REDEMPTION PERIOD, IF ANY, WITHOUT PAYMENT OF ANY RENT OR OCCUPANCY FEE. THE JUDGMENT DEBTOR MAY ALSO HAVE A RIGHT TO RETAIN POSSESSION DURING ANY REDEMPTION PERIOD IF THE PROPERTY IS USED FOR FARMING OR IF THE PROPERTY IS BEING SOLD UNDER A MORTGAGE THAT SO PROVIDES.

. SHERIFF-DIRECTOR, COUNTY, WASHINGTON.

By, Deputy
Address
City
Washington 9. . . .
Phone (. . .)

[1987 c 442 § 604; 1984 c 276 § 2; 1981 c 329 § 2. Formerly RCW 6.24.015.]

Application—1984 c 276: See note following RCW 6.21.020.

Severability—1981 c 329: See note following RCW 6.21.020.

6.21.050 Time and place of sale—Postponements.

(1) All sales of property under execution, order of sale, or decree, shall be made by auction between nine o'clock in the morning and four o'clock in the afternoon. Sale of a public franchise under execution or order of sale on foreclosure must be made at the front door of the courthouse in the county in which the franchise was granted. Sales of real property shall be made at the courthouse door on Friday

unless Friday is a legal holiday and then the sale shall be held on the next following regular business day.

(2) If at the time appointed for the sale the sheriff is prevented from attending at the place appointed or, being present, should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, the sheriff may postpone the sale not exceeding one week next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment by public proclamation made at the same time, and by posting written notices of such adjournment under the notices of sale originally posted. The sheriff for like causes may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with the consent of the plaintiff indorsed upon the writ. [1987 c 442 § 605; 1953 c 126 § 1; 1899 c 53 § 4; 1897 c 50 § 2; RRS § 583. Formerly RCW 6.24.020.]

6.21.060 Amount of property to be sold—Officers and deputies may not purchase. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his or her deputy shall become a purchaser or be interested in any purchase at the sale. [1987 c 442 § 606.]

6.21.070 Manner of sale of personal property—Bill of sale—Sheriff's deed if real estate contract. If the sale is of personal property capable of manual delivery, and not in the possession of a third person, it shall be within view of those who attend the sale and shall be sold in such parcels as are likely to bring the highest price; and upon receipt of the purchase money, the sheriff shall deliver the property to the purchaser and shall give a bill of sale containing an acknowledgment of the payment if the purchaser requests it. A vendor's interest under a real estate contract, including vendor's legal title to the real property, shall be treated as personal property for purposes of sale, but the sheriff shall give the purchaser both a bill of sale covering the vendor's interest under the contract and a sheriff's deed covering the vendor's legal title to the real property. In all other sales of personal property, the sheriff shall give the purchaser a bill of sale with an acknowledgment of payment. The sheriff shall return the proceeds with the execution to the clerk who issued the writ for payment as required by law. [1987 c 442 § 607; Code 1881 § 362; 1877 p 78 § 365; 1869 p 94 § 358; 1854 p 183 § 270; RRS § 586. Formerly RCW 6.24.050.]

6.21.080 Redemption rights—Sale of short term leasehold and vendor's interest under real estate contract absolute. A sale of a real property estate of less than a leasehold of two years unexpired term and a sale of a vendor's interest in real property being sold under a real estate contract shall be absolute. In all other cases, real property shall be sold subject to redemption, as provided in chapter 6.23 RCW. [1987 c 442 § 608; 1899 c 53 § 5; RRS § 584. Formerly RCW 6.24.030.]

6.21.090 Manner of selling real estate—Sale by lot, acre—Measurement. (1) The form and manner of selling real estate by execution shall be as follows: The sheriff shall proclaim aloud at the place of sale, in the hearing of all

the bystanders: "I am about to sell the following tracts of real estate (here reading the description,) upon the following execution:" (here reading the execution). The sheriff shall also state the amount that is required upon the execution, which shall include damages, interests and costs up to the day of sale, and increased costs. The sheriff shall then offer the land for sale.

(2) If the sale is of real property consisting of several known lots or parcels, they shall be sold separately or otherwise as the sheriff deems likely to bring the highest price, except that if an interest in a portion of such real property is claimed by a third person who, by request directed to the sheriff in writing prior to the sale or orally or in writing at the sale before the bidding is begun, requests that it be sold separately, such portion shall be sold separately. Bids on all land except town lots may be by the acre or by tract or parcel.

(3) If the land is sold by the acre and any fewer number of acres than the whole tract or parcel is sold, it shall be measured off to the purchaser in a square form, from the northeast corner of the tract or parcel, unless some person claiming an interest in the land, by request directed to the sheriff in writing prior to the sale or orally or in writing at the sale before the bidding is begun, requests that the land sold be taken from some other part or in some other form; in such case, if the request is reasonable, the officer making the sale shall sell accordingly.

(4) If an entire tract or parcel of land is sold by the acre, it shall not be measured but shall be deemed and taken to contain the number of acres named in the description, and be paid for accordingly; and if the number of acres is not contained in the description, the officer shall declare according to his or her judgment how many acres are contained therein, which shall be deemed and taken to be the true number of acres. [1987 c 442 § 609; Code 1881 § 363; 1877 p 79 § 366; 1869 p 94 § 359; 1854 p 181 § 262; RRS § 587. Formerly RCW 6.24.060.]

6.21.100 Sale of real property to highest bidder—Sheriff's return and certificate of sale. (1) The officer shall strike off the land to the highest bidder, who shall forthwith pay the money bid to the officer, who shall return the money with the execution and the report of proceedings on the execution to the clerk of the court from which the execution issued: PROVIDED, HOWEVER, That when final judgment shall have been entered in the supreme court or the court of appeals and the execution upon which sale has been made issued from said court, the return shall be made to the superior court in which the action was originally commenced, and the same proceedings shall be had as though execution had issued from that superior court.

(2) At the time of the sale, the sheriff shall prepare a certificate of the sale, containing a particular description of the property sold, the price bid for each distinct lot or parcel, and the whole price paid; and when subject to redemption, it shall be so stated. The matters contained in such certificate shall be substantially stated in the sheriff's return of proceedings upon the writ. Upon receipt of the purchase price, the sheriff shall give a copy of the certificate to the purchaser and the original certificate to the clerk of the court with the return on the execution to hold for delivery to the

purchaser upon confirmation of the sale. [1987 c 442 § 610; 1971 c 81 § 28; Code 1881 § 366; 1877 p 79 § 369; 1869 p 95 § 362; 1854 p 182 § 265; RRS § 590. Formerly RCW 6.24.090.]

6.21.110 Confirmation of sale—Objections—Resale—Distribution of sale proceeds—Filing of certificate. (1) Upon the return of any sale of real estate, the clerk (a) shall enter the cause, on which the execution or order of sale issued, by its title, on the motion docket, and mark opposite the same: "Sale of land for confirmation"; (b) shall mail notice of the filing of the return of sale to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them; (c) shall file proof of such mailing in the action; (d) shall apply the proceeds of the sale returned by the sheriff, or so much thereof as may be necessary, to satisfaction of the judgment, including interest as provided in the judgment, and shall pay any excess proceeds as provided in subsection (5) of this section; and (e) upon confirmation of the sale, shall deliver the original certificate of sale to the purchaser.

(2) The judgment creditor or successful purchaser at the sheriff's sale is entitled to an order confirming the sale at any time after twenty days have elapsed from the mailing of the notice of the filing of the sheriff's return, on motion with notice given to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them, unless the judgment debtor, or in case of the judgment debtor's death, the representative, or any nondefaulting party to whom notice was sent shall file objections to confirmation with the clerk within twenty days after the mailing of the notice of the filing of such return.

(3) If objections to confirmation are filed, the court shall nevertheless allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received as of that date.

(4) Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken, except for a greater amount. If on resale the property sells for a greater amount to any person other than the former purchaser, the clerk shall first repay to the former purchaser out of the proceeds of the resale the amount of the former purchaser's bid together with interest as is provided in the judgment.

(5) If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or the judgment debtor's representative, as the case may be, before the order is made upon the motion to confirm the sale only if the party files with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; otherwise the excess proceeds shall remain in the custody of the clerk until the sale of the property has been disposed of; but if the sale be

confirmed, such excess proceeds shall be paid to the judgment debtor or representative as a matter of course.

(6) The purchaser shall file the original certificate of sale for record with the recording officer in the county in which the property is located. [1987 c 442 § 611; 1984 c 276 § 3; 1981 c 329 § 3; 1899 c 53 § 6; RRS § 591. Prior: 1897 c 50 § 14; Code 1881 § 367; 1877 p 79 § 370; 1869 p 95 § 363; 1854 p 182 § 266. Formerly RCW 6.24.100.]

Application—1984 c 276: See note following RCW 6.21.020.

Severability—1981 c 329: See note following RCW 6.21.020.

6.21.120 Sheriff's deed to real property sold. In all cases where real estate has been, or may hereafter be sold by virtue of an execution or other process, it shall be the duty of the sheriff or other officer making such sale to execute and deliver to the purchaser, or other person entitled to the same, a deed of conveyance of the real estate so sold. The deeds shall be issued upon request immediately after the confirmation of sale by the court in those instances where redemption rights have been precluded pursuant to RCW 61.12.093 et seq., or immediately after the time for redemption from such sale has expired in those instances in which there are redemption rights, as provided in RCW 6.23.060. In case the term of office of the sheriff or other officer making such sale shall have expired before a sufficient deed has been executed, then the successor in office of such sheriff shall, within the time specified in this section, execute and deliver to the purchaser or other person entitled to the same a deed of the premises so sold, and such deeds shall be as valid and effectual to convey to the grantee the lands or premises so sold, as if the deed had been made by the sheriff or other officer who made the sale. [1987 c 442 § 612; 1965 c 80 § 5; 1899 c 53 § 16; RRS § 603. Prior: 1897 c 50 § 16. Formerly RCW 6.24.220.]

Sheriff, successor to complete process: RCW 36.28.130.

6.21.130 Effect of reversal of judgment on sale of real property. A purchaser of real property sold on execution, or a purchaser's successor in interest, who is evicted in consequence of the reversal of the judgment may recover from the plaintiff in the execution the price paid with interest and the costs and disbursements of the eviction suit. [1987 c 442 § 613; Code 1881 § 368; 1877 p 80 § 371; 1869 p 96 § 364; RRS § 592. Formerly RCW 6.24.110.]

Chapter 6.23 REDEMPTION

Sections	
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6.23.011	Voluntary relinquishment of ownership rights by mortgagor may result in loss of redemption rights.
6.23.020	Time for redemption from purchaser—Amount to be paid.
6.23.030	Notice to be given during redemption period—Effect of noncompliance—Form of notice and affidavit.
6.23.040	Time for redemption from redemptioner—Successive redemptions—Amount to be paid.
6.23.050	Purchaser or redemptioner to file statements of amounts paid.
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- 6.23.070 Payment on successive redemptions.
- 6.23.080 Redemption procedure—Certificate to be recorded—Evidence of right to redeem.
- 6.23.090 Rents and profits during period of redemption—Accounting—Option for reimbursement or extension on agricultural property.
- 6.23.100 Restraining waste during redemption period.
- 6.23.110 Possession during period of redemption.
- 6.23.120 Listing of property for sale during redemption period—Acceptance of qualifying offer if property unredeemed and deed issued—Procedure—Disposition of proceeds.

6.23.010 Redemption from sale—Who may redeem—Terms include successors. (1) Real property sold subject to redemption, as provided in RCW 6.21.080, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor, in the whole or any part of the property separately sold.

(b) A creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold. The persons mentioned in this subsection are termed redemptioners.

(2) As used in this chapter, the terms "judgment debtor," "redemptioner," and "purchaser," refer also to their respective successors in interest. [1987 c 442 § 701; 1899 c 53 § 7; RRS § 594. Prior: 1897 c 50 § 15. Formerly RCW 6.24.130.]

6.23.011 Voluntary relinquishment of ownership rights by mortgagor may result in loss of redemption rights. See RCW 61.12.093 through 61.12.095.

6.23.020 Time for redemption from purchaser—Amount to be paid. (1) Unless redemption rights have been precluded pursuant to RCW 61.12.093 et seq., the judgment debtor or any redemptioner may redeem the property from the purchaser at any time (a) within eight months after the date of the sale if the sale is pursuant to judgment and decree of foreclosure of any mortgage executed after June 30, 1961, which mortgage declares in its terms that the mortgaged property is not used principally for agricultural or farming purposes, and in which complaint the judgment creditor has expressly waived any right to a deficiency judgment, or (b) otherwise within one year after the date of the sale.

(2) The person who redeems from the purchaser must pay: (a) The amount of the bid, with interest thereon at the rate provided in the judgment to the time of redemption, together with (b) the amount of any assessment or taxes which the purchaser has paid thereon after purchase, and like interest on such amount from time of payment to time of redemption, together with (c) any sum paid by the purchaser on a prior lien or obligation secured by an interest in the property to the extent the payment was necessary for the protection of the interest of the judgment debtor or a redemptioner, and like interest upon every payment made from the date of payment to the time of redemption, and (d) if the redemption is by a redemptioner and if the purchaser is also a creditor having a lien, by judgment, decree, deed of trust, or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the

redemptioner shall also pay the amount of such lien with like interest: PROVIDED, HOWEVER, That a purchaser who makes any payment as mentioned in (c) of this subsection shall submit to the sheriff the affidavit required by RCW 6.23.080, and any purchaser who pays any taxes or assessments or has or acquires any such lien as mentioned in (d) of this subsection must file the statement required in RCW 6.23.050 and provide evidence of the lien as required by RCW 6.23.080. [1987 c 442 § 702; 1984 c 276 § 4; 1965 c 80 § 4; 1961 c 196 § 1; 1899 c 53 § 8; RRS § 595. Formerly RCW 6.24.140.]

Application—1984 c 276: See note following RCW 6.21.020.

6.23.030 Notice to be given during redemption period—Effect of noncompliance—Form of notice and affidavit. (1) If the property is subject to a homestead as provided in chapter 6.13 RCW, the purchaser, or the redemptioner if the property has been redeemed, shall send a notice, in the form prescribed in subsection (3) of this section, at least forty but not more than sixty days before the expiration of the judgment debtor's redemption period both by regular mail and by certified mail, return receipt requested, to the judgment debtor or debtors and to each of them separately, if there is more than one judgment debtor, at their last known address or addresses and to "occupant" at the property address. The party who sends the notice shall file a copy of the notice with an affidavit of mailing with the clerk of the court and deliver or mail a copy to the sheriff.

(2) Failure to comply with this section extends the judgment debtor's redemption period six months. If the redemption period is extended, no further notice need be sent. Time for redemption by redemptioners shall not be extended.

(3) The notice and affidavit of mailing required by subsection (1) of this section shall be in substantially the following form:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR COUNTY

Plaintiff,	}	CAUSE NO.
vs.		NOTICE OF EXPIRATION OF REDEMPTION PERIOD
Defendant.		

TO: [Judgment Debtor]
 THIS IS AN IMPORTANT NOTICE AFFECTING YOUR RIGHT TO RETAIN YOUR PROPERTY.

NOTICE IS HEREBY GIVEN that the period for redemption of the following described real property ("the property") is expiring. The property is situated in the County of, State of Washington, to wit: [legal description] and commonly known as, which was sold by, County Sheriff, in, County, Washington on the day of, 19. . . ., under and by virtue of a writ of execution and order of sale issued by the court in the above-entitled action.

THE REDEMPTION PERIOD FOR THE PROPERTY IS MONTHS. THE REDEMPTION PERIOD COMMENCED ON, 19. . . ., AND WILL EXPIRE AT 4:30 p.m. ON, 19. . . .

If you intend to redeem the property described above you must give written notice of your intention to the County Sheriff on or before, 19. . .

Following is an itemized account of the amount required to redeem the property to date:

Table with 2 columns: Item, Amount. Items include Purchase price paid at sale, Interest from date of sale to date of this notice at . . . percent per annum, Real estate taxes plus interest, Assessments plus interest, Liens or other costs paid by purchaser or purchaser's successor during redemption period plus interest, Lien of redemptioner, and TOTAL REQUIRED TO REDEEM AS OF THE DATE OF THIS NOTICE.

You may redeem the property by 4:30 p.m. on or before the . . . day of, 19. . ., by paying the amount set forth above and such other amounts as may be required by law. Payment must be in the full amount and in cash, certified check, or cashier's check. Because such other amounts as may be required by law to redeem may include presently unknown expenditures required to operate, preserve, protect, or insure the property, or the amount to comply with state or local laws, or the amounts of prior liens, with interest, held by the purchaser or a redemptioner, it will be necessary for you to contact the County Sheriff at the address stated below prior to the time you tender the redemption amount so that you may be informed exactly how much you will have to pay to redeem the property.

. SHERIFF-DIRECTOR, COUNTY, WASHINGTON.

By, Deputy
Address
City
Washington 9. . . .
Phone (. . .)

IF YOU FAIL TO REDEEM THE PROPERTY BY 4:30 p.m. ON OR BEFORE THE . . . DAY OF, 19. . ., THE DATE UPON WHICH THE REDEMPTION PERIOD WILL EXPIRE, THE PURCHASER OR THE PURCHASER'S SUCCESSOR WILL BE ENTITLED TO POSSESSION OF THE PROPERTY AND MAY BRING AN ACTION TO EVICT YOU FROM POSSESSION OF THE PROPERTY.

DATED THIS . . . DAY OF, 19. . .

[Purchaser]
By
[Purchaser's attorney]
Attorneys for

STATE OF WASHINGTON }
COUNTY OF } ss.

The undersigned being first duly sworn on oath states: That on this day affiant deposited in the mails of the United

States of America a properly stamped and addressed envelope directed to the judgment debtor at the address stated on the face of this document and to "occupant" at the property address, both by certified mail, return receipt requested, and by first class mail, all of the mailings containing a copy of the document to which this affidavit is attached.

SIGNED AND SWORN TO BEFORE ME THIS
DAY OF, 19. . ., BY (name of person making statement)

.
Title
My appointment expires
., 19. . .

[1987 c 442 § 703; 1984 c 276 § 5; 1981 c 329 § 6. Formerly RCW 6.24.145.]

Application—1984 c 276: See note following RCW 6.21.020.
Severability—1981 c 329: See note following RCW 6.21.020.

6.23.040 Time for redemption from redemptioner—Successive redemptions—Amount to be paid. (1) If property is redeemed from the purchaser by a redemptioner, as provided in RCW 6.23.020, another redemptioner may, within sixty days after the first redemption, redeem it from the first redemptioner. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, and such sixty-day redemption periods may extend beyond the period prescribed in RCW 6.23.020 for redemption from the purchaser.

(2) The judgment debtor may also redeem from a redemptioner, but in all cases the judgment debtor shall have the entire redemption period prescribed by RCW 6.23.020, but no longer unless the time is extended under RCW 6.23.030 or 6.23.090. If the judgment debtor redeems, the effect of the sale is terminated and the estate of the debtor is restored.

(3) A redemptioner may redeem under this section by paying the sum paid on the last previous redemption with interest at the rate of eight percent per annum, and the amount of any assessments or taxes which the last previous redemptioner paid on the property after redeeming, with like interest, and the amount of any liens by judgment, decree, deed of trust, or mortgage, other than the judgment under which the property was sold, held by the last redemptioner, prior to his own, with interest. A judgment debtor who redeems from a redemptioner under this section must make the same payments as are required to effect a redemption by a redemptioner, including any lien by judgment, decree, deed of trust, or mortgage, other than the judgment under which the property was sold, held by the redemptioner. A redemptioner who pays any taxes or assessments, or has or acquires any such lien as herein mentioned, must file a statement as required under RCW 6.23.050. [1987 c 442 § 704; 1899 c 53 § 9; RRS § 596. Formerly RCW 6.24.150.]

6.23.050 Purchaser or redemptioner to file statements of amounts paid. A purchaser or redemptioner who pays any taxes or assessments or has or acquires a lien on

the property by judgment, decree, deed of trust, or mortgage prior to that of a prospective redemptioner must file a statement thereof, for recording, with the recording officer of the county in which the property is situated before the property has been redeemed from him or her. Otherwise, the property may be redeemed without paying such tax, assessment, or lien, but if actual notice of such payments or liens has been given to the person who redeems, failure to file the statement shall not affect the right to payment from that person absent that person's demonstration of prejudice resulting from the failure to file the statement. [1987 c 442 § 705.]

6.23.060 Sheriff's deed—When issued. If no redemption is made within the redemption period prescribed by RCW 6.23.020 or within any extension of that period under any other provision of this chapter, the purchaser is entitled to a sheriff's deed; or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made or notice given operating to extend the period for redemption, and the time for redemption by the judgment debtor has expired, the last redemptioner is entitled to receive a sheriff's deed as provided in RCW 6.21.120. [1987 c 442 § 706; 1961 c 196 § 2; 1899 c 53 § 10; RRS § 597. Prior: 1897 c 50 § 16. Formerly RCW 6.24.160.]

6.23.070 Payment on successive redemptions. When two or more persons apply to the sheriff to redeem at the same time, the sheriff shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if that person is present at time of redemption; or if not, at any time thereafter when demanded. When a sheriff wrongfully refuses to allow any person to redeem, the right to redeem shall not be prejudiced by such refusal, and the sheriff may be required, by order of the court, to allow such redemption. [1987 c 442 § 707; 1899 c 53 § 11; RRS § 598. Formerly RCW 6.24.170.]

6.23.080 Redemption procedure—Certificate to be recorded—Evidence of right to redeem. (1) The person seeking to redeem shall give the sheriff at least five days' written notice of intention to apply to the sheriff for that purpose. It shall be the duty of the sheriff to notify the purchaser or redemptioner, as the case may be, or the purchaser's or redemptioner's attorney, of the receipt of such notice, if such person is within such county. At the time specified in such notice, the person seeking to redeem may do so by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate stating the sum paid on redemption, from whom redeemed, the date thereof and a description of the property redeemed. A certificate of redemption must be filed and recorded in the office of the recording officer of the county in which the property is situated, and the recording officer must note the record thereof in the margin of the record of the certificate of sale.

(2) A person seeking to redeem shall submit to the sheriff the evidence of the right to redeem, as follows:

(a) A lien creditor shall submit a copy of the docket of the judgment or decree under which the right to redeem is claimed, certified by the clerk of the court where such

judgment or decree is docketed; or the holder of a mortgage or deed of trust shall submit the certificate of the record thereof together with an affidavit, verified by the holder or agent, showing the amount then actually due thereon.

(b) An assignee shall submit a copy of any assignment necessary to establish the claim, verified by the affidavit of the assignee or agent, showing the amount then actually due on the judgment, decree, deed of trust, or mortgage.

(3) If the redemptioner or purchaser has a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the same kind of evidence thereof as is required from a person seeking to redeem under subsection (2) of this section, and the amount due thereon, or the same may be disregarded.

(4) A purchaser who has paid a sum on a prior lien or obligation secured by an interest in the property shall submit to the sheriff an affidavit, verified by the purchaser or an agent, showing the amount paid on the prior lien or obligation, or the prior lien or obligation may be disregarded. [1987 c 442 § 708; 1984 c 276 § 6; 1899 c 53 § 12; RRS § 599. Formerly RCW 6.24.180.]

Application—1984 c 276: See note following RCW 6.21.020.

6.23.090 Rents and profits during period of redemption—Accounting—Option for reimbursement or extension on agricultural property. (1) Except as provided in subsection (3) of this section and in RCW 6.23.110, the purchaser, from the time of the sale until the redemption, and the redemptioner from the time of the redemption until another redemption, is entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received from the property by such purchaser or redemptioner, preceding the redemption thereof from him or her, the amount of such rents and profits, over and above the expenses paid for operating, caring for, protecting and insuring the property, shall be a credit upon the redemption money to be paid.

(2) If a redemptioner or other person entitled to redeem, before the expiration of the time allowed for such redemption, files with the sheriff a demand in writing for a written and verified statement of the amounts of rents and profits thus received and expenses paid and incurred, the period for redemption is extended five days after such a sworn statement is given by the person receiving such rents and profits, or by his or her agent, to the person making the demand, or to the sheriff. It shall be the duty of the sheriff to serve a copy of such demand upon the person receiving such rents and profits, his or her agent or his or her attorney, if service can be made in the county where the property is situate. If such person shall, for a period of ten days after such demand has been given to the sheriff, fail or refuse to give such statement, the redemptioner or other person entitled to redeem who made the demand may bring an action within sixty days after making such demand, but not later, in any court of competent jurisdiction, to compel an accounting and disclosure of such rents, profits and expenses, and until fifteen days from and after the final determination of such action the right of redemption is extended to such redemptioner or other person entitled to redeem who made the demand. If a sworn statement is given by the purchaser or

other person receiving such rents and profits, and the redemptioner or other person entitled to redeem who made the demand, desires to contest the correctness of the statement, he or she must first redeem in accordance with such sworn statement, and if he or she desires to bring an action for an accounting thereafter he or she may do so within thirty days after such redemption, but not later.

(3) If such property is farming or agricultural property and is in possession of any purchaser or any previous redemptioner and is redeemed after the first day of April and before the first day of December, and the purchaser or previous redemptioner or the tenant of either has performed any work in preparing such property for crops or has planted crops, such purchaser or previous redemptioner shall have the option to demand reimbursement for such work and labor or to retain possession of such property until the first day of December following, and the new redemptioner shall be entitled to collect the reasonable rental value thereof during such farming year, unless such reasonable rental shall have been collected by such purchaser or previous redemptioner and accounted for to the new redemptioner. [1987 c 442 § 709; 1899 c 53 § 13; RRS § 600. Formerly RCW 6.24.190.]

6.23.100 Restraining waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property. But it is not waste for the person in possession of the property at the time of the sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repairs of fences, or for fuel in his or her family while occupying the property. [1987 c 442 § 710; 1899 c 53 § 14; RRS § 601. Formerly RCW 6.24.200.]

6.23.110 Possession during period of redemption. (1) Except as provided in this section and RCW 6.23.090, the purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption.

(2) If a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired, the court shall make its decree to that effect and the mortgagor shall have such right.

(3) As to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used, at the time of sale, for farming purposes, the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his successor in interest shall, if the judgment debtor does not redeem, have a lien upon the crops raised or harvested thereon during said period of redemption, for interest on the purchase price at the rate of six percent per annum during said period of

redemption and for taxes becoming delinquent during the period of redemption together with interest thereon.

(4) In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation. [1987 c 442 § 711; 1981 c 329 § 21; 1961 c 196 § 3; 1957 c 8 § 6; 1939 c 94 § 1; 1927 c 93 § 1; 1899 c 53 § 15; RRS § 602. Formerly RCW 6.24.210.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.23.120 Listing of property for sale during redemption period—Acceptance of qualifying offer if property unredeemed and deed issued—Procedure—Disposition of proceeds. (1) Except as provided in subsection (4) of this section, during the period of redemption for any property that a person would be entitled to claim as a homestead, any licensed real estate broker within the county in which the property is located may nonexclusively list the property for sale whether or not there is a listing contract. If the property is not redeemed by the judgment debtor and a sheriff's deed is issued under RCW 6.21.120, then the property owner shall accept the highest current qualifying offer upon tender of full cash payment within two banking days after notice of the pending acceptance is received by the offeror. If timely tender is not made, such offer shall no longer be deemed to be current and the opportunity shall pass to the next highest current qualifying offer, if any. Notice of pending acceptance shall be given for the first highest current qualifying offer within five days after delivery of the sheriff's deed under RCW 6.21.120 and for each subsequent highest current qualifying offer within five days after the offer becoming the highest current qualifying offer. An offer is qualifying if the offer is made during the redemption period through a licensed real estate broker listing the property and is at least equal to the sum of: (a) One hundred twenty percent greater than the redemption amount determined under RCW 6.23.020 and (b) the normal commission of the real estate broker or agent handling the offer.

(2) The proceeds shall be divided at the time of closing with: (a) One hundred twenty percent of the redemption amount determined under RCW 6.23.020 paid to the property owner, (b) the real estate broker's or agent's normal commission paid, and (c) any excess paid to the judgment debtor.

(3) Notice, tender, payment, and closing shall be made through the real estate broker or agent handling the offer.

(4) This section shall not apply to mortgage or deed of trust foreclosures under chapter 61.12 or 61.24 RCW. [1987 c 442 § 712; 1981 c 329 § 23. Formerly RCW 6.24.230.]

Severability—1981 c 329: See note following RCW 6.21.020.

Chapter 6.25
ATTACHMENT

Sections

6.25.010	Application of chapter to district courts.
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6.25.040	Grounds if debt not due.
6.25.050	Procedure when debt not due.
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6.25.070	Issuance of writ—Notice—Hearing—Issuance without notice—Forms for notice.
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6.25.230	Custody of property or proceeds.
6.25.240	Subjection of attached property to judgment.
6.25.250	Procedure when attached property insufficient.
6.25.260	Procedure where execution unsatisfied.
6.25.270	Procedure when judgment is for defendant.
6.25.280	Chapter to be liberally construed—Amendments.

6.25.010 Application of chapter to district courts. Unless otherwise expressly provided, all the provisions of this chapter governing attachment of personal property apply to proceedings before district courts of this state, but the district courts shall not have power to issue writs of attachment against real property or any interest in real property or against vendors' interests under real estate contracts. [1987 c 442 § 801.]

6.25.020 Time for granting. The plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants, attached in the manner prescribed in this chapter, as security for the satisfaction of such judgment as the plaintiff may recover. [1987 c 442 § 802; 1886 p 39 § 1; RRS § 647. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.010.]

Rules of court: Cf. CR 64.

6.25.030 Issuance of writ—Grounds. The writ of attachment may be issued by the court in which the action is pending on one or more of the following grounds:

- (1) That the defendant is a foreign corporation; or
- (2) That the defendant is not a resident of this state; or
- (3) That the defendant conceals himself so that the ordinary process of law cannot be served upon him; or
- (4) That the defendant has absconded or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be served upon him; or

(5) That the defendant has removed or is about to remove any of his property from this state, with intent to delay or defraud his creditors; or

(6) That the defendant has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of his property, with intent to delay or defraud his creditors; or

(7) That the defendant is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or

(8) That the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or

(9) That the damages for which the action is brought are for injuries arising from the commission of some felony, gross misdemeanor, or misdemeanor; or

(10) That the object for which the action is brought is to recover on a contract, express or implied. [1987 c 442 § 803; 1973 1st ex.s. c 154 § 16; 1923 c 159 § 1; 1886 p 39 § 2; RRS § 648. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.020.]

Rules of court: CR 64.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

6.25.040 Grounds if debt not due. An action may be commenced and the property of a debtor may be attached previous to the time when the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness, and when the complaint and the affidavit allege, in addition to that fact, one or more of the following grounds:

(1) That the defendant is about to dispose or has disposed of his property in whole or in part with intent to defraud his creditors; or

(2) That the defendant is about to remove from the state and refuses to make any arrangements for securing the payment of the debt when it falls due, and the contemplated removal was not known to the plaintiff at the time the debt was contracted; or

(3) That the debt was incurred for property obtained under false pretenses. [1987 c 442 § 804; 1886 p 39 § 3; RRS § 649. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.030.]

Rules of court: Cf. CR 64.

6.25.050 Procedure when debt not due. If the debt or demand for which the attachment is sued out is not due at the time of the commencement of the action, the defendant is not required to file any pleadings until the maturity of such debt or demand, but the defendant may, in his or her discretion, do so, and go to trial as early as the cause is reached. No final judgment shall be rendered in such action until the debt or demand upon which it is based becomes due, unless the defendant consents by filing pleadings or otherwise. However, property of a perishable nature may be sold as provided in RCW 6.25.220. [1987 c 442 § 805; 1886 p 40 § 4; RRS § 650. Prior: Code 1881 §§ 174-192;

1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.040.]

6.25.060 Application for writ—Affidavit. (1) The plaintiff or someone on plaintiff's behalf shall apply for a writ of attachment by affidavit, alleging that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant and also alleging that affiant has reason to believe and does believe the following, together with specific facts on which affiant's belief in the allegations is based: (a) That the defendant is indebted to the plaintiff (specifying the nature of the claim and the amount of such indebtedness over and above all just credits and offsets), and (b) that one or more of the grounds stated in RCW 6.25.030 for issuance of a writ of attachment exists.

(2) If the action is based on a debt not due, the ground alleged under subsection (1)(b) of this section must be one stated in RCW 6.25.040 for attachment on a debt not due, and affiant shall also allege reason to believe and belief that nothing but time is wanting to fix an absolute indebtedness due from defendant, together with specific facts on which the affiant's belief in the allegations is based. [1987 c 442 § 806.]

6.25.070 Issuance of writ—Notice—Hearing—Issuance without notice—Forms for notice. (1) Except as provided in subsection (2) of this section, the court shall issue a writ of attachment only after prior notice to defendant, given in the manner prescribed in subsections (4) and (5) of this section, with an opportunity for a prior hearing at which the plaintiff shall establish the probable validity of the claim sued on and that there is probable cause to believe that the alleged ground for attachment exists.

(2) Subject to subsection (3) of this section, the court shall issue the writ without prior notice to defendant and an opportunity for a prior hearing only if:

(a)(i) The attachment is to be levied only on real property, or (ii) if it is to be levied on personal property, the ground alleged for issuance of attachment is one appearing in RCW 6.25.030 (5) through (7) or in RCW 6.25.040(1) or, if attachment is necessary for the court to obtain jurisdiction of the action, the ground alleged is one appearing in RCW 6.25.030 (1) through (4); and

(b) The court finds, on the basis of specific facts alleged in the affidavit, after an ex parte hearing, that there is probable cause to believe the allegations of plaintiff's affidavit.

(3) If a writ is issued under subsection (2) of this section without prior notice to defendant, after seizure of property under the writ the defendant shall be entitled to prompt notice of the seizure and of a right to an early hearing, if requested, at which the plaintiff shall establish the probable validity of the claim sued on and that there is probable cause to believe that the alleged ground for attachment exists. Such notice shall be given in the manner prescribed in subsections (4) and (5) of this section.

(4) When notice and a hearing are required under this section, notice may be given by a show cause order stating the date, time, and place of the hearing. Notice required

under this section shall be jurisdictional and, except as provided for published notice in subsection (5) of this section, notice shall be served in the same manner as a summons in a civil action and shall be served together with: (a) A copy of the plaintiff's affidavit and a copy of the writ if already issued; (b) if the defendant is an individual, copies of homestead statutes, RCW 6.13.010, 6.13.030, and 6.13.040, if real property is to be attached, or copies of exemption statutes, RCW 6.15.010 and 6.15.060, if personal property is to be attached; and (c) if the plaintiff has proceeded under subsection (2) of this section, a copy of a "Notice of Right to Hearing" in substantially the following form:

NOTICE OF RIGHT TO HEARING

In a lawsuit against you, a Washington court has issued or will issue a Writ of Attachment against your property. Under the writ a sheriff or sheriff's deputy has or will put a lien against your real estate or has seized or will seize other property of yours to hold until the court decides the lawsuit. Delivery of this notice of your rights is required by law.

YOU HAVE THE RIGHT TO A PROMPT HEARING. If notice of a hearing date and time is not served with this notice, you have a right to request the hearing. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the statements in the enclosed affidavit are true and also that the claim stated in the lawsuit is probably valid, or else your property will be released.

If the defendant is an individual, the following paragraph shall be added to the notice:

YOU MAY ALSO HAVE A RIGHT TO HAVE YOUR PROPERTY RELEASED if it is exempt property as described in the copies of statutes included with this notice and if you claim your exemptions in the way described in the statutes.

(5) If service of notice on the defendant must be effected by publication, only the following notice need be published under the caption of the case:

To Defendant:

A writ of attachment has been issued in the above-captioned case, directed to the Sheriff of County, commanding the Sheriff as follows:

"WHEREAS, . . . [Quoting body of writ of attachment]"

YOU HAVE A RIGHT TO ASK FOR A HEARING. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the ground for attachment alleged in an affidavit filed with the court exists and also that the claim stated in the lawsuit is probably valid, or else the attachment will be discharged.

If the defendant is an individual, the following paragraph shall be added to the published notice:

YOU MAY ALSO HAVE A RIGHT TO HAVE YOUR PROPERTY RELEASED if it is exempt property as

described in Washington exemption statutes, including sections 6.13.010, 6.13.030, 6.13.040, 6.15.010, and 6.15.060 of the Revised Code of Washington, in the manner described in those statutes.

[1988 c 231 § 15; 1987 c 442 § 807.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.25.080 Issuance of writ—Attachment bond. (1) Except as provided in subsection (2) of this section, before the writ of attachment shall issue, the plaintiff, or someone in the plaintiff's behalf, shall execute and file with the clerk a surety bond or undertaking in the sum in no case less than three thousand dollars, in the superior court, nor less than five hundred dollars in the district court, and double the amount for which plaintiff demands judgment, or such other amount as the court shall fix, conditional that the plaintiff will prosecute the action without delay and will pay all costs that may be adjudged to the defendant, and all damages that the defendant may sustain by reason of the writ of attachment or of additional writs issued as permitted under RCW 6.25.120, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively or maliciously sued out.

(2) If it is desired to attach real estate only, and such fact is stated in the affidavit for attachment, and the ground of attachment is that the defendant is a foreign corporation or is not a resident of the state, or conceals himself or herself or has absconded or is absent from his or her usual place of abode so that the ordinary process of law cannot be served upon him or her, the writ of attachment shall issue without bond or undertaking by or on behalf of the plaintiff.

(3) If the plaintiff sues on an assigned claim and the plaintiff's immediate or any other assignor thereof retains or has any interest in the claim, then the plaintiff and every assignor who retains or has any interest therein shall be jointly and severally liable for all costs that may be adjudged to the defendant and for all damages that the defendant may sustain by reason of the attachment, should the same be wrongfully, oppressively or maliciously sued out. [1988 c 231 § 16. Prior: 1987 c 442 § 808; 1987 c 202 § 128; 1957 c 51 § 1; 1903 c 41 § 1; 1886 p 40 § 6; RRS § 652; prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.060.]

Severability—1988 c 231: See note following RCW 6.01.050.

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

Corporate surety—Insurance: Chapter 48.28 RCW.

Court may fix amount of bond in civil actions: RCW 4.44.470.

6.25.090 Bond—Additional security. The defendant may, at any time before judgment, move the court or judge for additional security on the part of the plaintiff, or for security if none was required under RCW 6.25.080, and if, on such motion, the court or judge is satisfied that security or additional security should be required or that the surety in the plaintiff's bond has removed from this state or is not sufficient, the attachment may be vacated, and restitution directed of any property taken under it, unless in a reasonable time, to be fixed by the court or judge, further security is given by the plaintiff in form as provided in RCW

6.25.080. [1987 c 442 § 809; 1886 p 40 § 7; RRS § 653. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.070.]

6.25.100 Action on bond—Damages and attorney's fees. In an action on such bond, if it is shown that the attachment was wrongfully sued out, the defendant may recover the actual damages sustained and reasonable attorney's fees to be fixed by the court. If it is shown that such attachment was sued out maliciously, the defendant may recover exemplary damages, and the defendant need not wait until the principal suit is determined before suing on the bond. [1987 c 442 § 810; 1886 p 41 § 8; RRS § 654. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.080.]

6.25.110 Contents of writ—Levy of attachment. The writ of attachment shall be directed to the sheriff of any county in which property of the defendant may be, and shall require the sheriff to attach and safely keep the property of such defendant within the county, to the requisite amount, which shall be stated in conformity with the affidavit. The sheriff shall in all cases attach the amount of property directed, if sufficient property not exempted from execution be found in the county, giving that in which the defendant has a legal and unquestionable title a preference over that in which title is doubtful or only equitable, and the sheriff shall as nearly as the circumstances of the case will permit, levy upon property fifty percent greater in valuation than the amount that the plaintiff in the affidavit claims to be due. When property is seized on attachment, the court may allow to the officer having charge thereof such compensation for the trouble and expenses in keeping the same as shall be reasonable and just. [1987 c 442 § 811; 1886 p 41 § 9; RRS § 655. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.090.]

6.25.120 Writs to different counties—Successive writs. If issuance of a writ of attachment has been ordered by the court in a case, other writs of attachment may be issued in the same case from the court to different counties, and several may, at the option of the plaintiff, be issued at the same time, or in succession and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court, and if more property is attached in the aggregate than the plaintiff is entitled to have held, the surplus must be abandoned and the plaintiff pay all costs incurred in relation to such surplus. After the first writ has issued, it shall not be necessary for the plaintiff to file any further affidavit or bond unless the court otherwise directs, but the plaintiff shall be entitled to as many writs as may be necessary to secure the amount claimed. [1988 c 231 § 17; 1987 c 442 § 812; 1886 p 41 § 10; RRS § 656. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.100.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.25.130 Writ—Notation of time received—Order of execution. The sheriff or other officer shall indorse upon the writ of attachment in ink the day, hour, and minute when the writ first came into the officer's hands. Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff. [1987 c 442 § 813; 1886 p 41 § 11; RRS § 657. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.110.]

Rules of Court: Cf. CR 64.

6.25.140 Manner of levy. The sheriff shall levy on property to be attached in the same manner as provided for execution in RCW 6.17.160, 6.17.170, and 6.17.180. [1987 c 442 § 814.]

6.25.150 Property may be followed to adjoining county. If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the property in an adjoining county within twenty-four hours after removal. [1987 c 442 § 815; 1886 p 42 § 12; RRS § 658. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.120.]

6.25.160 Sheriff's inventory—Return. The sheriff shall make a full inventory of the property attached and return the inventory with the writ of attachment within twenty days of receipt of the writ, with a return of the proceedings indorsed on or attached to the writ. If the writ was issued at the same time as the summons, the sheriff shall return the writ with the summons. [1987 c 442 § 816; 1927 c 100 § 2; 1886 p 43 § 21; RRS § 666. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.200.]

6.25.170 Examination of defendant as to property. Whenever it appears by the affidavit of the plaintiff that the plaintiff has probable cause to believe that a ground for attachment exists and it appears by the plaintiff's affidavit or by the return of the attachment that no property is known to the plaintiff or officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the court or judge by affidavit that the defendant has property within the state not exempted, the defendant may be required by such court or judge to attend before the court or judge or referee appointed by the court or judge and give information on oath respecting the property. [1987 c 442 § 817; 1886 p 42 § 14; RRS § 660. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.140.]

6.25.180 Motion to discharge attachment—Affidavits in opposition—Discharge. (1) The defendant

may at any time, after appearing in the action and before giving bond as provided in RCW 6.25.190, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought or to the judge thereof, that the writ of attachment be discharged on the ground that it was improperly or irregularly issued.

(2) If the motion is made on affidavits on the part of the defendant, the plaintiff may oppose the same by affidavits in addition to those on which the attachment was issued or by other evidence, unless otherwise ordered by the court.

(3) If upon application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged.

(4) Whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be recorded with the recording officer of the county in which the writ of attachment has been recorded. [1987 c 442 § 818; 1927 c 131 § 1; 1886 p 45 § 31; RRS § 673. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.270.]

Rules of court: CR 7(b), 64.

6.25.190 Discharge of attachment—Bond—Judgment on bond. If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment or after the return thereof by the clerk, conditional on the performance of the judgment of the court, the attachment shall be discharged and restitution made of property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant to the action. The bond shall be part of the record and, if judgment goes against the defendant, the judgment shall be entered against the defendant and the sureties. [1987 c 442 § 819; 1886 p 45 § 29; RRS § 671. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.250.]

6.25.200 Appointment of receiver for property. The court before whom the action is pending may at any time appoint a receiver to take possession of property attached under the provisions of this chapter and to collect, manage, and control the property and pay over the proceeds according to the nature of the property and the exigency of the case. [1987 c 442 § 820; 1957 c 9 § 9; 1886 p 42 § 15; RRS § 661. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.150.]

6.25.220 Sale of property before judgment. If any property attached be perishable or in danger of serious and immediate waste or decay, the sheriff shall sell the same in the manner in which such property is sold on execution. Whenever it shall be made to appear satisfactorily to the court or judge that the interest of the parties to the action will be subserved by a sale of any attached property, the court or judge may order such property to be sold in the same manner as like property is sold under execution. Such

order shall be made only upon notice to the adverse party or that party's attorney in case such party shall have been personally served with a summons in the action. [1987 c 442 § 822; 1957 c 51 § 2; 1886 p 42 § 16; RRS § 662. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.160.]

6.25.230 Custody of property or proceeds. All moneys received by the sheriff under the provisions of this chapter shall be paid to the clerk of the court that issued the writ, to be held to be applied to any judgment that may be recovered in the action, and all other attached property shall be retained by the sheriff to be applied to any judgment that may be recovered in the action. [1987 c 442 § 823; 1886 p 43 § 17; RRS § 663. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.170.]

6.25.240 Subjection of attached property to judgment. If judgment is recovered by the plaintiff, it shall be paid out of any proceeds held by the clerk of the court and out of the property retained by the sheriff if it is sufficient for that purpose as follows:

(1) By applying on the execution issued on said judgment the proceeds of all sales of perishable or other property sold, or so much as shall be necessary to satisfy the judgment.

(2) If any balance remains due, the sheriff shall sell under the execution so much of the personal property attached as may be necessary to satisfy the balance and, if there is not sufficient personal property to satisfy the balance, the sheriff shall sell so much of any real property attached as is necessary to satisfy the judgment.

Notice of sale shall be given and sale conducted as in other cases of sales on execution. [1987 c 442 § 824; 1957 c 51 § 4; 1886 p 44 § 25; RRS § 667. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.210.]

6.25.250 Procedure when attached property insufficient. If, after the proceeds of all the property attached have been applied to the payment of the judgment, any balance remains due, the sheriff shall proceed as upon an execution in other cases. Whenever the judgment has been paid, the sheriff, upon reasonable demand, shall deliver to the defendant the attached property remaining and the clerk shall pay to the defendant any remaining proceeds of the property attached that have not been applied on the judgment. [1987 c 442 § 825; 1957 c 51 § 5; 1886 p 44 § 26; RRS § 668. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.220.]

6.25.260 Procedure where execution unsatisfied. If the execution is returned unsatisfied, in whole or in part, the plaintiff may proceed as in other cases upon the return of an execution. [1987 c 442 § 826; 1886 p 45 § 27; RRS § 669. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-

50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.230.]

6.25.270 Procedure when judgment is for defendant. If the defendant recovers judgment against the plaintiff, all the proceeds of sales and money collected by the sheriff and deposited with the clerk and all the property attached and retained by the sheriff shall be delivered to the defendant or the defendant's agent. The order of attachment shall be discharged and the property released therefrom. [1987 c 442 § 827; 1886 p 45 § 28; RRS § 670. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.240.]

6.25.280 Chapter to be liberally construed—Amendments. This chapter shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the complaint, affidavit, bond, writ or other proceeding, and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has been or can be amended so as to show that a legal cause for the attachment existed at the time it was issued, and the court shall give the plaintiff a reasonable time to perfect such defective proceedings. [1987 c 442 § 828; 1886 p 46 § 35; RRS § 677. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.310.]

Chapter 6.26

PREJUDGMENT GARNISHMENT

Sections

6.26.010	Prejudgment writs of garnishment—Grounds.
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6.26.025	Writs of garnishment to different garnishees.
6.26.030	Action on bond for wrongful garnishment—Damages and attorney's fees.
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6.26.070	Application of chapter 6.27 RCW to prejudgment garnishments.

Rules of court: CR 64.

6.26.010 Prejudgment writs of garnishment—Grounds. Except as limited by RCW 6.27.040, relating to the state and other public entities, and RCW 6.27.330, relating to continuing liens on earnings, the plaintiff at the time of commencing an action, or at any time thereafter before judgment in an action, may obtain a prejudgment writ of garnishment from a superior or district court of this state before which the action is pending on the following grounds:

(1) If the writ is issued for a purpose other than garnishing a defendant's earnings as defined in RCW 6.27.010, (a) on the ground that an attachment has been issued in accordance with chapter 6.25 RCW, (b) on the ground that the plaintiff sues on a debt that is due and owing and unpaid, or

(c) on one or more of the grounds for issuance of attachment stated in RCW 6.25.030 or 6.25.040; or

(2) If the writ is directed to an employer for the purpose of garnishing earnings of a defendant, on the grounds that the defendant:

(a) Is not a resident of this state, or is about to move from this state; or

(b) Has concealed himself or herself, absconded, or absented himself or herself so that ordinary process of law cannot be served on him or her; or

(c) Has removed or is about to remove any of his or her property from this state, with intent to delay or defraud his or her creditors. [1988 c 231 § 18; 1987 c 442 § 901.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.26.020 Issuance of writ—Bond—Fee. In all cases of garnishment before judgment, before the writ shall issue, the plaintiff shall pay the fee described in RCW 6.27.060 and shall execute and file with the clerk a bond with sufficient sureties, to be approved by the clerk of the court issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, or such other amount as the court shall fix, conditioned that the plaintiff will prosecute the suit without delay and pay all damages and costs that may be adjudged against him or her for wrongfully suing out such garnishment. [1988 c 231 § 19; 1987 c 442 § 902; 1969 ex.s. c 264 § 3. Formerly RCW 7.33.030.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.26.025 Writs of garnishment to different garnishees. If issuance of a writ of garnishment or of a writ of attachment has been ordered by the court in a case, other writs of garnishment to different garnishees may be issued in the same case under the circumstances and restrictions stated in RCW 6.25.120 for issuance of successive writs of attachment. [1988 c 231 § 21.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.26.030 Action on bond for wrongful garnishment—Damages and attorney's fees. In an action on the bond under RCW 6.26.020, if it is shown that the garnishment was wrongfully sued out, the defendant may recover the actual damages sustained and reasonable attorney's fees to be fixed by the court. If it is shown that such garnishment was sued out maliciously, the defendant may also recover exemplary damages, and the defendant need not wait until the principal suit is determined before suing on the bond by counterclaim in the original action or in a separate action. [1987 c 442 § 903.]

6.26.040 Action against plaintiff for wrongful garnishment—Damages and attorney's fees. In all actions in which a prejudgment writ of garnishment has been issued by a court and served upon a garnishee, in the event judgment is not entered for the plaintiff on the claim sued upon by plaintiff, and the claim has not voluntarily been settled or otherwise satisfied, the defendant shall have an action for damages against the plaintiff. The defendant's action for damages may be brought by way of a counterclaim in the

original action or in a separate action and, in the action the trier of fact, in addition to other actual damages sustained by the defendant, may award the defendant reasonable attorney's fees. [1987 c 442 § 904; 1970 ex.s. c 61 § 4; 1969 ex.s. c 264 § 34. Formerly RCW 7.33.340.]

6.26.050 Application for prejudgment writ of garnishment—Affidavit. The plaintiff or someone on the plaintiff's behalf shall apply for a prejudgment writ of garnishment by affidavit, alleging that the garnishment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant and also alleging that the affiant has reason to believe and does believe the following, together with specific facts on which the affiant's belief in the allegations is based: (1) That the defendant is indebted to the plaintiff (specifying the nature of the claim and the amount of such indebtedness over and above all just credits and offsets); (2) that one or more of the grounds for prejudgment garnishment established in RCW 6.26.010 exists; (3) that the plaintiff has reason to believe, and does believe, that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law; (4) whether or not the garnishee is the employer of the defendant; and (5) if the action is based on a debt not due, that nothing but time is wanting to fix an absolute indebtedness due from the defendant. [1987 c 442 § 905.]

6.26.060 Issuance of writ—Notice—Hearing—Issuance without prior notice—Forms for notice. (1) When application is made for a prejudgment writ of garnishment, the court shall issue the writ in substantially the form prescribed in RCW 6.27.070 and 6.27.100 directing that the garnishee withhold an amount as prescribed in RCW 6.27.090, but, except as provided in subsection (2) of this section, the court shall issue the writ only after prior notice to the defendant, given in the manner prescribed in subsections (4) and (5) of this section, with an opportunity for a prior hearing at which the plaintiff shall establish the probable validity of the plaintiff's claim and that there is probable cause to believe that the alleged ground for garnishment exists.

(2) Subject to subsection (3) of this section, the court shall issue the writ without prior notice to the defendant and without an opportunity for a prior hearing only if:

(a) A ground alleged in the plaintiff's affidavit is: (i) A ground appearing in RCW 6.26.010(2)(c) if the writ is to be directed to an employer for the purpose of garnishing the defendant's earnings; or (ii) a ground appearing in RCW 6.25.030 (5) through (7) or in RCW 6.25.040(1) of the attachment chapter; or (iii) if garnishment is necessary to permit the court to acquire jurisdiction over the action, the ground alleged is one appearing in RCW 6.25.030 (1) through (4) or in RCW 6.26.010(2)(a) or (b); and

(b) The court finds on the basis of specific facts, after an ex parte hearing, that there is probable cause to believe the allegations of the plaintiff's affidavit.

(3) If a writ is issued under subsection (2) of this section without prior notice to the defendant, after service of the writ on the garnishee, the defendant shall be entitled to prompt notice of the garnishment and a right to an early hearing, if requested, at which the plaintiff shall establish the probable validity of the claim sued on and that there is probable cause to believe that the alleged ground for garnishment exists.

(4) When notice and a hearing are required under this section, notice may be given by a show cause order stating the date, time, and place of the hearing. Notice required under this section shall be jurisdictional and, except as provided for published notice in subsection (5) of this section, notice required under this section shall be served in the same manner as a summons in a civil action and shall be served together with (a) a copy of plaintiff's affidavit and a copy of the writ if already issued, and (b) a copy of the following "Notice of Right to a Hearing" in substantially the following form or, if defendant is an individual, a copy of the claim form and the "Notice of Garnishment and of Your Rights" prescribed by RCW 6.27.140, in which the following notice is substituted for the first paragraph of said Notice:

NOTICE OF RIGHT TO HEARING

A writ of garnishment has been or will be issued by a Washington court and has been or will be served on the garnishee defendant. It will require the garnishee defendant to withhold payment of money that may be due to you and to withhold other property of yours that the garnishee may hold or control until a lawsuit in which you are a defendant has been decided by the court. Service of this notice of your rights is required by law.

YOU HAVE A RIGHT TO A PROMPT HEARING. If notice of a hearing date and time is not served with this notice, you have the right to request the hearing. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the statements in the enclosed affidavit are true and also that the claim stated in the lawsuit is probably valid, or else the garnishment will be released.

(5) If service of notice on the defendant must be effected by publication, only the following notice need be published under the caption of the case:

To, Defendant:

A writ of prejudgment garnishment has been issued in the above captioned case, directed to as Garnishee Defendant, commanding the Garnishee to withhold amounts due you or to withhold any of your property in the Garnishee's possession or control for application to any judgment that may be entered for plaintiff in the case.

YOU HAVE A RIGHT TO ASK FOR A HEARING. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the ground for garnishment alleged in an affidavit filed with the court exists and also that the claim

stated in the lawsuit is probably valid, or else the garnishment will be released.

If the defendant is an individual, the following paragraph shall be added to the published notice:

YOU MAY ALSO HAVE A RIGHT TO HAVE THE GARNISHMENT RELEASED if amounts or property withheld are exempt under federal or state statutes, for example, bank accounts in which benefits such as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Social Security, United States pension, Unemployment Compensation, or Veterans' benefits have been deposited or certain personal property described in section 6.15.010 of the Revised Code of Washington.

[1988 c 231 § 20; 1987 c 442 § 906.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.26.070 Application of chapter 6.27 RCW to prejudgment garnishments. Except as otherwise provided, the provisions of chapter 6.27 RCW governing garnishments apply to prejudgment garnishments. [1987 c 442 § 907.]

Chapter 6.27 GARNISHMENT

Sections	
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- 6.27.300 Garnishee protected against claim of defendant.
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- 6.27.320 Dismissal of garnishment upon satisfaction of judgment from other source—Duty of plaintiff—Procedure—Penalty—Costs.
- 6.27.330 Continuing lien on earnings—Authorized.
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- 6.27.350 Continuing lien on earnings—When lien becomes effective—Termination—Second answer.
- 6.27.360 Continuing lien on earnings—Priorities—Exceptions.

Rules of court: CR 64.

6.27.010 Definitions. (1) As used in this chapter, the term "earnings" means compensation paid or payable to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(2) As used in this chapter, the term "disposable earnings" means that part of earnings remaining after the deduction from those earnings of any amounts required by law to be withheld. [1987 c 442 § 1001.]

6.27.020 Grounds for issuance of writ—Time of issuance of prejudgment writs. (1) The clerks of the superior courts and district courts of this state may issue writs of garnishment returnable to their respective courts for the benefit of a judgment creditor who has a judgment wholly or partially unsatisfied in the court from which the garnishment is sought.

(2) Except as otherwise provided in RCW 6.27.040 and 6.27.330, the superior courts and district courts of this state may issue prejudgment writs of garnishment to a plaintiff at the time of commencement of an action or at any time afterward, subject to the requirements of chapter 6.26 RCW. [1987 c 442 § 1002; 1969 ex.s. c 264 § 1. Formerly RCW 7.33.010.]

Rules of court: Cf. CR 64.

6.27.030 Application of chapter to district courts. All the provisions of this chapter shall apply to proceedings before district courts of this state. [1987 c 442 § 1003; 1969 ex.s. c 264 § 2. Formerly RCW 7.33.020.]

6.27.040 State and municipal corporations subject to garnishment—Service of writ. The state of Washington, all counties, cities, towns, school districts and other municipal corporations shall be subject to garnishment after judgment has been entered in the principal action, but not before, in the superior and district courts, in the same manner and with the same effect, as provided in the case of other garnishees.

The venue of any such garnishment proceeding shall be the same as for the original action, and the writ shall be issued by the clerk of the court having jurisdiction of such original action.

The writ of garnishment shall be served in the same manner and upon the same officer as is required for service of summons upon the commencement of a civil action against the state, county, city, town, school district, or other

municipal corporation, as the case may be. [1987 c 442 § 1004; 1987 c 202 § 134; 1969 ex.s. c 264 § 6. Formerly RCW 7.33.060.]

Reviser's note: This section, previously codified as RCW 7.33.060, was amended by 1987 c 202 § 134 and by 1987 c 442 § 1004, each without reference to the other. Chapter 442 also directed that RCW 7.33.060 be recodified. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

6.27.050 Garnishment of money held by officer—Of judgment debtor—Of personal representative. A sheriff or other peace officer who holds money of the defendant is subject to garnishment, excepting only for money or property taken from a person arrested by such officer, at the time of the arrest. A judgment debtor of the defendant is subject to garnishment when the judgment has not been previously assigned on the record or by writing filed in the office of the clerk of the court that entered the judgment and minuted by the clerk as an assignment in the execution docket. An executor or administrator is subject to garnishment for money due from the decedent to the defendant. [1987 c 442 § 1005; 1927 c 101 § 1; 1886 p 43 § 19; RRS § 664. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.180.]

6.27.060 Application for writ—Affidavit—Fee. The judgment creditor as the plaintiff or someone in the judgment creditor's behalf shall apply for a writ of garnishment by affidavit, stating the following facts: (1) The plaintiff has a judgment wholly or partially unsatisfied in the court from which the writ is sought; (2) the amount alleged to be due under that judgment; (3) the plaintiff has reason to believe, and does believe that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law; and (4) whether or not the garnishee is the employer of the judgment debtor.

The judgment creditor shall pay to the clerk of the superior court the fee provided by RCW 36.18.020, or to the clerk of the district court the fee of two dollars. [1988 c 231 § 22. Prior: 1987 c 442 § 1006; 1987 c 202 § 133; 1981 c 193 § 3; 1977 ex.s. c 55 § 1; 1969 ex.s. c 264 § 4. Formerly RCW 7.33.040.]

Severability—1988 c 231: See note following RCW 6.01.050.

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

6.27.070 Issuance of writ—Form—Dating—Attestation. When application for a writ of garnishment is made by a judgment creditor and the requirements of RCW 6.27.060 have been complied with, the clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and deliver a writ of garnishment to the judgment creditor in the form prescribed in RCW 6.27.100, directed to the garnishee, commanding the

Estimated Garnishment Costs:

Filing Fee	\$
Service and Affidavit Fees	\$
Postage and Costs of Certified Mail	\$
Answer Fee or Fees	\$
Garnishment Attorney Fee	\$

.....
 Address By

[1988 c 231 § 25; 1987 c 442 § 1010; 1981 c 193 § 4; 1969 ex.s. c 264 § 11. Formerly RCW 7.33.110.]

Severability—1988 c 231: See note following RCW 6.01.050.

YOU ARE HEREBY COMMANDED, unless otherwise directed by the court or by this writ, not to pay any debt, whether earnings subject to this garnishment or any other debt, owed to the defendant at the time this writ was served and not to deliver, sell, or transfer, or recognize any sale or transfer of, any personal property or effects of the defendant in your possession or control at the time when this writ was served. Any such payment, delivery, sale, or transfer is void to the extent necessary to satisfy the plaintiff's claim and costs for this writ with interest.

YOU ARE FURTHER COMMANDED to answer this writ by filling in the attached form according to the instructions in this writ and in the answer forms and, within twenty days after the service of the writ upon you, to mail or deliver the original of such answer to the court, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant, in the envelopes provided.

If, at the time this writ was served, you owed the defendant any earnings (that is, wages, salary, commission, bonus, or other compensation for personal services or any periodic payments pursuant to a pension or retirement program), the defendant is entitled to receive amounts that are exempt from garnishment under federal and state law. You must pay the exempt amounts to the defendant on the day you would customarily pay the compensation or other periodic payment. As more fully explained in the answer, the basic exempt amount is the greater of seventy-five percent of disposable earnings or a minimum amount determined by reference to the employee's pay period, to be calculated as provided in the answer. However, if this writ carries a statement in the heading that "This garnishment is based on a judgment or court order for child support," the basic exempt amount is forty percent of disposable earnings.

If you owe the defendant a debt payable in money in excess of the amount set forth in the first paragraph of this writ, hold only the amount set forth in the first paragraph and release all additional funds or property to defendant.

YOUR FAILURE TO ANSWER THIS WRIT AS COMMANDED WILL RESULT IN A JUDGMENT BEING ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING INTERESTS AND COSTS WHETHER OR NOT YOU OWE ANYTHING TO THE DEFENDANT.

Witness, the Honorable, Judge of the Superior Court, and the seal thereof, this day of, 19. . .

[Seal]

.....
 Attorney for
 Plaintiff (or
 Plaintiff,
 if no attorney)

.....
 Clerk of
 Superior
 Court

6.27.110 Service of writ generally—Forms—Requirements for financial institution—Return. (1) Service of the writ of garnishment on the garnishee is invalid unless the writ is served together with: (a) Four answer forms as prescribed in RCW 6.27.190; (b) three stamped envelopes addressed respectively to the clerk of the court issuing the writ, the attorney for the plaintiff (or to the plaintiff if the plaintiff has no attorney), and the defendant; and (c) cash or a check made payable to the garnishee in the amount of ten dollars.

(2) Except as provided in RCW 6.27.080 for service on a bank, savings and loan association, or credit union, the writ of garnishment shall be mailed to the garnishee by certified mail, return receipt requested, addressed in the same manner as a summons in a civil action, and will be binding upon the garnishee on the day set forth on the return receipt. In the alternative, the writ shall be served by the sheriff of the county in which the garnishee lives or has its place of business or by any person qualified to serve process in the same manner as a summons in a civil action is served.

(3) If a writ of garnishment is served by a sheriff, the sheriff shall file with the clerk of the court that issued the writ a signed return showing the time, place, and manner of service and that the writ was accompanied by answer forms, addressed envelopes, and cash or a check as required by this section, and noting thereon fees for making the service. If service is made by any person other than a sheriff, such person shall file an affidavit including the same information and showing qualifications to make such service. If a writ of garnishment is served by mail, the person making the mailing shall file an affidavit showing the time, place, and manner of mailing and that the writ was accompanied by answer forms, addressed envelopes, and cash or a check as required by this section and shall attach the return receipt to the affidavit. [1988 c 231 § 26; 1987 c 442 § 1011; 1981 c 193 § 5; 1971 ex.s. c 292 § 8; 1970 ex.s. c 61 § 11; 1969 ex.s. c 264 § 13. Formerly RCW 7.33.130.]

Rules of court: Cf. SPR 91.04W(a), (b), and (e).

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

6.27.120 Effect of service of writ. (1) From and after the service of a writ of garnishment, it shall not be lawful, except as provided in this chapter or as directed by the court, for the garnishee to pay any debt owing to the defendant at the time of such service, or to deliver, sell or transfer, or recognize any sale or transfer of, any personal property or effects belonging to the defendant in the garnishee's possession or under the garnishee's control at the time of such service; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt,

personal property or effects as may be necessary to satisfy the plaintiff's demand.

(2) This section shall have no effect as to any portion of a debt that is exempt from garnishment.

(3) The garnishee shall incur no liability for releasing funds or property in excess of the amount stated in the writ of garnishment if the garnishee continues to hold an amount equal to the amount stated in the writ of garnishment. [1987 c 442 § 1012; 1969 ex.s. c 264 § 14. Formerly RCW 7.33.140.]

6.27.130 Mailing of writ and judgment or affidavit to judgment debtor—Mailing of notice and claim form if judgment debtor is an individual—Service—Return. (1) When a writ is issued under a judgment, on or before the date of service of the writ on the garnishee, the judgment creditor shall mail or cause to be mailed to the judgment debtor, by certified mail, addressed to the last known post office address of the judgment debtor, (a) a copy of the writ and a copy of the judgment or, if it is a district court judgment, a copy of the judgment creditor's affidavit submitted in application for the writ, and (b) if the judgment debtor is an individual, the notice and claim form prescribed in RCW 6.27.140. In the alternative, on or before the day of the service of the writ on the garnishee or within two days thereafter, the stated documents shall be served on the judgment debtor in the same manner as is required for personal service of summons upon a party to an action.

(2) The requirements of this section shall not be jurisdictional, but (a) no disbursement order or judgment against the garnishee defendant shall be entered unless there is on file the return or affidavit of service or mailing required by subsection (3) of this section, and (b) if the copies of the writ and judgment or affidavit, and the notice and claim form if the defendant is an individual, are not mailed or served as herein provided, or if any irregularity appears with respect to the mailing or service, the court, in its discretion, on motion of the judgment debtor promptly made and supported by affidavit showing that the judgment debtor has suffered substantial injury from the plaintiff's failure to mail or otherwise to serve such copies, may set aside the garnishment and award to the judgment debtor an amount equal to the damages suffered because of such failure.

(3) If the service on the judgment debtor is made by a sheriff, the sheriff shall file with the clerk of the court that issued the writ a signed return showing the time, place, and manner of service and that the copy of the writ was accompanied by a copy of a judgment or affidavit, and by a notice and claim form if required by this section, and shall note thereon fees for making such service. If service is made by any person other than a sheriff, such person shall file an affidavit including the same information and showing qualifications to make such service. If service on the judgment debtor is made by mail, the person making the mailing shall file an affidavit including the same information as required for return on service and, in addition, showing the address of the mailing and attaching the return receipt or the mailing should it be returned to the sender as undeliverable. [1988 c 231 § 27; 1987 c 442 § 1013; 1969 ex.s. c 264 § 32. Formerly RCW 7.33.320.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.140 Form of returns under RCW 6.27.130. (1) The notice required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

**NOTICE OF GARNISHMENT
AND OF YOUR RIGHTS**

A Writ of Garnishment issued by a Washington court has been or will be served on the garnishee named in the attached copy of the writ. After receipt of the writ, the garnishee is required to withhold payment of any money that was due to you and to withhold any other property of yours that the garnishee held or controlled. This notice of your rights is required by law.

YOU HAVE THE FOLLOWING EXEMPTION RIGHTS:

WAGES. If the garnishee is your employer who owes wages or other personal earnings to you, your employer is required to pay amounts to you that are exempt under state and federal laws, as explained in the writ of garnishment. You should receive a copy of your employer's answer, which will show how the exempt amount was calculated. If the garnishment is for child support, the exempt amount paid to you will be forty percent of wages due you, but if you are supporting a spouse or dependent child, you are entitled to claim an additional ten percent as exempt.

BANK ACCOUNTS. If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits such as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Social Security, veterans' benefits, unemployment compensation, or a United States pension, you may claim the account as fully exempt if you have deposited only such benefit funds in the account. It may be partially exempt even though you have deposited money from other sources in the same account. An exemption is also available under RCW 26.16.200, providing that funds in a community bank account that can be identified as the earnings of a stepparent are exempt from a garnishment on the child support obligation of the parent.

OTHER EXEMPTIONS. If the garnishee holds other property of yours, some or all of it may be exempt under RCW 6.15.010, a Washington statute that exempts up to five hundred dollars of property of your choice (including up to one hundred dollars in cash or in a bank account) and certain property such as household furnishings, tools of trade, and a motor vehicle (all limited by differing dollar values).

HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and mail or deliver it as

described in instructions on the claim form. If the plaintiff does not object to your claim, the funds or other property that you have claimed as exempt must be released not later than 10 days after the plaintiff receives your claim form. If the plaintiff objects, the law requires a hearing not later than 14 days after the plaintiff receives your claim form, and notice of the objection and hearing date will be mailed to you at the address that you put on the claim form.

THE LAW ALSO PROVIDES OTHER EXEMPTION RIGHTS. IF NECESSARY, AN ATTORNEY CAN ASSIST YOU TO ASSERT THESE AND OTHER RIGHTS, BUT YOU MUST ACT IMMEDIATELY TO AVOID LOSS OF RIGHTS BY DELAY.

(2) The claim form required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

[Caption to be filled in by judgment creditor or plaintiff before mailing.]

Name of Court

No.

Plaintiff,

vs.

Defendant,

EXEMPTION CLAIM

Garnishee Defendant

INSTRUCTIONS:

- 1. Read this whole form after reading the enclosed notice. Then put an X in the box or boxes that describe your exemption claim or claims and write in the necessary information on the blank lines.
2. Make two copies of the completed form. Deliver the original form by first class mail or in person to the clerk of the court, whose address is shown at the bottom of the writ of garnishment. Deliver one of the copies by first class mail or in person to the plaintiff or plaintiff's attorney, whose name and address are shown at the bottom of the writ. Keep the other copy. YOU SHOULD DO THIS AS QUICKLY AS POSSIBLE, BUT NO LATER THAN 28 DAYS (4 WEEKS) AFTER THE DATE ON THE WRIT.

I/We claim the following money or property as exempt:

IF BANK-ACCOUNT IS GARNISHED:

- [] The account contains payments from:
[] AFDC, SSI, or other public assistance. I receive \$. . . . monthly.
[] Social Security. I receive \$. . . . monthly.
[] Veterans' Benefits. I receive \$. . . . monthly.

- [] U.S. Government Pension. I receive \$. . . . monthly.
[] Unemployment Compensation. I receive \$. . . . monthly.
[] Child support. I receive \$. . . . monthly.
[] Other. Explain

IF EXEMPTION IN BANK ACCOUNT IS CLAIMED, ANSWER ONE OR BOTH OF THE FOLLOWING:

- [] No money other than from above payments are in the account.
[] Moneys in addition to the above payments have been deposited in the account. Explain

IF EARNINGS ARE GARNISHED FOR CHILD SUPPORT:

- [] I claim maximum exemption.
[] I am supporting another child or other children.
[] I am supporting a husband or a wife.

IF PENSION OR RETIREMENT BENEFITS ARE GARNISHED:

- [] Name and address of employer who is paying the benefits:

OTHER PROPERTY:

- [] Describe property
(If you claim other personal property as exempt, you must attach a list of all other personal property that you own.)

Print: Your name

If married, name of husband/wife

Your signature

Signature of husband or wife

Address

Address (if different from yours)

Telephone number

Telephone number (if different from yours)

CAUTION: If the plaintiff objects to your claim, you will have to go to court and give proof of your claim. For example, if you claim that a bank account is exempt, you may have to show the judge your bank statements and papers that show the source of the money you deposited in the bank. Your claim may be granted more quickly if you attach copies of such proof to your claim.

IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU DID NOT MAKE THE CLAIM IN GOOD FAITH, HE OR SHE MAY

DECIDE THAT YOU MUST PAY THE PLAINTIFF'S ATTORNEY FEES.

[1987 c 442 § 1014.]

6.27.150 Exemption of earnings—Amount. (1) Except as provided in subsection (2) of this section, if the garnishee is an employer owing the defendant earnings, then for each week of such earnings, an amount shall be exempt from garnishment which is the greatest of the following:

(a) Thirty times the federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 of the United States Code in effect at the time the earnings are payable; or

(b) Seventy-five percent of the disposable earnings of the defendant.

(2) In the case of a garnishment based on a judgment or other court order for child support or court order for spousal maintenance, other than a mandatory wage assignment order pursuant to chapter 26.18 RCW, or a mandatory assignment of retirement benefits pursuant to chapter 41.50 RCW, the exemption shall be fifty percent of the disposable earnings of the defendant if the individual is supporting a spouse or dependent child (other than a spouse or child on whose behalf the garnishment is brought), or forty percent of the disposable earnings of the defendant if the individual is not supporting such a spouse or dependent child.

(3) The exemptions stated in this section shall apply whether such earnings are paid, or are to be paid, weekly, monthly, or at other intervals, and whether earnings are due the defendant for one week, a portion thereof, or for a longer period.

(4) Unless directed otherwise by the court, the garnishee shall determine and deduct exempt amounts under this section as directed in the writ of garnishment and answer, and shall pay these amounts to the defendant.

(5) No money due or earned as earnings as defined in RCW 6.27.010 shall be exempt from garnishment under the provisions of RCW 6.15.010, as now or hereafter amended. [1991 c 365 § 26; 1987 c 442 § 1015; 1981 c 193 § 6; 1971 c 6 § 1; 1970 ex.s. c 61 § 3; 1969 ex.s. c 264 § 28. Formerly RCW 7.33.280.]

Severability—1991 c 365: See note following RCW 41.50.500.

6.27.160 Claiming exemptions—Form—Hearing—Attorney's fees—Costs—Release of funds or property.

(1) A defendant may claim exemptions from garnishment in the manner specified by the statute that creates the exemption or by delivering to or mailing by first class mail to the clerk of the court out of which the writ was issued a declaration in substantially the following form or in the form set forth in RCW 6.27.140 and mailing a copy of the form by first class mail to the plaintiff or plaintiff's attorney at the address shown on the writ of garnishment, all not later than twenty-eight days after the date stated on the writ except that the time shall be extended to allow a declaration mailed or delivered to the clerk within twenty-one days after service of the writ on the garnishee if service on the garnishee is delayed more than seven days after the date of the writ.

[NAME OF COURT]

No.

Plaintiff

Defendant

Garnishee

CLAIM OF EXEMPTION

I/We claim the following described property or money as exempt from execution:

I/We believe the property is exempt because:

Print name

Print name of spouse, if married

Signature

Signature

Address

Address

Telephone number

Telephone number

(2) A plaintiff who wishes to object to an exemption claim must, not later than seven days after receipt of the claim, cause to be delivered or mailed to the defendant by first class mail, to the address shown on the exemption claim, a declaration by self, attorney, or agent, alleging the facts on which the objection is based, together with notice of date, time, and place of a hearing on the objection, which hearing the plaintiff must cause to be noted for a hearing date not later than fourteen days after the receipt of the claim. After a hearing on an objection to an exemption claim, the court shall award costs to the prevailing party and may also award an attorney's fee to the prevailing party if the court concludes that the exemption claim or the objection to the claim was not made in good faith.

(3) If the plaintiff elects not to object to the claim of exemption, the plaintiff shall, not later than ten days after receipt of the claim, obtain from the court and deliver to the garnishee an order directing the garnishee to release such part of the debt, property, or effects as is covered by the exemption claim. If the plaintiff fails to obtain and deliver the order as required or otherwise to effect release of the exempt funds or property, the defendant shall be entitled to recover fifty dollars from the plaintiff, in addition to actual damages suffered by the defendant from the failure to release the exempt property. [1988 c 231 § 28; 1987 c 442 § 1016.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.170 Garnished employee not to be discharged—Exception. No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to a writ of garnishment directed to the employer: PROVIDED, HOWEVER, That this provision shall not apply if garnishments on three or more separate indebtednesses are served upon the employer within any period of twelve consecutive months. [1987 c 442 § 1017; 1969 ex.s. c 264 § 16. Formerly RCW 7.33.160.]

6.27.175 Employee separated from employment due to wage garnishment not disqualified for unemployment compensation. See RCW 50.20.045.

6.27.180 Bond to discharge writ. If the defendant in the principal action causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the writ of garnishment or by the clerk of the court out of which the writ was issued, conditioned that the defendant will perform the judgment of the court, the writ of garnishment shall, upon the filing of said bond with the clerk, be immediately discharged, and all proceedings under the writ shall be vacated: PROVIDED, That the garnishee shall not be thereby deprived from recovering any costs in said proceeding, to which the garnishee would otherwise be entitled under this chapter. The bond shall be part of the record and, if judgment is against the defendant, it shall be entered against defendant and the sureties. [1988 c 231 § 29; 1987 c 442 § 1018; 1969 ex.s. c 264 § 17. Formerly RCW 7.33.170.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.190 Answer of garnishee—Contents—Forms. The answer of the garnishee shall be signed by the garnishee or attorney or if the garnishee is a corporation, by an officer, attorney or duly authorized agent of the garnishee, under penalty of perjury, and the original delivered, either personally or by mail, to the clerk of the court that issued the writ, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant. The answer shall be made on a form substantially as appears in this section, served on the garnishee with the writ, with minimum exemption amounts for the different pay periods filled in by the plaintiff before service of the answer forms: PROVIDED, That, if the garnishment is for a continuing lien, the answer forms shall be as prescribed in RCW 6.27.340 and 6.27.350: AND PROVIDED FURTHER, That if the writ is not directed to an employer for the purpose of garnishing the defendant's wages, paragraphs relating to the earnings exemptions may be omitted.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

NO.
Plaintiff
vs.
ANSWER
TO WRIT OF
GARNISHMENT
Defendant
Garnishee Defendant

At the time of service of the writ of garnishment on the garnishee there was due and owing from the garnishee to the above-named defendant \$ (On the reverse side of this answer form, or on an attached page, give an explanation of the dollar amount stated, or give reasons why there is uncertainty about your answer.)

If the above amount or any part of it is for personal earnings (that is, compensation payable for personal services, whether called wages, salary, commission, bonus, or otherwise, and including periodic payments pursuant to a pension or retirement program): Garnishee has deducted from this amount \$ which is the exemption to which the defendant is entitled, leaving \$ that garnishee holds under the writ. The exempt amount is calculated as follows:

Table with 2 columns: Description and Amount. Rows include Total compensation due defendant, LESS deductions for social security and withholding taxes and any other deduction required by law, and Disposable earnings.

If the title of this writ indicates that this is a garnishment under a child support judgment, enter forty percent of disposable earnings: \$ This amount is exempt and must be paid to the defendant at the regular pay time.

If this is not a garnishment for child support, enter seventy-five percent of disposable earnings: \$ From the listing in the following paragraph, choose the amount for the relevant pay period and enter that amount: \$ (If amounts for more than one pay period are due, multiply the preceding amount by the number of pay periods and/or fraction of pay period for which amounts are due and enter that amount: \$) The greater of the amounts entered in this paragraph is the exempt amount and must be paid to the defendant at the regular pay time.

Minimum exempt amounts for different pay periods: Weekly \$; Biweekly \$; Semimonthly \$; Monthly \$

List all of the personal property or effects of defendant in the garnishee's possession or control when the writ was served. (Use the reverse side of this answer form or attach a schedule if necessary.)

An attorney may answer for the garnishee.

Under penalty of perjury, I affirm that I have examined this answer, including accompanying schedules, and to the best of my knowledge and belief it is true, correct, and complete.

Signature of Garnishee Defendant Date

.....
Signature of person
answering for Connection with
garnishee garnishee

.....
Address of Garnishee

[1988 c 231 § 30; 1987 c 442 § 1019; 1969 ex.s. c 264 § 15. Formerly RCW 7.33.150.]

Rules of court: Cf. *SPR 91.04W(c)*.
Severability—1988 c 231: See note following 6.01.050.

6.27.200 Default judgment—Reduction upon motion of garnishee—Attorney’s fees. If the garnishee fails to answer the writ within the time prescribed in the writ, after the time to answer the writ has expired and after required returns or affidavits have been filed, showing service on the garnishee and service on or mailing to the defendant, it shall be lawful for the court to render judgment by default against such garnishee, in accordance with rules relating to entry of default judgments, for the full amount claimed by the plaintiff against the defendant, or in case the plaintiff has a judgment against the defendant, for the full amount of the plaintiff’s unpaid judgment against the defendant with all accruing interest and costs as prescribed in RCW 6.27.090: PROVIDED, That upon motion by the garnishee at any time within seven days following service on, or mailing to, the garnishee defendant of a copy of a writ of execution or a writ of garnishment under such judgment, the judgment against the garnishee shall be reduced to the amount of any nonexempt funds or property which was actually in the possession of the garnishee at the time the writ was served, plus the cumulative amount of the nonexempt earnings subject to the lien provided for in RCW 6.27.350, or the sum of one hundred dollars, whichever is more, but in no event to exceed the full amount claimed by the plaintiff or the amount of the unpaid judgment against the principal defendant plus all accruing interest and costs and attorney’s fees as prescribed in RCW 6.27.090, and in addition the plaintiff shall be entitled to a reasonable attorney’s fee for the plaintiff’s response to the garnishee’s motion to reduce said judgment against the garnishee under this proviso and the court may allow additional attorney’s fees for other actions taken because of the garnishee’s failure to answer. [1988 c 231 § 31; 1987 c 442 § 1020; 1970 ex.s. c 61 § 10; 1969 ex.s. c 264 § 19. Formerly RCW 7.33.190.]

Rules of court: CR 55, JCR 55.
Severability—1988 c 231: See note following RCW 6.01.050.

6.27.210 Answer of garnishee may be controverted by plaintiff or defendant. If the garnishee files an answer, either the plaintiff or the defendant, if not satisfied with the answer of the garnishee, may controvert within twenty days after the filing of the answer, by filing an affidavit in writing signed by the controverting party or attorney or agent, stating that the affiant has good reason to believe and does believe that the answer of the garnishee is incorrect, stating in what particulars the affiant believes the same is incorrect. Copies of the affidavit shall be served on or mailed by first class

mail to the garnishee at the address indicated on the answer or, if no address is indicated, at the address to or at which the writ was mailed or served, and to the other party, at the address shown on the writ if the defendant controverts, or at the address to or at which the copy of the writ of garnishment was mailed or served on the defendant if the plaintiff controverts, unless otherwise directed in writing by the defendant or defendant’s attorney. [1987 c 442 § 1021; 1969 ex.s. c 264 § 24. Formerly RCW 7.33.240.]

6.27.220 Controversion—Procedure. If the answer of the garnishee is controverted, as provided in RCW 6.27.210, the garnishee may respond by affidavit of the garnishee, the garnishee’s attorney or agent, within twenty days of the filing of the controverting affidavit, with copies served on or mailed by first class mail to the plaintiff at the address shown on the writ and to the defendant as provided in RCW 6.27.210. Upon the expiration of the time for garnishee’s response, the matter may be noted by any party for hearing before a commissioner or presiding judge for a determination whether an issue is presented that requires a trial. If a trial is required, it shall be noted as in other cases, but no pleadings shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the reply of the plaintiff or defendant controverting such answer, unless otherwise ordered by the court. [1987 c 442 § 1022; 1969 ex.s. c 264 § 26. Formerly RCW 7.33.260.]

6.27.230 Controversion—Costs and attorney’s fees. Where the answer is controverted, the costs of the proceeding, including a reasonable compensation for attorney’s fees, shall be awarded to the prevailing party: PROVIDED, That no costs or attorney’s fees in such contest shall be taxable to the defendant in the event of a controversion by the plaintiff. [1987 c 442 § 1023; 1969 ex.s. c 264 § 29. Formerly RCW 7.33.290.]

6.27.240 Discharge of garnishee. If it appears from the answer of the garnishee that the garnishee was not indebted to the defendant when the writ of garnishment was served, and that the garnishee did not have possession or control of any personal property or effects of the defendant, and if an affidavit controverting the answer of the garnishee is not filed within twenty days of the filing of the answer, as provided in this chapter, the garnishee shall stand discharged without further action by the court or the garnishee and shall have no further liability. [1987 c 442 § 1024; 1969 ex.s. c 264 § 18. Formerly RCW 7.33.180.]

6.27.250 Judgment against garnishee—Procedure if debt not mature. (1) If it appears from the answer of the garnishee or if it is otherwise made to appear that the garnishee was indebted to the defendant in any amount, not exempt, when the writ of garnishment was served, and if the required return or affidavit showing service on or mailing to the defendant is on file, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount exceeds the amount of the plaintiff’s claim or judgment against the defendant with accruing interest and costs and attorney’s fees as prescribed

in RCW 6.27.090, in which case it shall be for the amount of such claim or judgment, with said interest, costs, and fees.

(2) If it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the hearing or trial on controversion or by stipulation of the parties that the garnishee is indebted to the principal defendant in any sum, but that such indebtedness is not matured and is not due and payable, and if the required return or affidavit showing service on or mailing to the defendant is on file, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, the date when such payment is to be made to be specified in the order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found due. In case the garnishee pays the sum at the time specified in the order, the payment shall operate as a discharge, otherwise judgment shall be entered against the garnishee for the amount of such indebtedness, which judgment shall have the same force and effect, and be enforced in the same manner as other judgments entered against garnishees as provided in this chapter. PROVIDED, That if judgment is rendered in favor of the principal defendant, or if any judgment rendered against the principal defendant is satisfied prior to the date of payment specified in an order of payment entered under this subsection, the garnishee shall not be required to make the payment, nor shall any judgment in such case be entered against the garnishee. [1988 c 231 § 32; 1987 c 442 § 1025; 1969 ex.s. c 264 § 20. Formerly RCW 7.33.200.]

Rules of court: Cf. *SPR 91.04W(d)*.

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.260 Execution on judgment against garnishee.

Execution may be issued on the judgment against the garnishee in the same manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing it to the clerk of the court from which the execution was issued; and, in cases where judgment has been rendered against the defendant, the amount made on the execution shall be applied to the satisfaction of the judgment, interest and costs against the defendant. In case judgment has not been rendered against the defendant at the time execution issued against the garnishee is returned, any amount made on the execution shall be paid to the clerk of the court from which the execution issued, who shall retain the same until judgment is rendered in the action between the plaintiff and defendant. In case judgment is rendered in favor of the plaintiff, the amount made on the execution against the garnishee shall be applied to the satisfaction of such judgment and the surplus, if any, shall be paid to the defendant. In case judgment is rendered in favor of the defendant, the amount made on the execution against the garnishee shall be paid to the defendant. [1987 c 442 § 1026; 1969 ex.s. c 264 § 21. Formerly RCW 7.33.210.]

6.27.270 Decree directing garnishee to deliver up effects—Disposition. If it appears from the garnishee's answer or otherwise that the garnishee had possession or control, when the writ was served, of any personal property or effects of the defendant liable to execution, and if the required return or affidavit showing service on or mailing to

the defendant is on file, the court shall render a decree requiring the garnishee to deliver up to the sheriff on demand, and after making arrangements with the sheriff as to time and place of delivery, such personal property or effects or so much of them as may be necessary to satisfy the plaintiff's claim. If a judgment has been rendered in favor of the plaintiff against the defendant, such personal property or effects may be sold in the same manner as any other property is sold upon an execution issued on said judgment. If judgment has not been rendered in the principal action, the sheriff shall retain possession of the personal property or effects until the rendition of judgment therein, and, if judgment is thereafter rendered in favor of the plaintiff, said personal property or effects, or sufficient of them to satisfy such judgment, may be sold in the same manner as other property is sold on execution, by virtue of an execution issued on the judgment in the principal action. If judgment is rendered in the action against the plaintiff and in favor of the defendant, such effects and personal property shall be returned to the defendant by the sheriff: PROVIDED, HOWEVER, That if such effects or personal property are of a perishable nature, or the interests of the parties will be subserved by making a sale thereof before judgment, the court may order a sale thereof by the sheriff in the same manner as sales upon execution are made, and the proceeds of such sale shall be paid to the clerk of the court that issued the writ, and the same disposition shall be made of the proceeds at the termination of the action as would have been made of the personal property or effects under the provisions of this section in case the sale had not been made. [1988 c 231 § 33; 1987 c 442 § 1027; 1969 ex.s. c 264 § 22. Formerly RCW 7.33.220.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.280 Procedure upon failure of garnishee to deliver. If the garnishee, adjudged to have effects or personal property of the defendant in possession or under control as provided in RCW 6.27.270, fails or refuses to deliver them to the sheriff on such demand, the officer shall immediately make return of such failure or refusal, whereupon, on motion of the plaintiff, the garnishee shall be cited to show cause why he or she should not be found in contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal, he or she shall be fined for such contempt and imprisoned until he or she shall deliver such personal property or effects. [1987 c 442 § 1028; 1969 ex.s. c 264 § 23. Formerly RCW 7.33.230.]

6.27.290 Similarity of names—Procedure. (1) If the garnishee in the answer states that the garnishee at the time of the service of the writ was indebted to or had possession or control of personal property or effects belonging to a person with a name the same as or similar to the name of the defendant, and stating the place of business or residence of said person, and that the garnishee does not know whether or not such person is the same person as the defendant, and prays the court to determine whether or not the person is the same person as the defendant, the court, before rendering judgment against the garnishee defendant as hereinbefore

provided, shall conduct a hearing to take proof as to the identity of said persons.

(2) Before the hearing on the question of identity, the plaintiff shall cause the court to issue a citation directed to the person identified in the garnishee's answer, commanding that person to appear before the court from which the citation is issued within ten days after the service of the same, and to answer on oath whether or not he or she is the same person as the defendant in said action. The citation shall be dated and attested in the same manner as a writ of garnishment and be delivered to the plaintiff or the plaintiff's attorney and shall be served in the same manner as a summons in a civil action is served.

(3) If the court finds after hearing that the persons are not the same, the garnishee shall be discharged and shall recover costs against the plaintiff. If the court finds that the persons are the same, it shall make the same kind of judgment as in other cases in which the garnishee is held upon the garnishee's answer, including provision for garnishee's costs.

(4) If the court finds after the hearing that the defendant or judgment debtor is the same person as the person identified in the garnishee's answer, it shall be sufficient answer to any claim of said person against the garnishee founded on any indebtedness of the garnishee or on the possession or control by the garnishee of any personal property or effects for the garnishee to show that the indebtedness was paid or the personal property or effects were delivered under the judgment of the court in accordance with the provisions in this chapter. [1987 c 442 § 1029; 1969 ex.s. c 264 § 33. Formerly RCW 7.33.330.]

6.27.300 Garnishee protected against claim of defendant. It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of the garnishee or on the possession or control by the garnishee of any personal property or effects, for the garnishee to show that such indebtedness was paid or such personal property or effects were delivered under the judgment of the court in accordance with this chapter. [1987 c 442 § 1030; 1969 ex.s. c 264 § 30. Formerly RCW 7.33.300.]

6.27.310 Dismissal of writ after one year—Notice—Exception. In all cases where it shall appear from the answer of the garnishee that the garnishee was indebted to the defendant when the writ of garnishment was served, no controversy is pending, there has been no discharge or judgment against the garnishee entered, and one year has passed since the filing of the answer of the garnishee, the court, after ten days' notice in writing to the plaintiff, shall enter an order dismissing the writ of garnishment and discharging the garnishee: PROVIDED, That this provision shall have no effect if the cause of action between plaintiff and defendant is pending on the trial calendar, or if any party files an affidavit that the action is still pending. [1987 c 442 § 1031; 1969 ex.s. c 264 § 27. Formerly RCW 7.33.270.]

6.27.320 Dismissal of garnishment upon satisfaction of judgment from other source—Duty of plaintiff—

Procedure—Penalty—Costs. In any case where garnishee has answered that it is holding funds or property belonging to defendant and plaintiff shall obtain satisfaction of his judgment from a source other than the garnishment, upon written demand of the defendant or the garnishee, it shall be the duty of plaintiff to obtain an order dismissing the garnishment and to serve it upon the garnishee within twenty days after demand or satisfaction of judgment, whichever shall be later. In the event of the failure of plaintiff to obtain and serve such an order, if garnishee continues to hold such funds or property, defendant shall be entitled to move for dismissal of the garnishment and shall further be entitled to a judgment against plaintiff of one hundred dollars plus defendant's costs and damages. Dismissal may be on ex parte motion of the plaintiff. [1969 ex.s. c 264 § 31. Formerly RCW 7.33.310.]

6.27.330 Continuing lien on earnings—Authorized.

A judgment creditor may obtain a continuing lien on earnings by a garnishment pursuant to RCW 6.27.340, 6.27.350, 6.27.360, and *7.33.390. [1987 c 442 § 1032; 1970 ex.s. c 61 § 5. Formerly RCW 7.33.350.]

*Reviser's note: RCW 7.33.390 was repealed by 1987 c 442. Language substantially similar to RCW 7.33.390 was added to RCW 6.27.350.

6.27.340 Continuing lien on earnings—Captions—Additions to writ and answer forms. (1) Service of a writ for a continuing lien shall comply fully with RCW 6.27.110.

(2) The caption of the writ shall be marked "CONTINUING LIEN ON EARNINGS" and the following additional paragraph shall be included in the writ form prescribed in RCW 6.27.100:

"THIS IS A WRIT FOR A CONTINUING LIEN. THE GARNISHEE SHALL HOLD the nonexempt portion of the defendant's earnings due at the time of service of this writ and shall also hold the defendant's nonexempt earnings that accrue through the last payroll period ending on or before SIXTY days after the date of service of this writ. HOWEVER, IF THE GARNISHEE IS PRESENTLY HOLDING THE NONEXEMPT PORTION OF THE DEFENDANT'S EARNINGS UNDER A PREVIOUSLY SERVED WRIT FOR A CONTINUING LIEN, THE GARNISHEE SHALL HOLD UNDER THIS WRIT only the defendant's nonexempt earnings that accrue from the date the previously served writ or writs terminate and through the last payroll period ending on or before sixty days after the date of termination of the previous writ or writs. IN EITHER CASE, THE GARNISHEE SHALL STOP WITHHOLDING WHEN THE SUM WITHHELD EQUALS THE AMOUNT STATED IN THIS WRIT OF GARNISHMENT."

(3) The answer forms served on an employer with the writ shall include in the caption, "ANSWER TO WRIT OF GARNISHMENT FOR CONTINUING LIEN ON EARNINGS," and the following paragraph shall be added as the first paragraph of the answer form prescribed in RCW 6.27.190:

"If you are withholding the defendant's nonexempt earnings under a previously served writ for a continuing lien, answer only this portion of this form and mail or deliver the forms as directed in the writ. Withhold from the defendant's future nonexempt earnings as directed in the writ, and a second set of answer forms will be forwarded to you later.

ANSWER: I am presently holding the defendant's nonexempt earnings under a previous writ served on that will terminate not later than, 19.

If you are NOT withholding the defendant's earnings under a previously served writ for a continuing lien, answer the following portion of this form and mail or deliver the forms as directed in the writ. A second set of answer forms will be forwarded to you later for subsequently withheld earnings."

(4) In the event plaintiff fails to comply with this section, employer may elect to treat the garnishment as one not creating a continuing lien. [1988 c 231 § 34; 1987 c 442 § 1033; 1970 ex.s. c 61 § 6. Formerly RCW 7.33.360.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.350 Continuing lien on earnings—When lien becomes effective—Termination—Second answer. (1) Where the garnishee's answer to a garnishment for a continuing lien reflects that the defendant is employed by the garnishee, the judgment or balance due thereon as reflected on the writ of garnishment shall become a lien on earnings due at the time of the effective date of the writ, as defined in this subsection, to the extent that they are not exempt from garnishment, and such lien shall continue as to subsequent nonexempt earnings until the total subject to the lien equals the amount stated on the writ of garnishment or until the expiration of the employer's payroll period ending on or before sixty days after the effective date of the writ, whichever occurs first, except that such lien on subsequent earnings shall terminate sooner if the employment relationship is terminated or if the underlying judgment is vacated, modified, or satisfied in full or if the writ is dismissed. The "effective date" of a writ is the date of service of the writ if there is no previously served writ; otherwise, it is the date of termination of a previously served writ or writs.

(2) At the time of the expected termination of the lien, the plaintiff shall mail to the garnishee cash or a check made payable to the garnishee in the amount of ten dollars, three additional stamped envelopes addressed as provided in RCW 6.27.110, and four additional copies of the answer form prescribed in RCW 6.27.190, (a) with a statement in substantially the following form added as the first paragraph: "ANSWER THE SECOND PART OF THIS FORM WITH RESPECT TO THE TOTAL AMOUNT OF EARNINGS WITHHELD UNDER THIS GARNISHMENT, INCLUDING THE AMOUNT, IF ANY, STATED IN YOUR FIRST ANSWER, AND WITHIN TWENTY DAYS AFTER YOU RECEIVE THESE FORMS, MAIL OR DELIVER THEM AS DIRECTED IN THE WRIT" and (b) with the following

lines substituted for the first sentence of the form prescribed in RCW 6.27.190:

Amount due and owing stated in first answer \$.
Amount accrued since first answer \$.

(3) Within twenty days of receipt of the second answer form the garnishee shall file a second answer, in the form as provided in subsection (2) of this section, stating the total amount held subject to the garnishment. [1988 c 231 § 35; 1987 c 442 § 1034; 1970 ex.s. c 61 § 7. Formerly RCW 7.33.370.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.360 Continuing lien on earnings—Priorities—Exceptions. (1) Except as provided in subsection (2) of this section, a lien obtained under RCW 6.27.350 shall have priority over any subsequent garnishment lien or wage assignment except that service of a writ shall not be effective to create a continuing lien with such priority if a writ in the same case is pending at the time of the service of the new writ.

(2) A lien obtained under RCW 6.27.350 shall not have priority over a notice of payroll deduction issued under RCW 26.23.060 or a wage assignment or other garnishment for child support issued under chapters 26.18 and 74.20A RCW. [1989 c 360 § 20; 1987 c 442 § 1035; 1970 ex.s. c 61 § 8. Formerly RCW 7.33.380.]

Chapter 6.28

COMMISSIONERS TO CONVEY REAL ESTATE

Sections

- 6.28.010 Court may appoint, when.
- 6.28.020 Contents of deed.
- 6.28.030 Effect of conveyance pursuant to judgment.
- 6.28.040 Effect of conveyance pursuant to order of sale.
- 6.28.050 Approval of court necessary.
- 6.28.060 Execution of conveyance.
- 6.28.070 Recording.
- 6.28.080 Compelling performance.

Rules of court: Cf. CR 70.

6.28.010 Court may appoint, when. The several superior courts may, whenever it is necessary, appoint a commissioner to convey real estate:

(1) When by a judgment in an action, a party is ordered to convey real property to another, or any interest therein.

(2) When real property, or any interest therein, has been sold under a special order of the court and the purchase money paid therefor. [Code 1881 § 528; 1877 p 111 § 532; 1854 p 205 § 390; RRS § 605.]

6.28.020 Contents of deed. The deed of the commissioner shall so refer to the judgment authorizing the conveyance, that the same may be readily found, but need not recite the record in the case generally. [Code 1881 § 529; 1877 p 112 § 533; 1854 p 205 § 391; RRS § 606.]

6.28.030 Effect of conveyance pursuant to judgment. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey

the land. [Code 1881 § 530; 1877 p 112 § 534; 1854 p 205 § 392; RRS § 607.]

6.28.040 Effect of conveyance pursuant to order of sale. A conveyance made in pursuance of a sale ordered by the court, shall pass to the grantee the title of all the parties to the action or proceeding. [Code 1881 § 531; 1877 p 112 § 535; 1854 p 205 § 393; RRS § 608.]

6.28.050 Approval of court necessary. A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be indorsed on the conveyance and recorded with it. [Code 1881 § 532; 1877 p 112 § 536; 1854 p 205 § 394; RRS § 609.]

6.28.060 Execution of conveyance. It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the name of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance. [Code 1881 § 533; 1877 p 112 § 537; 1854 p 205 § 395; RRS § 610.]

6.28.070 Recording. The conveyance shall be recorded in the office in which by law it should have been recorded had it been made by the parties whose title is conveyed by it. [Code 1881 § 534; 1877 p 112 § 538; 1854 p 205 § 396; RRS § 611.]

6.28.080 Compelling performance. In case of a judgment to compel a party to execute a conveyance of real estate, the court may enforce the judgment by attachment or sequestration, or appoint a commissioner to make the conveyance. [Code 1881 § 535; 1877 p 112 § 539; 1854 p 205 § 397; RRS § 612.]

Chapter 6.32

PROCEEDINGS SUPPLEMENTAL TO EXECUTION

Sections

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6.32.210	Proceedings in case of joint debtors.
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6.32.250	Property exempt from seizure.
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6.32.280	Fee of referee.
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6.32.300	Effect on pending supplemental proceedings.
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6.32.330	Property vested in receiver.
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6.32.350	Book of orders to be kept by clerk.

Rules of court: Cf. CR 69(b).

6.32.010 Order for examination of judgment debtor—Plaintiff entitled to costs—Additional fees if debtor fails to answer or appear. At any time within ten years after entry of a judgment for the sum of twenty-five dollars or over upon application by the judgment creditor, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before the judge granting the order, or a referee appointed by him, to answer concerning the same; and the judge to whom application is made under this chapter may, if it is made to appear to him by the affidavit of the judgment creditor, his agent or attorney that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before the judge granting the order. Upon being brought before the judge he may be ordered to enter into a bond, with sufficient sureties, that he will attend from time to time before the judge or referee, as shall be directed, during the pendency of the proceedings and until the final termination thereof. If the judgment debtor or other persons against whom the special proceedings are instituted has been served with these proceedings, the plaintiff shall be entitled to costs of service, notary fees, and an appearance fee of twenty-five dollars. If the judgment debtor or other persons fail to answer or appear, the plaintiff shall additionally be entitled to reasonable attorney fees. If a plaintiff institutes special proceedings and fails to appear, a judgment debtor or other person against whom the proceeding was instituted who appears is entitled to an appearance fee of twenty-five dollars and reasonable attorney fees. [1985 c 215 § 1; 1983 1st ex.s. c 45 § 6; 1980 c 105 § 5; 1971 ex.s. c 211 § 1; 1957 c 8 § 7; 1899 c 93 § 1; 1893 c 133 § 1; RRS § 613.]

Application—1980 c 105: See note following RCW 4.16.020.

6.32.015 Order to require judgment debtor to answer interrogatories. At any time within ten years, after entry of a judgment for a sum of twenty-five dollars or over, upon application by the judgment creditor, such court or judge may by order served on the judgment debtor require such debtor to answer written interrogatories, under oath, in such form as may be approved by the court. No such creditor shall be required to proceed under this section nor shall he waive his rights to proceed under RCW 6.32.010 by proceeding under this section. [1980 c 105 § 6; 1971 ex.s. c 211 § 2.]

Application—1980 c 105: See note following RCW 4.16.020.

6.32.020 Warrant, how vacated. A warrant issued as prescribed in RCW 6.32.010 may be vacated or modified by the judge making the same, or by the court out of which the execution was issued, upon giving three days' notice to the opposite party. [1893 c 133 § 2; RRS § 614.]

6.32.030 Third parties may be brought in for examination. Any person may be made a party to a supplemental proceeding by service of a like order in like manner as that required to be served upon the judgment debtor, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that execution has been issued and return made thereon wholly or partially unsatisfied, and also that any person or corporation has personal property of the judgment debtor of the value of twenty-five dollars or over, or is indebted to him in said amount, or is holding the title to real estate for the judgment debtor, or has knowledge concerning the property interests of the judgment debtor, the judge may make an order requiring such person or corporation, or an officer thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same. [1923 c 160 § 1; 1893 c 133 § 3; RRS § 615.]

6.32.040 Before whom examined. An order requiring a person to attend and be examined, made pursuant to any provision of this chapter, must require him so to attend and be examined either before the judge to whom the order is returnable or before a referee designated therein. Where the examination is taken before a referee, he must certify to the judge to whom the order is returnable all of the evidence and other proceedings taken before him. [1893 c 133 § 4; RRS § 616.]

6.32.050 Procedure on examination. Upon an examination made under this chapter, the answer of the party or witness examined must be under oath. A corporation must attend by and answer under the oath of an officer thereof, and the judge may, in his discretion, specify the officer. Either party may be examined as a witness in his own behalf, and may produce and examine other witnesses as upon the trial of an action. The judge or referee may adjourn any proceedings under this chapter, from time to time, as he thinks proper. [1893 c 133 § 5; RRS § 617.]

6.32.060 Referee's oath. Unless the parties expressly waive the referee's oath, a referee appointed as prescribed in this chapter must, before entering upon an examination or taking testimony, subscribe and take an oath that he will faithfully and fairly discharge his duty upon the reference, and make a just and true report according to the best of his understanding. The oath must be returned to the judge with the report of the testimony. [1893 c 133 § 6; RRS § 618.]

6.32.070 Order authorizing payment by debtor of judgment debtor. At any time after the commencement of a special proceeding authorized by this chapter, and before the appointment of a receiver therein, or the extension of a receivership thereto, the judge by whom the order or warrant was granted or to whom it is made returnable, may in his discretion upon proof by affidavit to his satisfaction that a

person or corporation is indebted to the judgment debtor, and upon such notice given to such person or corporation as he deems just, or without notice make an order permitting the person or corporation to pay the sheriff designated in the order a sum on account of the alleged indebtedness not exceeding the sum which will satisfy the execution. A payment thus made is to the extent thereof a discharge of the indebtedness except as against a transferee from the judgment debtor in good faith, and for a valuable consideration, of whose rights the person or corporation had actual or constructive notice when the payment was made. [1893 c 133 § 7; RRS § 619.]

6.32.080 Order requiring delivery of money or property to sheriff. Where it appears from the examination or testimony taken in the special proceedings authorized by this chapter that the judgment debtor has in his possession or under his control money or other personal property belonging to him, or that one or more articles of personal property capable of manual delivery, his right to the possession whereof is not substantially disputed, are in the possession or under the control of another person, the judge by whom the order or warrant was granted, or to whom it is returnable, may in his discretion, and upon such notice given to such persons as he deems just, or without notice, make an order directing the judgment debtor, or other person, immediately to pay the money or deliver the articles of personal property to a sheriff designated in the order, unless a receiver has been appointed or a receivership has been extended to the special proceedings, and in that case to the receiver. [1893 c 133 § 8; RRS § 620.]

6.32.085 Order charging partnership interest or directing sale. If it appears from the examination or testimony taken in the special proceedings authorized by this chapter that the judgment debtor owns an interest in a partnership, the judge who granted the order or warrant or to whom it is returnable may in his or her discretion, upon such notice to other partners as the judge deems just, and to the extent permitted by Title 25 RCW, (1) enter an order charging the partnership interest with payment of the judgment, directing that all or any part of distributions or other amounts becoming due to the judgment debtor, other than earnings as defined in RCW 6.27.010, be paid to a receiver if one has been appointed, otherwise to the clerk of the court that entered the judgment, for application to payment of the judgment in the same manner as proceeds from sale on execution and, in aid of the charging order, the court may make such other orders as a case requires, or (2) enter an order directing sale of the partnership interest in the same manner as personal property is sold on execution. [1987 c 442 § 1114.]

6.32.090 Powers of sheriff. If the sheriff to whom money is paid or other property is delivered, pursuant to an order made as prescribed in RCW 6.32.080, does not then hold an execution upon the judgment against the property of the judgment debtor, he has the same rights and power, and is subject to the same duties and liabilities with respect to the money or property, as if the money had been collected or the property had been levied upon by him by virtue of

such an execution, except as provided in RCW 6.32.100. [1893 c 133 § 9; RRS § 621.]

6.32.100 How money or property applied by sheriff.

After a receiver has been appointed or a receivership has been extended to the special proceedings, the judge must, by order, direct the sheriff to pay the money, or the proceeds of the property, deducting his fees, to the receiver; or if the case so requires to deliver to the receiver the property in his hands. But if it appears to the satisfaction of the judge that an order appointing a receiver or extending a receivership is not necessary, he may, by an order reciting that fact, direct the sheriff to apply the money so paid, or the proceeds of the property so delivered, upon an execution in favor of the judgment creditor issued either before or after the payment or delivery to the sheriff. [1893 c 133 § 10; RRS § 622.]

6.32.110 Disposition of balance after judgment satisfied. Where money is paid or property is delivered as prescribed in RCW 6.32.070, 6.32.080, 6.32.090 and 6.32.100 and afterwards the special proceeding is discontinued or dismissed, or the judgment is satisfied without resorting to the money or property, or a balance of the money or of the proceeds of the property, or a part of the property remains in the sheriff's or receiver's hands after satisfying the judgment and the costs and expenses of the special proceeding, the judge must make an order directing the sheriff or receiver to pay the money or deliver the property so remaining in his hands to the debtor, or to such other person as appears to be entitled thereto, upon payment of his fees and all other sums legally chargeable against the same. [1893 c 133 § 11; RRS § 623.]

6.32.120 Transfer of property may be enjoined.

The judge by whom the order or warrant was granted or to whom it is returnable may make an injunction order restraining any person or corporation, whether a party or not a party to the special proceeding, from making or suffering any transfer or other disposition of or interference with the property of the judgment debtor or the property or debt concerning which any person is required to attend and be examined, until further direction in the premises. Such an injunction may be made simultaneously with the order or warrant by which the special proceeding is instituted, and upon the same papers or afterwards, upon an affidavit showing sufficient grounds therefor. The judge or court may, as a condition of granting an application to vacate or modify the injunction order require the applicant to give security in such sum and in such manner as justice requires. [1893 c 133 § 12; RRS § 624.]

6.32.130 Service of orders. An injunction order or an order requiring a person to attend and be examined made as prescribed in this chapter must be served,—

(1) By delivering to the person to be served a certified copy of the original order and a copy of the affidavit on which it was made;

(2) Service upon a corporation is sufficient if made upon an officer, to whom a copy of a summons must be delivered. Where an order is personally served upon a corporation, unless the officer to be served is specially

designated in the order, the order may be served upon any person upon whom a summons can be served. [1925 ex.s. c 38 § 1; 1893 c 133 § 13; RRS § 625.]

6.32.140 Service of warrant. The sheriff, when he arrests a judgment debtor by virtue of a warrant issued as prescribed in this chapter, must deliver to him a copy of the warrant and of the affidavit upon which it was granted. [1893 c 133 § 14; RRS § 626.]

6.32.150 Discontinuance or dismissal of proceedings. A special proceeding instituted as prescribed in this chapter may be discontinued at any time upon such terms as justice requires, by an order of the judge made upon the application of the judgment creditor. Where the judgment creditor unreasonably delays or neglects to proceed, or where it appears that his judgment has been satisfied, his proceedings may be dismissed upon like terms by a like order made upon the application of the judgment debtor, or of plaintiff in a judgment creditor's action against the debtor, or of a judgment creditor who has instituted either of the special proceedings authorized by this chapter. Where an order appointing a receiver or extending a receivership has been made in the course of the special proceeding, notice of the application for an order specified in this section must be given in such manner as the judge deems proper, to all persons interested in the receivership as far as they can conveniently be ascertained. [1893 c 133 § 15; RRS § 627.]

6.32.160 Costs to judgment creditor. The judge may make an order allowing to the judgment creditor a fixed sum as costs, consisting of his witness fees and referee's fees and other disbursements, and of a sum in addition thereto not exceeding twenty-five dollars, and directing the payment thereof out of any money which has come or may come to the hands of the receiver or of the sheriff within a time specified in the order. [1893 c 133 § 16; RRS § 628.]

6.32.170 Costs to judgment debtor, when. Where the judgment debtor or other person against whom the special proceeding is instituted has been examined, and property applicable to the payment of the judgment has not been discovered, the judge may make an order allowing him a sum, not to exceed twenty-five dollars, as costs, provided that any such sum so allowed the judgment debtor, shall be set off against the amount due the judgment creditor on his judgment. [1923 c 160 § 2; 1893 c 133 § 17; RRS § 629.]

6.32.180 Disobedience of order punishable as contempt. A person who refuses, or without sufficient excuse neglects, to obey an order of a judge or referee made pursuant to any of the provisions of this chapter, and duly served upon him, or an oral direction given directly to him by a judge or referee in the course of the special proceeding, or to attend before a judge or referee according to the command of a subpoena duly served upon him, may be punished by the judge of the court out of which the execution issued, as for contempt. [1893 c 133 § 18; RRS § 630.]

6.32.190 Attendance of judgment debtor. A judgment debtor who resides or does business in the state cannot be compelled to attend pursuant to an order made under the provisions of this chapter at a place without the county where his residence or place of business is situated. Where the judgment debtor to be examined under this chapter is a corporation the court may cause such corporation to appear and be examined by making like order or orders as are prescribed in this chapter, directed to any officer or officers thereof. [1893 c 133 § 19; RRS § 631.]

6.32.200 Party or witness not excused from answering. A party or witness examined in a special proceeding authorized by this chapter is not excused from answering a question on the ground that his examination will tend to convict him of a commission of a fraud, or to prove that he has been a party to or privy to or knowing of a conveyance, assignment, transfer or other disposition of property for any purpose; or that he or another person claims to be entitled as against the judgment creditor or receiver appointed or to be appointed in the special proceeding to hold property derived from or through the judgment debtor, or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in his behalf. But an answer cannot be used as evidence against the person so answering in a criminal action or criminal proceeding. [1893 c 133 § 20; RRS § 632.]

6.32.210 Proceedings in case of joint debtors. When, in proceedings under this chapter, personal service of the summons in the action was not made on all of the defendants, a debt due to, or other personal property owned by, one or more of the defendants not summoned jointly with the defendants summoned, or with any of them, may be reached by proceedings under this chapter. [1893 c 133 § 21; RRS § 633.]

6.32.220 Continuances. A special proceeding under this chapter instituted before one judge may be continued from time to time before another judge of the same court with like effect as if it had been instituted or commenced before the judge who last heard the same. [1893 c 133 § 22; RRS § 634.]

6.32.240 Proceedings, before whom instituted. Special proceedings under this chapter may be instituted and prosecuted before the superior or district court of the county in which the judgment was entered or any judge thereof, or before the superior or district court of any county to the sheriff of which an execution has been issued or in which a transcript of said judgment has been filed in the office of the clerk of said court or before any judge thereof. [1981 c 193 § 2; 1899 c 93 § 2; 1893 c 133 § 24; RRS § 636.]

6.32.250 Property exempt from seizure. This chapter does not authorize the seizure of, or other interference with, (1) any property which is expressly exempt by law from levy and sale by virtue of an execution, attachment, or garnishment; or (2) any money, thing in action or other property held in trust for a judgment debtor where the trust has been created by, or the fund so held in trust has

proceeded from, a person other than the judgment debtor; or (3) the earnings of the judgment debtor for personal services to the extent they would be exempt against garnishment of the employer under RCW 6.27.150. [1987 c 442 § 1115; 1893 c 133 § 25; RRS § 637.]

Trust income is subject to execution in certain cases notwithstanding RCW 6.32.250: RCW 11.96.150.

6.32.260 Proceedings to be heard without jury. Proceedings under this chapter are special proceedings, and shall be heard by the judge or referee before whom the same are returnable without a jury, except as provided in RCW 6.32.270. [1923 c 160 § 3; 1893 c 133 § 26; RRS § 638.]

6.32.270 Adjudication of title to property—Jury trial. In any supplemental proceeding, where it appears to the court that a judgment debtor may have an interest in or title to any real property, and such interest or title is disclaimed by the judgment debtor or disputed by another person, or it appears that the judgment debtor may own or have a right of possession to any personal property, and such ownership or right of possession is substantially disputed by another person, the court may, if the person or persons claiming adversely be a party to the proceeding, adjudicate the respective interests of the parties in such real or personal property, and may determine such property to be wholly or in part the property of the judgment debtor. If the person claiming adversely to the judgment debtor be not a party to the proceeding, the court shall by show cause order or otherwise cause such person to be brought in and made a party thereto, and shall set such proceeding for hearing on the first open date in the trial calendar. Any person so made a party, or any party to the original proceeding, may have such issue determined by a jury upon demand therefor and payment of a jury fee as in other civil actions: PROVIDED, That such person would be entitled to a jury trial if the matter was adjudicated in a separate action. [1923 c 160 § 4; RRS § 638-1.]

6.32.280 Fee of referee. The fees of referees appointed in proceedings under this chapter shall be five dollars per day. [1893 c 133 § 27; RRS § 639.]

6.32.290 Appointment of receiver—Notice. At any time after making an order requiring the judgment debtor or any other person to attend and be examined, or the issuing of a warrant, as prescribed in this chapter, the judge to whom the order or warrant is returnable, or the court out of which the order was issued, may make an order appointing a receiver of the property of the judgment debtor. At least two days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor, unless the judge or court is satisfied that he cannot, with reasonable diligence, be found within the state, in which case the order must recite that fact and may dispense with the notice, or may direct notice to be given in any manner which the judge thinks proper. But where the order to attend and be examined or the warrant has been served upon the judgment debtor, a receiver may be appointed upon the return day thereof, or at the close of the examination,

without further notice to him. [1893 c 133 § 28; RRS § 640.]

Rules of court: CR 66.

6.32.300 Effect on pending supplemental proceedings. The judge must ascertain, if practicable, by the oath of the judgment debtor or otherwise, whether any other special proceeding authorized by this chapter is pending against the judgment debtor, or if a receiver has been appointed or application has been made for the appointment of a receiver of the property of the judgment debtor in any other action by a judgment creditor. If either is pending, and a receiver has not been appointed therein, notice of the application for the appointment of a receiver, and of all of the subsequent proceedings respecting the receivership, must be given in such manner as the judge directs to the judgment creditor prosecuting it. [1893 c 133 § 29; RRS § 641.]

6.32.310 Only one receiver may be appointed—Extending receivership. Only one receiver of the property of the judgment debtor shall be appointed. Where a receiver thereof has already been appointed the judge, instead of making the order prescribed in RCW 6.32.300, must make an order extending the receivership to the special proceedings before him. Such an order gives to the judgment creditor the same rights as if a receiver was appointed upon his application, including the right to apply to the court to control, direct or remove the receiver, or to subordinate the proceedings in or by which the receiver was appointed to those taken under his judgment. [1893 c 133 § 30; RRS § 642.]

6.32.320 Order, where to be filed. An order appointing a receiver or extending a receivership must be filed in the office of the county clerk wherein the judgment roll in the action is filed; or if the special proceeding is founded upon an execution issued out of a court other than that in which the judgment was rendered, in the office of the clerk of the county wherein the transcript of the judgment is filed. [1893 c 133 § 31; RRS § 643.]

6.32.330 Property vested in receiver. The property of the judgment debtor is vested in a receiver, who has duly qualified, from the time of filing the order appointing him or extending his receivership, as the case may be, subject to the following exceptions:

(1) Real property is vested in the receiver only from the time when the order, or a certified copy thereof, as the case may be, is filed with the auditor of the county where it is situated.

(2) When the judgment debtor, at the time when the order is filed, resides in another county of the state, his personal property is vested in the receiver only from the time when a copy of the order, certified by the auditor in whose office it is recorded, is filed with the auditor of the county where he resides. [1893 c 133 § 32; RRS § 644.]

6.32.340 Receiver's title extends back by relation. Where the receiver's title to personal property has become vested, as prescribed in RCW 6.32.330, it also extends back

by relation, for the benefit of the judgment creditor, in whose behalf the special proceeding was instituted as follows:

(1) When an order requiring the judgment debtor to attend and be examined, or a warrant requiring the sheriff to arrest him and bring him before the judge, has been served, before the appointment of the receiver, or the extension of the receivership, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or warrant.

(2) Where an order or warrant has not been served as specified in the foregoing subdivision, but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor, which was in the hands or under the control of the person or corporation thus required to attend at the time of the service of the order, and to a debt then due to him from that person or corporation.

(3) In every other case where notice of application for the appointment of a receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements of an order prescribing a substitute for personal service.

(4) Where the case is within two or more of the foregoing subdivisions of this section, the rule most favorable to the judgment creditor must be adopted. But this section does not affect the title of a purchaser in good faith without notice, and for a valuable consideration; or the payment of a debt in good faith and without notice. [1893 c 133 § 33; RRS § 645.]

6.32.350 Book of orders to be kept by clerk. Each county clerk must keep in his office a book indexed to the names of the judgment debtors, styled "book of orders appointing receivers of judgment debtors." A county clerk in whose office an order or a certified copy of an order is filed, as prescribed in this chapter, must immediately note thereupon the time of filing it, and as soon as practicable, must record it in the book so kept by him. He must also, upon request, furnish forthwith to any party or person interested, one or more certified copies thereof. For each omission to comply with any provision of this section, a county clerk forfeits to the party aggrieved two hundred and fifty dollars, in addition to all damages sustained by reason of the omission. [1893 c 133 § 34; RRS § 646.]

Chapter 6.36

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Sections	
6.36.010	Definitions.
6.36.025	Filing of foreign judgment—Authorized—Effect.
6.36.035	Affidavit of last address of judgment debtor, creditor— Filing—Notice of filing of judgment—Contents—Effect.
6.36.045	Effect of appeal from or stay of execution of foreign judgment—Grounds for stay of enforcement.
6.36.130	Sale under levy.
6.36.140	Interest and costs.

- 6.36.150 Satisfaction of judgment.
 6.36.160 Optional procedure.
 6.36.900 Construction—1953 c 191.
 6.36.910 Short title.

Rules of court: Cf. CR 69(a).

Foreign judgments for debt, faith accorded: RCW 5.44.020.

Uniform judicial notice of foreign laws act: Chapter 5.24 RCW.

6.36.010 Definitions. As used in this chapter: (1) "Foreign judgment" means any judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state.

(2) "Register" means to file a foreign judgment in a court of this state.

(3) "Levy" means to take control of or create a lien upon property under any judicial writ or process whereby satisfaction of a judgment may be enforced against such property.

(4) "Judgment debtor" means the party against whom a foreign judgment has been rendered. [1953 c 191 § 1.]

6.36.025 Filing of foreign judgment—Authorized—Effect. A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of any superior court of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the superior court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, set-offs, counterclaims, cross-complaints, and proceedings for reopening, vacating, or staying as a judgment of a superior court of this state and may be enforced or satisfied in like manner. [1977 ex.s. c 45 § 1.]

6.36.035 Affidavit of last address of judgment debtor, creditor—Filing—Notice of filing of judgment—Contents—Effect. (1) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer if any in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until ten days after the date the judgment is filed or until ten days after mailing the notice of filing, whether mailed by the clerk or judgment creditor, whichever is later. [1979 c 97 § 1; 1977 ex.s. c 45 § 2.]

6.36.045 Effect of appeal from or stay of execution of foreign judgment—Grounds for stay of enforcement.

(1) If the judgment debtor shows the superior court of any county that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the superior court of any county any ground upon which enforcement of a judgment of a superior court of any county of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state. [1977 ex.s. c 45 § 3.]

6.36.130 Sale under levy. Sale under the levy may be held at any time after final judgment, either personal or QUASI IN REM, but not earlier except as otherwise provided by law for sale under levy on perishable goods. Sale and distribution of the proceeds shall be made in accordance with the law of this state. [1953 c 191 § 13.]

6.36.140 Interest and costs. When a registered foreign judgment becomes a final judgment of this state, the court shall include as part of the judgment interest payable on the foreign judgment under the law of the state in which it was rendered, and the cost of obtaining the authenticated copy of the original judgment. The court shall include as part of its judgment court costs incidental to the proceeding in accordance with the law of this state. [1953 c 191 § 14.]

6.36.150 Satisfaction of judgment. Satisfaction, either partial or complete, of the original judgment or of a judgment entered thereupon in any other state shall operate to the same extent as satisfaction of the judgment in this state, except as to costs authorized by RCW 6.36.140. [1953 c 191 § 15.]

6.36.160 Optional procedure. The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this chapter remains unimpaired. [1953 c 191 § 16.]

6.36.900 Construction—1953 c 191. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1953 c 191 § 17.]

6.36.910 Short title. This chapter may be cited as the "Uniform Enforcement of Foreign Judgments Act." [1953 c 191 § 18.]

Chapter 6.40

UNIFORM FOREIGN MONEY-JUDGMENTS
RECOGNITION ACT

Sections

6.40.010	Definitions.
6.40.020	Applicability.
6.40.030	Recognition and enforcement.
6.40.040	Grounds for nonrecognition.
6.40.050	Personal jurisdiction.
6.40.060	Stay in case of appeal.
6.40.070	Saving clause.
6.40.900	Uniformity of interpretation.
6.40.905	Short title.
6.40.910	Application to judgments in effect on effective date.
6.40.915	Section headings.

6.40.010 Definitions. As used in this chapter:

(1) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands;

(2) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters. [1975 1st ex.s. c 240 § 1.]

6.40.020 Applicability. This chapter applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal. [1975 1st ex.s. c 240 § 2.]

6.40.030 Recognition and enforcement. Except as provided in RCW 6.40.040, a foreign judgment meeting the requirements of RCW 6.40.020 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit. [1975 1st ex.s. c 240 § 3.]

6.40.040 Grounds for nonrecognition. (1) A foreign judgment is not conclusive if

(a) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(b) the foreign court did not have personal jurisdiction over the defendant; or

(c) the foreign court did not have jurisdiction over the subject matter.

(2) A foreign judgment need not be recognized if

(a) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(b) the judgment was obtained by fraud;

(c) the claim for relief on which the judgment is based is repugnant to the public policy of this state;

(d) the judgment conflicts with another final and conclusive judgment;

(e) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in

question was to be settled otherwise than by proceedings in that court; or

(f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action. [1975 1st ex.s. c 240 § 4.]

6.40.050 Personal jurisdiction. (1) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if

(a) the defendant was served personally in the foreign state;

(b) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

(c) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(d) the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;

(e) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a claim for relief arising out of business done by the defendant through that office in the foreign state; or

(f) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a claim for relief arising out of such operation.

(2) The courts of this state may recognize other bases of jurisdiction. [1975 1st ex.s. c 240 § 5.]

6.40.060 Stay in case of appeal. If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal. [1975 1st ex.s. c 240 § 6.]

6.40.070 Saving clause. This chapter does not prevent the recognition of a foreign judgment in situations not covered by this chapter. [1975 1st ex.s. c 240 § 7.]

6.40.900 Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1975 1st ex.s. c 240 § 8.]

6.40.905 Short title. This chapter may be cited as the Uniform Foreign Money-Judgments Recognition Act. [1975 1st ex.s. c 240 § 9.]

6.40.910 Application to judgments in effect on effective date. This chapter shall apply to all foreign judgments in effect on the date this chapter becomes effective as well as all judgments rendered after such date. [1975 1st ex.s. c 240 § 10.]

Effective date—1975 1st ex.s. c 240: September 8, 1975, see preface to 1975 session laws.

6.40.915 Section headings. Section headings as used in this act shall not constitute part of the law. [1975 1st ex.s. c 240 § 12.]

Chapter 6.44

UNIFORM FOREIGN-MONEY CLAIMS ACT

Sections

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6.44.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this chapter, is:

(a) Paid to a claimant in an action or distribution proceeding;

(b) Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(c) Used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to RCW 6.44.040.

(9) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States. [1991 c 153 § 1.]

6.44.020 Scope. (1) This chapter applies only to a foreign-money claim in an action or distribution proceeding.

(2) This chapter applies to foreign-money issues even if other law under the conflict of laws rules of this state applies to other issues in the action or distribution proceeding. [1991 c 153 § 2.]

6.44.030 Variation by agreement. (1) The effect of this chapter may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(2) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction. [1991 c 153 § 3.]

6.44.040 Determining money of the claim. (1) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(2) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(a) Regularly used between the parties as a matter of usage or course of dealing;

(b) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(c) In which the loss was ultimately felt or will be incurred by the party claimant. [1991 c 153 § 4.]

6.44.050 Determining amount of the money of certain contract claims. (1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding thirty days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(3) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly. [1991 c 153 § 5.]

6.44.060 Asserting and defending foreign-money claim. (1) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(2) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(3) A person may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.

(4) The determination of the proper money of the claim is a question of law. [1991 c 153 § 6.]

6.44.070 Judgments and awards on foreign-money claims—Times of money conversion—Form of judgment.

(1) Except as provided in subsection (3) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) A judgment or award made in an action or distribution proceeding on both (a) a defense, set-off, recoupment, or counterclaim, and (b) the adverse party's claim, must be netted by converting the money of the smaller into the

money of the larger, and by subtracting the smaller from the larger, and specify the rates of exchange used.

(6) A judgment substantially in the following form complies with subsection (1) of this section:

IT IS ADJUDGED AND ORDERED, that defendant (insert name) pay to plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate—see RCW 6.44.090) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

(7) If a contract claim is of the type covered by RCW 6.44.050 (a) or (b) [(1) or (2)], the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment must be filed or docketed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment. [1991 c 153 § 7.]

6.44.080 Conversions of foreign money in distribution proceeding. The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated. [1991 c 153 § 8.]

6.44.090 Prejudgment and judgment interest. (1) With respect to a foreign-money claim, recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (2) of this section, are matters of the substantive law governing the right to recovery under the conflict of laws rules of this state.

(2) The court or arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(3) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state. [1991 c 153 § 9.]

6.44.100 Enforcement of foreign judgments. (1) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in RCW 6.44.070,

whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(2) A foreign judgment may be filed or docketed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

(3) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(4) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only. [1991 c 153 § 10.]

6.44.110 Determining United States dollar value of foreign-money claims for limited purposes. (1) Computations under this section are for the limited purposes of this section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(2) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections (3) and (4) of this section.

(3) A party seeking process, costs, bond, or other undertaking under subsection (2) of this section, shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(4) A party seeking the process, costs, bond, or other undertaking under subsection (2) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate. [1991 c 153 § 11.]

6.44.120 Effect of currency revalorization. (1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under subsection (1) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money. [1991 c 153 § 12.]

6.44.130 Supplementary general principles of law. Unless displaced by particular provisions of this chapter, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions. [1991 c 153 § 13.]

6.44.140 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1991 c 153 § 14.]

6.44.901 Short title. This chapter may be cited as the uniform foreign-money claims act. [1991 c 153 § 15.]

6.44.902 Effective date—1991 c 153. This chapter shall take effect January 1, 1992. [1991 c 153 § 16.]

6.44.903 Severability—1991 c 153. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 153 § 17.]

6.44.904 Prospective application. This chapter applies prospectively only and not retroactively. It applies only to causes of action which are commenced on or after January 1, 1992. [1991 c 153 § 18.]

Title 7

SPECIAL PROCEEDINGS AND ACTIONS

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Chapter 7.04 ARBITRATION

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7.04.010 Arbitration authorized. Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this chapter, any controversy which may be the subject of an action existing between them at the time of the agreement to submit, or they may include in a written agreement a provision to settle by arbitration any controversy thereafter arising between them out of or in relation to such agreement. Such agreement shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement.

The provisions of this chapter shall not apply to any arbitration agreement between employers and employees or

between employers and associations of employees, and as to any such agreement the parties thereto may provide for any method and procedure for the settlement of existing or future disputes and controversies, and such procedure shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement. [1947 c 209 § 1; 1943 c 138 § 1; Rem. Supp. 1947 § 430-1.]

Saving—1943 c 138: "Sections 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, and 274 of the Code of 1881 (sections 420 to 430, both inclusive, Remington's Revised Statutes; sections 7339 to 7349, both inclusive, Pierce's Code) are hereby repealed: PROVIDED, HOWEVER, That arbitration proceedings pending upon the effective date of this act may be carried through to final judgment under the provisions of said sections, which are hereby continued in effect for such purposes only." [1943 c 138 § 23.] This applies to RCW 7.04.010 through 7.04.170, 7.04.180 through 7.04.220.

7.04.020 Applications in writing—How heard—Jurisdiction. Any application made under authority of this chapter shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions or petitions, except as otherwise herein expressly provided.

Jurisdiction under this chapter is specifically conferred on the district and superior courts of the state, subject to jurisdictional limitations. [1982 c 122 § 1; 1943 c 138 § 2; Rem. Supp. 1943 § 430-2.]

7.04.030 Stay of action pending arbitration. If any action for legal or equitable relief or other proceedings be brought by any party to a written agreement to arbitrate, the court in which such action or proceeding is pending, upon being satisfied that any issue involved in such action or proceeding is referable to arbitration under such agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in accordance with the agreement. [1943 c 138 § 3; Rem. Supp. 1943 § 430-3.]

7.04.040 Motion to compel arbitration—Notice and hearing—Motion for stay. (1) A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the court for an order directing the parties to proceed with the arbitration in accordance with their agreement. Eight days notice in writing of such application shall be served upon the party alleged to be in default. Service thereof shall be made in the manner provided by law for service of a summons in a civil action in the court specified in RCW 7.04.020. If the court is satisfied after hearing the parties that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith, the court shall make an order directing the parties to proceed to arbitrate in accordance with the terms of the agreement.

(2) If the court shall find that a substantial issue is raised as to the existence or validity of the arbitration agreement or the failure to comply therewith, the court shall proceed immediately to the trial of such issue. If upon such trial the court finds that no written agreement providing for

arbitration was made or that there is no default in proceeding thereunder, the motion to compel arbitration shall be denied.

(3) Either party shall have the right to demand the immediate trial by jury of any such issue concerning the validity or existence of the arbitration agreement or the failure to comply therewith. Such demand shall be made before the return day of the motion to compel arbitration under this section, or if no such motion was made, the demand shall be made in the application for a stay of the arbitration, as provided under subsection (4)(a) hereunder.

(4) In order to raise an issue as to the existence or validity of the arbitration agreement or the failure to comply therewith, a party must set forth evidentiary facts raising such issue and must either (a) make a motion for a stay of the arbitration. If a notice of intention to arbitrate has been served as provided in RCW 7.04.060, notice of the motion for the stay must be served within twenty days after service of said notice. Any issue regarding the validity or existence of the agreement or failure to comply therewith shall be tried in the same manner as provided in subsections (2) and (3) hereunder; or (b) by contesting a motion to compel arbitration as provided under subsection (1) of this section. [1943 c 138 § 4; Rem. Supp. 1943 § 430-4.]

7.04.050 Appointment of arbitrators by court.

Upon the application of any party to the arbitration agreement, and upon notice to the other parties thereto, the court shall appoint an arbitrator, or arbitrators, in any of the following cases:

(1) When the arbitration agreement does not prescribe a method for the appointment of arbitrators.

(2) When the arbitration agreement does prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they should have been appointed has expired.

(3) When any arbitrator fails or is otherwise unable to act, and his successor has not been duly appointed.

(4) In any of the foregoing cases where the arbitration agreement is silent as to the number of arbitrators, three arbitrators shall be appointed by the court.

Arbitrators appointed by the court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate. [1943 c 138 § 5; Rem. Supp. 1943 § 430-5.]

7.04.060 Notice of intention to arbitrate—Contents.

When the controversy arises from a written agreement containing a provision to settle by arbitration a controversy thereafter arising between the parties out of or in relation to such agreement, the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of his intention to arbitrate. Such notice must state in substance that unless within twenty days after its service, the party served therewith shall serve a notice of motion to stay the arbitration, he shall thereafter be barred from putting in issue the existence or validity of the agreement or the failure to comply therewith. [1943 c 138 § 6; Rem. Supp. 1943 § 430-6.]

7.04.070 Hearing by arbitrators. The arbitrators shall appoint a time and place for the hearing and notify the

parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party, and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award.

All the arbitrators shall meet and act together during the hearing but a majority of them may determine any question and render a final award. The court shall have power to direct the arbitrators to proceed promptly with the hearing and determination of the controversy. [1943 c 138 § 7; Rem. Supp. 1943 § 430-7.]

7.04.080 Failure of party to appear no bar to hearing and determination. If any party neglects to appear before the arbitrators after reasonable notice of the time and place of hearing, the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them. [1943 c 138 § 8; Rem. Supp. 1943 § 430-8.]

7.04.090 Time of making award—Extension—Failure to make award when required. If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty days from the closing of the proceeding, unless the parties, in writing, extend the time in which that award may be made. If the arbitrator fails to make an award when required, the court, upon motion and hearing, shall order the arbitrator to enter an award within the time fixed by the court, and may impose sanctions or terms deemed reasonable by the court. Failure to make an award within the time required shall not divest the arbitrators of jurisdiction to make an award or to correct or modify an award as provided in RCW 7.04.175. [1985 c 265 § 1; 1943 c 138 § 9; Rem. Supp. 1943 § 430-9.]

7.04.100 Representation by attorney. Any party shall have the right to be represented by an attorney at law in any arbitration proceeding or any hearing before the arbitrators. [1943 c 138 § 10; Rem. Supp. 1943 § 430-10.]

7.04.110 Witnesses—Compelling attendance. The arbitrators, or a majority of them, may require any person to attend as a witness, and to bring with him any book, record, document or other evidence. The fees for such attendance shall be the same as the fees of witnesses in the superior court. Each arbitrator shall have the power to administer oaths.

Subpoenae shall issue and be signed by the arbitrators, or any one of them, and shall be directed to the person and shall be served in the same manner as subpoenae to testify before a court of record in this state. If any person so summoned to testify shall refuse or neglect to obey such subpoenae, upon petition authorized by the arbitrators or a majority of them, the court may compel the attendance of such person before the said arbitrator or arbitrators, or punish said person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the courts of this state. [1943 c 138 § 11; Rem. Supp. 1943 § 430-11.]

Witnesses, compelling attendance: Chapter 5.56 RCW.

7.04.120 Depositions. Depositions may be taken with or without a commission in the same manner and upon the same grounds as provided by law for the taking of depositions in suits pending in the courts of record in this state. [1943 c 138 § 12; Rem. Supp. 1943 § 430-12.]

Depositions: Rules of court: Cf. CR 28-CR 32; see also Title 5 RCW.

7.04.130 Order to preserve property or secure satisfaction of award. At any time before final determination of the arbitration the court may upon application of a party to the agreement to arbitrate make such order or decree or take such proceeding as it may deem necessary for the preservation of the property or for securing satisfaction of the award. [1943 c 138 § 13; Rem. Supp. 1943 § 430-13.]

7.04.140 Form of award—Copies to parties. The award shall be in writing and signed by the arbitrators or by a majority of them. The arbitrators shall promptly upon its rendition deliver a true copy of the award to each of the parties or their attorneys. [1943 c 138 § 14; Rem. Supp. 1943 § 430-14.]

7.04.150 Confirmation of award by court. At any time within one year after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is beyond the jurisdiction of the court, or is vacated, modified, or corrected, as provided in RCW 7.04.160 and 7.04.170. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof. The validity of an award, otherwise valid, shall not be affected by the fact that no motion is made to confirm it. [1982 c 122 § 2; 1943 c 138 § 15; Rem. Supp. 1943 § 430-15.]

7.04.160 Vacation of award—Rehearing. In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

(1) Where the award was procured by corruption, fraud or other undue means.

(2) Where there was evident partiality or corruption in the arbitrators or any of them.

(3) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.

(5) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in RCW 7.04.060, or without serving a motion to compel arbitration, as provided in RCW 7.04.040(1).

An award shall not be vacated upon any of the grounds set forth under subdivisions (1) to (4), inclusive, unless the

court is satisfied that substantial rights of the parties were prejudiced thereby.

Where an award is vacated, the court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order. [1943 c 138 § 16; Rem. Supp. 1943 § 430-16.]

7.04.170 Modification or correction of award by court. In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

(1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.

(2) Where the arbitrators have awarded upon a matter not submitted to them.

(3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof. [1943 c 138 § 17; Rem. Supp. 1943 § 430-17.]

7.04.175 Modification or correction of award by arbitrators. On application of a party or, if an application to the court is pending under RCW 7.04.150, 7.04.160, or 7.04.170, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in RCW 7.04.170 (1) and (3). The application shall be made, in writing, within ten days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that objections, if any, must be served within ten days from the notice. The arbitrators shall rule on the application within twenty days after such application is made. Any award so modified or corrected is subject to the provisions of RCW 7.04.150, 7.04.160, and 7.04.170 and is to be considered the award in the case for purposes of this chapter, said award being effective on the date the corrections or modifications are made. If corrections or modifications are denied, then the award shall be effective as of the date the award was originally made. [1985 c 265 § 2.]

7.04.180 Notice of motion to vacate, modify, or correct award—Stay. Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after a copy of the award is delivered to the party or his attorney. Such motion shall be made in the manner prescribed by law for the service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. [1943 c 138 § 18; Rem. Supp. 1943 § 430-18.]

7.04.190 Judgment—Costs. Upon the granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith. Costs of the application and of the proceedings subsequent thereto, not exceeding twenty-five dollars and disbursements, may be awarded by the court in its discretion. [1943 c 138 § 19; Rem. Supp. 1943 § 430-19.]

7.04.200 Judgment roll—Docketing. Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment roll:

(1) The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award.

(2) The award.

(3) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

(4) A copy of the judgment.

The judgment may be docketed as if it was rendered in an action. [1943 c 138 § 20; Rem. Supp. 1943 § 430-20.]

7.04.210 Effect of judgment. The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered. [1943 c 138 § 21; Rem. Supp. 1943 § 430-21.]

7.04.220 Appeal. An appeal may be taken from any final order made in a proceeding under this chapter, or from a judgment entered upon an award, as from an order or judgment in any civil action. [1943 c 138 § 22; Rem. Supp. 1943 § 430-22.]

Chapter 7.06

MANDATORY ARBITRATION OF CIVIL ACTIONS

Sections

7.06.010	Authorization.
7.06.020	Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support.
7.06.030	Implementation by supreme court rules.
7.06.040	Qualifications, appointment and compensation of arbitrators.
7.06.050	Decision and award—Appeals—Trial—Judgment.
7.06.060	Costs and attorney's fees.
7.06.070	Right to trial by jury.
7.06.900	Severability—1979 c 103.
7.06.910	Effective date—1979 c 103.

Rules of court: See *Superior Court Mandatory Arbitration Rules (MAR)*.

7.06.010 Authorization. In counties with a population of seventy thousand or more, the superior court of the county, by majority vote of the judges thereof, or the county legislative authority may authorize mandatory arbitration of civil actions under this chapter. In all other counties, the superior court of the county, by a majority vote of the judges thereof, may authorize mandatory arbitration of civil actions under this chapter. [1991 c 363 § 7; 1984 c 258 § 511; 1979 c 103 § 1.]

~~Purpose—Captions not law—1991 c 363:~~ See notes following RCW 2.32.180.

~~Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:~~ See notes following RCW 3.30.010.

7.06.020 Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support. (1) All civil actions, except for appeals from municipal or district courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of fifteen thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to thirty-five thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration.

(2) If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved. [1987 c 212 § 101; 1987 c 202 § 127; 1985 c 265 § 3; 1982 c 188 § 1; 1979 c 103 § 2.]

Rules of court: MAR 1.2.

Reviser's note: This section was amended by 1987 c 202 § 127 and by 1987 c 212 § 101, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1987 c 212 §§ 101, 102: "Sections 101 and 102 of this act shall take effect July 1, 1988." [1987 c 212 § 1902.]

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

7.06.030 Implementation by supreme court rules. The supreme court shall by rule adopt procedures to implement mandatory arbitration of civil actions under this chapter. [1979 c 103 § 3.]

7.06.040 Qualifications, appointment and compensation of arbitrators. The appointment of arbitrators shall be prescribed by rules adopted by the supreme court. An arbitrator must be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer arbitrator. The supreme court may prescribe by rule additional qualifications of arbitrators.

Arbitrators shall be compensated in the same amount and manner as judges pro tempore of the superior court. [1987 c 212 § 102; 1979 c 103 § 4.]

Effective date—1987 c 212 §§ 101, 102: See note following RCW 7.06.020.

7.06.050 Decision and award—Appeals—Trial—Judgment. Following a hearing as prescribed by court rule, the arbitrator shall file his decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions. [1982 c 188 § 2; 1979 c 103 § 5.]

7.06.060 Costs and attorney's fees. The supreme court may by rule provide for costs and reasonable attorney's fees that may be assessed against a party appealing from the award who fails to improve his position on the trial de novo. [1979 c 103 § 6.]

7.06.070 Right to trial by jury. No provision of this chapter may be construed to abridge the right to trial by jury. [1979 c 103 § 7.]

7.06.900 Severability—1979 c 103. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 103 § 9.]

7.06.910 Effective date—1979 c 103. This act shall take effect July 1, 1980. [1979 c 103 § 10.]

Chapter 7.08

ASSIGNMENT FOR BENEFIT OF CREDITORS

Sections

7.08.010	Assignment must be for benefit of all creditors.
7.08.020	Assent of creditors presumed.
7.08.030	Assignment—Procedure—Creditor's selection of new assignee.
7.08.050	Inventory by assignee—Bond.
7.08.060	Notice to creditors.
7.08.070	List of creditors' claims.
7.08.080	Exceptions to claims.
7.08.090	Dividends—Final account—Compensation.
7.08.100	Assignee subject to court's control.
7.08.110	Assignment not void, when.
7.08.120	Additional inventory.
7.08.130	Procedure on claims not due—Limitation on presentment of claims.
7.08.140	Authority of assignee to dispose of assets.
7.08.150	Procedure when assignee dies, fails to act, misapplies estate, or if bond insufficient.
7.08.170	Discharge of assignor.
7.08.180	Sheriff disqualified from acting.
7.08.190	Right of assignor to exemption.
7.08.200	Exemption, how claimed—Objections.

Fraud in assignment for benefit of creditors: RCW 9.45.100.

7.08.010 Assignment must be for benefit of all creditors. No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims; and after the payment of the costs and disbursements thereof, including the attorney fees allowed by law in case of judgment, out of the estate of the insolvent, such claim or claims shall be deemed as presented, and shall share pro rata with other claims as hereinafter provided. [1893 c 100 § 1; 1890 p 83 § 1; RRS § 1086.]

7.08.020 Assent of creditors presumed. In case of an assignment for the benefit of all the creditors of the assignor, the assent of the creditors shall be presumed. [1890 p 83 § 2; RRS § 1087.]

7.08.030 Assignment—Procedure—Creditor's selection of new assignee. The debtor shall annex to such assignment an inventory, under oath, of all his estate, real and personal, according to the best of his knowledge, and also a list of his creditors, with their post office address and a list of the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate. Every assignment shall be in writing, and duly acknowledged in the same manner as conveyances of real estate, and recorded in the record of deeds of the county where the person making the same resides, or where the business in respect to which the same is made has been carried on.

Upon the application of two or more creditors of said debtor therefor, by petition to the judge of the superior court of the county in which such assignment is or should be recorded, at any time within thirty days from the making or recording of such assignment, it shall be the duty of said superior judge to direct the clerk of said superior court to order a meeting of the creditors of said debtors, to choose an assignee of the estate of said debtor in lieu of the assignee named by the debtor in his assignment; and thereupon the clerk of said court shall forthwith give notice to all the creditors of said debtor to meet at his office at a time stated, not to exceed fifteen days from the date of such notice, to select one or more assignees in the place of the assignee named by the debtor in his assignment. Such creditors may appear in person or by proxy, and a majority in number and value of said creditors attending such meeting shall select one or more assignees; and in the event that no one shall receive a majority vote of said creditors who represent at least one-half in amount of all claims represented at such meeting, then, and in that event, said clerk shall certify that fact to the judge of the superior court aforesaid, and thereupon said superior judge shall select and appoint an assignee.

When such assignee shall have been selected by such creditors, or appointed by the superior judge as herein provided, then the assignee named in the debtor's assignment shall forthwith make to the assignee elected by the creditors or appointed by the superior judge, an assignment and conveyance of all the estate, real and personal, that has been assigned or conveyed to him by said debtor; and such assignee so elected by the creditors or appointed by the superior judge, upon giving the bond required of an assignee by RCW 7.08.010 through 7.08.170, shall possess all the powers, and be subject to all the duties imposed by RCW 7.08.010 through 7.08.170, as fully to all intents and purposes as though named in the debtor's assignment.

From the time of the pending of an application to elect an assignee by the creditors, and until the time shall be terminated by an election or appointment as herein provided, no property of the debtor, except perishable property, shall be sold or disposed of by any assignee; but the same shall be safely and securely kept until the election or appointment of an assignee as herein provided. No creditor shall be entitled to vote at any such meeting called for the purpose of

electing an assignee, until he shall have presented to the clerk of the superior court, who shall preside at such meeting, a verified statement of his claim against the debtor. [1890 p 83 § 3; RRS § 1088. Formerly RCW 7.08.030 and 7.08.040.]

7.08.050 Inventory by assignee—Bond. The assignee shall also forthwith file with the clerk of the superior court of the county where such assignment will be recorded, a true and full inventory and valuation of said estate, under oath, as far as the same has come to his knowledge, and shall then and there enter into bonds to the state of Washington, for the use of the creditors, in double the amount of the inventory and valuation, with two or more sufficient sureties, to be approved by said clerk, for the faithful performance of said trust; and the assignee may thereupon proceed to perform any duties necessary to carry into effect the intention of said assignment. [1890 p 85 § 4; RRS § 1089.]

7.08.060 Notice to creditors. The assignee shall forthwith give notice of such assignment, by publication in some newspaper in the county, if any, and if none, then in the nearest county thereto, which publication shall be continued at least six weeks; and shall forthwith send a notice by mail to each creditor of whom he shall be informed, directed to their usual place of residence, and notifying the creditors to present their claims, under oath, to him within three months thereafter. [1890 p 85 § 5; RRS § 1090.]

7.08.070 List of creditors' claims. At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list, under oath, of all such creditors of the assignor as shall have claims to be such, with a statement of their claims, and also an affidavit of publication or notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing, duly verified. [1890 p 85 § 6; RRS § 1091.]

7.08.080 Exceptions to claims. Any person interested may appear within three months after filing such report and file with said clerk any exceptions to the claim or demand of any creditor, and the clerk shall forthwith cause notice thereof to be given to the creditor, which shall be served and returned as in case of summons, and the said court shall proceed to hear proof of the parties in the premises, and shall render such judgment therein as shall be just, and may allow a trial by jury thereon. [1957 c 9 § 7; 1890 p 85 § 7; RRS § 1092.]

7.08.090 Dividends—Final account—Compensation. If no exception be made to the claim of any creditor, or if the same has been adjudicated, the court shall order the assignee to make from time to time fair and equal dividends among the creditors of the assets in his hands, in proportion to their claims, and as soon as may be to render a final account of said trust to said court, which may allow such commissions to said assignee in the final settlement as may be considered right and just, not exceeding, however, the

fees and compensation allowed by law to administrators and executors. [1893 c 26 § 1; 1890 p 86 § 8; RRS § 1093.]

7.08.100 Assignee subject to court's control. The assignee shall at all times be subject to the order of the court or judge, and the said court or judge may, by citation and attachment, compel the assignee from time to time to file reports of his proceedings, and of the situation and condition of the trust, and to proceed in the faithful execution of the duties required by RCW 7.08.010 through 7.08.170. [1890 p 86 § 9; RRS § 1094.]

7.08.110 Assignment not void, when. No assignment shall be declared fraudulent or void for want of any list or inventory as provided in RCW 7.08.010 through 7.08.170. The court or judge may, upon application of the assignee, or any creditor, compel the appearance in person of the debtor before such court or judge to answer under oath such matters as may then and there be inquired of him; and such debtor may then and there be fully examined under oath as to the amount and situation of his estate, and the names of the creditors, and amounts due to each, with their places of residence, and the court may compel the delivery to the assignee of any property or estate embraced in the assignment. [1957 c 9 § 8; 1890 p 86 § 10; RRS § 1095.]

7.08.120 Additional inventory. The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into his hands under such assignment, after the filing of the first inventory, and the clerk may thereupon require him to give additional security. [1890 p 86 § 11; RRS § 1096.]

7.08.130 Procedure on claims not due—Limitation on presentment of claims. Any creditor may claim debts to become due, as well as debts due, but on debts not due, a reasonable abatement shall be made when the same are not drawing interest; and all creditors who shall not exhibit their claims within the term of three months from the publication of notice as aforesaid shall not participate in the dividends until after payment in full of all claims presented within said term and allowed by the court. [1890 p 86 § 12; RRS § 1097.]

7.08.140 Authority of assignee to dispose of assets. Any assignee as aforesaid shall have as full power and authority to dispose of all estate, real and personal, assigned, as the debtor had at the time of assignment, and to sue for and recover, in the name of such assignee, everything belonging or appertaining to said estate, and generally to do whatever the debtor might have done in the premises; but no sale of real estate belonging to said trust shall be made without notice published, as in case of sale of real estate on execution, unless the court shall order and direct otherwise. [1890 p 87 § 13; RRS § 1098.]

7.08.150 Procedure when assignee dies, fails to act, misapplies estate, or if bond insufficient. In case any assignee shall die before closing of his trust, or in case any assignee shall fail or neglect, for the period of thirty days

after the making of any assignment, to file an inventory and valuation, and give bonds as required by RCW 7.08.010 through 7.08.170, the superior court, or judge thereof, of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust embraced in such assignment; and such person, on giving the bond, with sureties, as required of the assignee, shall possess all the powers conferred on such assignee and shall be subject to all the duties hereby imposed, as fully as though named in the assignment; and in case any surety shall be discovered insufficient, or on complaint before the court or judge it should be made to appear that any assignee is guilty of wasting or misapplying the trust estate, said court or judge may direct and require additional security, and may remove such assignee, and may appoint others instead, and such person so appointed, on giving bond, shall have full power to execute such duties, and to demand and sue for all estate in the hands of the person removed, and to demand and recover the amount and value of all moneys and property or estate so wasted and misapplied, which he may neglect or refuse to make satisfaction for, from such person and his sureties. [1890 p 87 § 14; RRS § 1099. Formerly RCW 7.08.150 and 7.08.160.]

7.08.170 Discharge of assignor. Whenever it shall appear to the satisfaction of the court or judge thereof when the assignment is pending upon the final reports of the assignee chosen by the creditors or otherwise that the assignor has been guilty of no fraud in making an assignment or concealment or diversion of the property or any part thereof, in order to keep the same beyond the reach of creditors, and has acted justly and fairly in all respects; that the estate has been made to realize the fullest amount possible and that the expenses of the assignment have been paid, the judge of the court having jurisdiction of the matter shall, upon the allowance of the final account of the assignee, make an order discharging the assignor or assignors as the case may be from any further liability on account of any indebtedness existing prior to the making of such assignment, and thereafter such assignor shall be freed from any liability on account of any unsatisfied portion of the indebtedness existing prior to the making of the assignment. [1895 c 151 § 1; 1890 p 88 § 15; RRS § 1100.]

7.08.180 Sheriff disqualified from acting. That it shall be unlawful for the judge of any court of record or the creditors of an insolvent debtor to appoint the sheriff of the county receiver or assignee in any case of insolvency or assignment. [1893 c 137 § 1; RRS § 1101.]

7.08.190 Right of assignor to exemption. That hereafter any person making a general assignment for the benefit of creditors, under any statute of this state, shall have the right to claim, and have set aside to him, as exempt from the operation of such assignment, all real and personal property which is, at the time of such assignment, exempt from levy by execution or attachment, under the laws of this state. [1897 c 6 § 1; RRS § 1102.]

7.08.200 Exemption, how claimed—Objections. That such assignor shall, if he desires to claim the benefit of

this section and RCW 7.08.190, state in such assignment, or in the inventory annexed thereto, what property he claims as exempt, giving a description thereof sufficient for identification. Any creditor of such assignor who believes any of the property so claimed as exempt is not so in fact shall have the right to make objection to such exemption claim at any time prior to the expiration of the time for presentment of claims against such assignor to his assignee. Such objection shall be made by delivering to the assignor and the assignee, and filing with the clerk of the court having jurisdiction of the assignment, a notice in writing, clearly pointing out the part or parts of such exemption claim objected to, and the ground of such objection. When the time above provided for the service and filing of objections has expired, the assignor, upon application to said court, shall have a right to the summary hearing of the said objections, and at such hearing the court shall determine and adjudge to the assignor his lawful exemptions. If any part of the exemptions claimed by the assignor shall be denied, the court shall direct the assignee to pay, out of the funds in his hands, the costs of the hearing, if any, as a part of the expenses of the assignment proceedings. The court may, at its discretion, if it find any claim made for exemption to be fraudulent and made in bad faith, deny such exemption. If no objection to the said exemption claim is served and filed prior to the expiration of the time for presentment of claims to the assignee, the assignor shall be entitled as of course to an order setting aside to him the exemptions claimed by him as aforesaid, and it shall be the duty of the assignee forthwith to deliver the same to him. [1897 c 6 § 2; RRS § 1103.]

Chapter 7.16

CERTIORARI, MANDAMUS, AND PROHIBITION

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Rules of court: Writ procedure superseded by RAP 2.1; special proceeding RAP 16.1 through 16.17.

Camping resorts, writ of mandamus authorized: RCW 19.105.470.

7.16.010 Parties, how designated. The party prosecuting a special proceeding may be known as the plaintiff and the adverse party as the defendant. [1895 c 65 § 1; RRS § 999.]

7.16.020 Judgment, motion, and order defined. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding. [1895 c 65 § 2; RRS § 1000.]

CERTIORARI

7.16.030 Certiorari defined. The writ of certiorari may be denominated the writ of review. [1895 c 65 § 3; RRS § 1001.]

7.16.040 Grounds for granting writ. A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law. [1987 c 202 § 130; 1895 c 65 § 4; RRS § 1002.]

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

7.16.050 Application for writ—Notice. The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice. [1895 c 65 § 5; RRS § 1003.]

7.16.060 Writ, to whom directed. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal the clerk, if there be one, must return the writ with the transcript required. [1895 c 65 § 6; RRS § 1004.]

7.16.070 Contents of writ. The writ of review must command the party to whom it is directed to certify fully to

the court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed. [1895 c 65 § 7; RRS § 1005.]

7.16.080 Stay of proceedings. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court, but if omitted the power of the inferior court or office is not suspended or the proceedings stayed. [1895 c 65 § 8; RRS § 1006.]

7.16.100 Service of writ. The writ may be served as follows, except where different directions respecting the mode of service thereof are given by the court granting it:

(1) Where it is directed to a person or persons by name or by his or her official title or titles, or to a municipal corporation, it must be served upon each officer or other person to whom it is directed, or upon the corporation, in the same manner as a summons.

(2) Where it is directed to a court, or to the judges of a court, having a clerk appointed pursuant to law, service upon the court or the judges thereof may be made by filing the writ with the clerk. [1895 c 65 § 10; RRS § 1008.]

7.16.110 Defective return—Further return—Hearing—Judgment. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below. [1895 c 65 § 11; RRS § 1009.]

7.16.120 Questions involving merits to be determined. The questions involving the merits to be determined by the court upon the hearing are:

(1) Whether the body or officer had jurisdiction of the subject matter of the determination under review.

(2) Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination.

(3) Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator.

(4) Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination.

(5) Whether the factual determinations were supported by substantial evidence. [1989 c 7 § 1; 1957 c 51 § 6; 1895 c 65 § 12; RRS § 1010.]

7.16.130 Copy of judgment to inferior tribunal, board, or officer. A copy of the judgment signed by the clerk, must be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding certified up. [1895 c 65 § 13; RRS § 1011.]

7.16.140 Judgment roll. A copy of the judgment signed by the clerk, entered upon or attached to the writ and return, constitute the judgment roll. [1895 c 65 § 14; RRS § 1012.]

MANDAMUS

7.16.150 Mandamus defined. The writ of mandamus may be denominated a writ of mandate. [1895 c 65 § 15; RRS § 1013.]

7.16.160 Grounds for granting writ. It may be issued by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person. [1987 c 202 § 131; 1987 c 3 § 3; 1895 c 65 § 16; RRS § 1014.]

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

Severability—1987 c 3: See note following RCW 3.46.020.

7.16.170 Absence of remedy at law required—Affidavit. The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit on the application of the party beneficially interested. [1895 c 65 § 17; RRS § 1015.]

7.16.180 Alternative or peremptory writs—Form. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ must be in some similar form, except the words requiring the party to show cause why he has not done as commanded must be omitted and a return [day] inserted. [1895 c 65 § 18; RRS § 1016.]

7.16.190 Notice of application—No default. When the application to the court is made without notice to the party, and the writ be allowed, the alternative must be first issued; and if the application be upon due notice and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court, whether the adverse party appear or not. [1895 c 65 § 19; RRS § 1017.]

7.16.200 Answer. On the return of the alternative, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an

answer to a complaint in a civil action. [1895 c 65 § 20; RRS § 1018.]

7.16.210 Questions of fact, how determined. If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the appellant may have sustained, in case they find for him. [1895 c 65 § 21; RRS § 1019.]

7.16.220 Applicant may demur to answer or countervail it by proof. On the trial the applicant is not precluded by the answer from any valid objections to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance. [1895 c 65 § 22; RRS § 1020.]

7.16.230 Motion for new trial, where made. The motion for new trial must be made in the court in which the issue of fact is tried. [1895 c 65 § 23; RRS § 1021.]

7.16.240 Certification of verdict—Argument. If no notice of a motion for a new trial be given, or if given, the motion be denied, the clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial, after which either party may bring on the argument of the application, upon reasonable notice to the adverse party. [1895 c 65 § 24; RRS § 1022.]

7.16.250 Hearing. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements not affecting the substantial rights of the party, the court must proceed to hear or fix a day for hearing the argument of the case. [1895 c 65 § 25; RRS § 1023.]

7.16.260 Judgment for damages and costs—Peremptory mandate. If judgment be given for the applicant he may recover the damages which he has sustained, as found by the jury or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate must also be awarded without delay. [1895 c 65 § 26; RRS § 1024.]

7.16.270 Service of writ. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time

of the service the board or body was in session or not. [1895 c 65 § 27; RRS § 1025.]

7.16.280 Enforcement of writ—Penalty. When a temporary mandate has been issued and directed to any inferior tribunal, corporation, board or person upon whom the writ has been personally served and such tribunal, corporation, board, or person has without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal or disobedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ. [1957 c 51 § 7; 1895 c 65 § 28; RRS § 1026.]

PROHIBITION

7.16.290 Prohibition defined. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. [1895 c 65 § 29; RRS § 1027.]

7.16.300 Grounds for granting writ—Affidavit. It may be issued by any court, except district or municipal courts, to an inferior tribunal, or to a corporation, board or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested. [1987 c 202 § 132; 1895 c 65 § 30; RRS § 1028.]

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

7.16.310 Alternative or peremptory writs—Form. The writ must be either alternative or peremptory. The alternative writ must state generally the allegations against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted. [1895 c 65 § 31; RRS § 1029.]

7.16.320 Provisions relating to mandate applicable. The provisions of this chapter relating to writ of mandate, apply to this proceeding. [1895 c 65 § 32; RRS § 1030.]

IN GENERAL

7.16.330 When writs may be made returnable. Writs of review, mandate, and prohibition issued by the supreme court, the court of appeals, or by a superior court, may, in the discretion of the court issuing the writ, be made

returnable, and a hearing thereon be had at any time. [1971 c 81 § 29; 1895 c 65 § 33; RRS § 1031.]

7.16.340 Rules of practice. Except as otherwise provided in this chapter, the provisions of the code of procedure concerning civil actions are applicable to and constitute the rules of practice in the proceedings in this chapter. [1895 c 65 § 34; RRS § 1032.]

7.16.350 Appellate review. From a final judgment in the superior court, in any such proceeding, appellate review by the supreme court or the court of appeals may be sought as in other actions. [1988 c 202 § 4; 1971 c 81 § 30; 1895 c 65 § 35; RRS § 1033.]

Severability—1988 c 202: See note following RCW 2.24.050.

7.16.360 Inapplicability to action reviewable under Administrative Procedure Act. This chapter does not apply to state agency action reviewable under chapter 34.05 RCW. [1989 c 175 § 38.]

Effective date—1989 c 175: See note following RCW 34.05.010.

7.16.370

Chapter 7.21

CONTEMPT OF COURT

Sections

7.21.010	Definitions.
7.21.020	Sanctions—Who may impose.
7.21.030	Remedial sanctions—Payment for losses.
7.21.040	Punitive sanctions—Fines.
7.21.050	Sanctions—Summary imposition—Procedure.
7.21.060	Administrative actions or proceedings—Petition to court for imposition of sanctions.
7.21.070	Appellate review.
7.21.900	Severability—1989 c 373.

7.21.010 Definitions. The definitions in this section apply throughout this chapter:

(1) "Contempt of court" means intentional:

(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

(c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or

(d) Refusal, without lawful authority, to produce a record, document, or other object.

(2) "Punitive sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.

(3) "Remedial sanction" means a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform. [1989 c 373 § 1.]

7.21.020 Sanctions—Who may impose. A judge or commissioner of the supreme court, the court of appeals, or the superior court, and a judge of a court of limited jurisdic-

tion may impose a sanction for contempt of court under this chapter. [1989 c 373 § 2.]

7.21.030 Remedial sanctions—Payment for losses.

(1) The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

(2) If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:

(a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

(d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(3) The court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees. [1989 c 373 § 3.]

7.21.040 Punitive sanctions—Fines. (1) Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

(2) (a) An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.

(b) If there is probable cause to believe that a contempt has been committed, the prosecuting attorney or city attorney may file the information or complaint on his or her own initiative or at the request of a person aggrieved by the contempt.

(c) A request that the prosecuting attorney or the city attorney commence an action under this section may be made by a judge presiding in an action or proceeding to which a contempt relates. If required for the administration of justice, the judge making the request may appoint a special counsel to prosecute an action to impose a punitive sanction for contempt of court.

A judge making a request pursuant to this subsection shall be disqualified from presiding at the trial.

(d) If the alleged contempt involves disrespect or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(3) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on an information or complaint seeking a punitive sanction.

(4) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

(5) If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment in the county jail for not more than one year, or both. [1989 c 373 § 4.]

7.21.050 Sanctions—Summary imposition—Procedure.

(1) The judge presiding in an action or proceeding may summarily impose either a remedial or punitive sanction authorized by this chapter upon a person who commits a contempt of court within the courtroom if the judge certifies that he or she saw or heard the contempt. The judge shall impose the sanctions immediately after the contempt of court or at the end of the proceeding and only for the purpose of preserving order in the court and protecting the authority and dignity of the court. The person committing the contempt of court shall be given an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise. The order of contempt shall recite the facts, state the sanctions imposed, and be signed by the judge and entered on the record.

(2) A court, after a finding of contempt of court in a proceeding under subsection (1) of this section may impose for each separate contempt of court a punitive sanction of a fine of not more than five hundred dollars or imprisonment in the county jail for not more than thirty days, or both, or a remedial sanction set forth in RCW 7.21.030(2). A forfeiture imposed as a remedial sanction under this subsection may not exceed more than five hundred dollars for each day the contempt continues. [1989 c 373 § 5.]

7.21.060 Administrative actions or proceedings—Petition to court for imposition of sanctions.

A state administrative agency conducting an action or proceeding or a party to the action or proceeding may petition the superior court in the county in which the action or proceeding is being conducted for a remedial sanction specified in RCW 7.21.030 for conduct specified in RCW 7.21.010 in the action or proceeding. [1989 c 373 § 6.]

7.21.070 Appellate review. A party in a proceeding or action under this chapter may seek appellate review under applicable court rules. Appellate review does not stay the proceedings in any other action, suit, or proceeding, or any judgment, decree, or order in the action, suit, or proceeding to which the contempt relates. [1989 c 373 § 7.]

7.21.900 Severability—1989 c 373. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 373 § 30.]

Chapter 7.24

UNIFORM DECLARATORY JUDGMENTS ACT

Sections

7.24.010	Authority of courts to render.
7.24.020	Rights and status under written instruments, statutes, ordinances.
7.24.030	Construction of contracts.
7.24.050	General powers not restricted by express enumeration.
7.24.060	Refusal of declaration where judgment would not terminate controversy.
7.24.070	Review.
7.24.080	Further relief.
7.24.090	Determination of issues of fact.
7.24.100	Costs.
7.24.110	Parties—City as party—Attorney general to be served, when.
7.24.120	Construction of chapter.
7.24.130	"Person" defined.
7.24.135	Severability—1935 c 113.
7.24.140	General purpose stated.
7.24.144	Short title.
7.24.146	Application of chapter—Validation of proceedings.
7.24.190	Court may stay proceedings and restrain parties.

Rules of court: Cf. CR 57.

7.24.010 Authority of courts to render. Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. [1937 c 14 § 1; 1935 c 113 § 1; RRS § 784-1.]

7.24.020 Rights and status under written instruments, statutes, ordinances. A person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder. [1935 c 113 § 2; RRS § 784-2.]

7.24.030 Construction of contracts. A contract may be construed either before or after there has been a breach thereof. [1935 c 113 § 3; RRS § 784-3.]

7.24.050 General powers not restricted by express enumeration. The enumeration in RCW 7.24.020 and 7.24.030 does not limit or restrict the exercise of the general powers conferred in RCW 7.24.010, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty. [1985 c 9 § 2. Prior: 1984 c 149 § 3; 1935 c 113 § 5; RRS § 784-5.]

Purpose—Reenactment—1985 c 9: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 9 § 1.]

Severability—1985 c 9: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 9 § 4.]

Reviser's note: 1985 c 9 reenacted RCW 7.24.050 without amendment.

Short title—Application—1984 c 30: See RCW 11.02.900 and 11.02.901.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

7.24.060 Refusal of declaration where judgment would not terminate controversy. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding. [1935 c 113 § 6; RRS § 784-6.]

7.24.070 Review. All orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees. [1935 c 113 § 7; RRS § 784-7.]

7.24.080 Further relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. When the application is deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith. [1935 c 113 § 8; RRS § 784-8.]

7.24.090 Determination of issues of fact. When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions, in the court in which the proceeding is pending. [1935 c 113 § 9; RRS § 784-9.]

7.24.100 Costs. In any proceeding under this chapter, the court may make such award of costs as may seem equitable and just. [1935 c 113 § 10; RRS § 784-10.]

7.24.110 Parties—City as party—Attorney general to be served, when. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served with a copy of the proceeding and be entitled to be heard. [1935 c 113 § 11; RRS § 784-11.]

7.24.120 Construction of chapter. This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered. [1935 c 113 § 12; RRS § 784-12.]

7.24.130 "Person" defined. The word "person" wherever used in this chapter, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever. [1935 c 113 § 13; RRS § 784-13.]

7.24.135 Severability—1935 c 113. The several sections and provisions of this chapter, except RCW 7.24.010 and 7.24.020, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the chapter invalid or inoperative. [1935 c 113 § 14; RRS § 784-14.]

7.24.140 General purpose stated. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees. [1935 c 113 § 15; RRS § 784-15.]

7.24.144 Short title. This chapter may be cited as the Uniform Declaratory Judgments Act. [1935 c 113 § 16; RRS § 784-16.]

7.24.146 Application of chapter—Validation of proceedings. This chapter shall apply to all actions and proceedings now pending in the courts of record of the state of Washington seeking relief under the terms of the uniform declaratory judgments act [this chapter]; and all judgments heretofore rendered; and all such actions and proceedings heretofore instituted and now pending in said courts of record of the state of Washington, seeking such relief, are hereby validated, and the respective courts of record in said actions shall have jurisdiction and power to proceed in said actions and to declare the rights, status and other legal relations sought to have been declared in said pending actions and proceedings in accordance with the provisions of said chapter. This chapter does not apply to state agency action reviewable under chapter 34.05 RCW. [1989 c 175 § 39; 1937 c 14 § 2; RRS § 784-17.]

Effective date—1989 c 175: See note following RCW 34.05.010.

7.24.190 Court may stay proceedings and restrain parties. The court, in its discretion and upon such conditions and with or without such bond or other security as it deems necessary and proper, may stay any ruling, order, or any court proceedings prior to final judgment or decree and may restrain all parties involved in order to secure the benefits and preserve and protect the rights of all parties to the court proceedings. [1965 c 131 § 1.]

Rules of court: CR 57.

Chapter 7.25

DECLARATORY JUDGMENTS OF LOCAL BOND ISSUES

Sections

- 7.25.010 Validity of bond issues may be tested.
 7.25.020 Complaint—Defendants—Service—Intervention—Attorney's fee.
 7.25.030 Judgment as to validity of all or part of bond issue—Effect.
 7.25.040 Other declaratory judgment provisions applicable.

Local bond issues generally: Title 39 RCW.

7.25.010 Validity of bond issues may be tested. Whenever the legislative or governing body of any county, city, school district, other municipal corporation, taxing district, or any agency, instrumentality, or public corporation thereof shall desire to issue bonds of any kind and shall have passed an ordinance or resolution authorizing the same, the validity of such proposed bond issue may be tested and determined in the manner provided in this chapter. [1983 c 263 § 1; 1939 c 153 § 1; RRS § 5616-11. Formerly RCW 7.24.150.]

7.25.020 Complaint—Defendants—Service—Intervention—Attorney's fee. A complaint shall be prepared and filed in the superior court by such county, city, school district, other municipal corporation, taxing district, or agency, instrumentality, or public corporation thereof setting forth such ordinance or resolution and that it is the purpose of the plaintiff to issue and sell bonds as stated therein and that it is desired that the right of the plaintiff to so issue such bonds and sell the same shall be tested and determined in said action. In said action all taxpayers of such taxing district shall be deemed to be defendants and shall be named in the title of said action as defendants with the words "The Taxpayers of (naming the taxing district), Defendants." Upon the filing of the complaint the court shall, upon the application of the plaintiff, enter an order naming one or more taxpayers of such taxing district upon whom service in said action shall be made as the representative of all taxpayers of said district, except such as may intervene as herein provided, and in such case the court shall fix and allow a reasonable attorney's fee in said action to the attorney who shall represent the representative taxpayer or taxpayers as aforesaid, and such fee and all taxable costs incurred by such representative taxpayer or taxpayers shall be taxed as costs against the plaintiff: PROVIDED, That if the taxpayer or taxpayers appointed by the court shall default, the court shall appoint an attorney who shall defend said action on behalf of all taxpayers, and such attorney shall be allowed a reasonable fee and taxable costs to be taxed against the plaintiff: PROVIDED FURTHER, That any taxpayer may intervene in such action and be represented therein by his own attorney. [1983 c 263 § 2; 1939 c 153 § 2; RRS § 5616-12. Formerly RCW 7.24.160.]

7.25.030 Judgment as to validity of all or part of bond issue—Effect. The court in such action shall enter its judgment determining whether or not the bonds as proposed will be valid, and if the court finds that a portion, but not all, of the said bond issue is authorized by law, the court shall

so declare, and find by its judgment what portion of such bond issue will be valid, and the judgment in said action shall be binding upon all taxpayers. [1939 c 153 § 3; RRS § 5616-13. Formerly RCW 7.24.170.]

7.25.040 Other declaratory judgment provisions applicable. Except as otherwise herein provided, all the provisions of the laws of Washington relating to declaratory judgments shall apply to the action herein provided for. The remedy herein provided shall be in addition to other remedies now provided by law. [1939 c 153 § 4; RRS § 5616-14. Formerly RCW 7.24.180.]

Uniform Declaratory Judgments Act: Chapter 7.24 RCW.

Chapter 7.28

EJECTMENT, QUIETING TITLE

Sections

- 7.28.010 Who may maintain actions—Service on nonresident defendant.
- 7.28.050 Limitation of actions for recovery of real property—Adverse possession under title deducible of record.
- 7.28.060 Rights inhere to heirs, devisees and assigns.
- 7.28.070 Adverse possession under claim and color of title—Payment of taxes.
- 7.28.080 Color of title to vacant and unoccupied land.
- 7.28.090 Adverse possession—Public lands—Adverse title in infants, etc.
- 7.28.100 Construction.
- 7.28.110 Substitution of landlord in action against tenant.
- 7.28.120 Pleadings—Superior title prevails.
- 7.28.130 Defendant must plead nature of his estate or right to possession.
- 7.28.140 Verdict of jury.
- 7.28.150 Damages—Limitation—Permanent improvements.
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- 7.28.280 Conflicting claims, donation law, generally—Joinder of parties.
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- 7.28.320 Possession no defense.

Forcible and unlawful entry, detainer: Chapters 59.12, 59.16 RCW.

Liens: Title 60 RCW.

Real property: Title 64 RCW.

Rent default, less than forty dollars: Chapter 59.08 RCW.

Tenancies: Chapter 59.04 RCW.

7.28.010 Who may maintain actions—Service on nonresident defendant. Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court

of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title; an action to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court. [1911 c 83 § 1; 1890 c 72 § 1; Code 1881 § 536; 1879 p 134 § 1; 1877 p 112 § 540; 1869 p 128 § 488; 1854 p 205 § 398; RRS § 785. Formerly RCW 7.28.010, 7.28.020, 7.28.030 and 7.28.040.]

Process, publication, etc.: Chapter 4.28 RCW.

Publication of legal notices: Chapter 65.16 RCW.

7.28.050 Limitation of actions for recovery of real property—Adverse possession under title deducible of record. That all actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual, open and notorious possession for seven successive years, having a connected title in law or equity deducible of record from this state or the United States, or from any public officer, or other person authorized by the laws of this state to sell such land for the nonpayment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid, but when the possessor shall acquire title after

taking such possession, the limitation shall begin to run from the time of acquiring title. [1893 c 11 § 1; RRS § 786.]

7.28.060 Rights inhere to heirs, devisees and assigns. The heirs, devisees and assigns of the person having such title and possession shall have the same benefit of RCW 7.28.050 as the person from whom the possession is derived. [1893 c 11 § 2; RRS § 787.]

7.28.070 Adverse possession under claim and color of title—Payment of taxes. Every person in actual, open and notorious possession of lands or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section. [1893 c 11 § 3; RRS § 788.]

7.28.080 Color of title to vacant and unoccupied land. Every person having color of title made in good faith to vacant and unoccupied land, who shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of said taxes for the term aforesaid, shall be entitled to the benefit of this section: PROVIDED, HOWEVER, If any person having a better paper title to said vacant and unoccupied land shall, during the said term of seven years, pay the taxes as assessed on said land for any one or more years of said term of seven years, then and in that case such taxpayer, his heirs or assigns, shall not be entitled to the benefit of this section. [1893 c 11 § 4; RRS § 789.]

7.28.090 Adverse possession—Public lands—Adverse title in infants, etc. RCW 7.28.070 and 7.28.080 shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor to lands held for any public purpose. Nor shall they extend to lands or tenements when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is a person under eighteen years of age, or incompetent within the meaning of RCW 11.88.010: PROVIDED, Such persons as aforesaid shall commence an action to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or in case of vacant and unoccupied land shall, within the time last aforesaid, pay to the person or persons who have paid the same for his or her betterments, and the taxes, with interest on said taxes at the legal rate per annum that have been paid

on said vacant and unimproved land. [1977 ex.s. c 80 § 7; 1971 ex.s. c 292 § 7; 1893 c 11 § 5; RRS § 790.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

7.28.100 Construction. That the provisions of RCW 7.28.050 through 7.28.100 shall be liberally construed for the purposes set forth in those sections. [1893 c 11 § 6; RRS § 791.]

7.28.110 Substitution of landlord in action against tenant. A defendant who is in actual possession may, for answer, plead that he is in possession only as a tenant of another, naming him and his place of residence, and thereupon the landlord, if he applies therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord does not apply to be made defendant within the time the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff he shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him defendant, or such further notice as the court or judge thereof may prescribe. [Code 1881 § 537; 1877 p 112 § 541; 1869 p 128 § 489; RRS § 792.]

7.28.120 Pleadings—Superior title prevails. The plaintiff in such action shall set forth in his complaint the nature of his estate, claim or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title, whether legal or equitable, shall prevail. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had. [Code 1881 § 538; 1879 p 134 § 2; 1877 p 113 § 542; 1869 p 128 § 490; RRS § 793.]

7.28.130 Defendant must plead nature of his estate or right to possession. The defendant shall not be allowed to give in evidence any estate in himself or another in the property, or any license or right to the possession thereof unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant, the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him. [Code 1881 § 539; 1877 p 113 § 543; 1869 p 129 § 491; RRS § 794.]

7.28.140 Verdict of jury. The jury by their verdict shall find as follows:

(1) If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such

property, part thereof, or undivided share or interest, in either, as the case may be.

(2) If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license, or right to the possession of either established on the trial by the defendant, if any, in effect as the same is required to be pleaded. [Code 1881 § 540; 1877 p 113 § 544; 1869 p 129 § 492; RRS § 795.]

Rules of court: CR 49.

General, special verdicts: RCW 4.44.410 through 4.44.440.

7.28.150 Damages—Limitation—Permanent improvements. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement, to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims holding under color of title adversely to the claim of the plaintiff, in good faith, the value thereof at the time of trial shall be allowed as a setoff against such damages. [Code 1881 § 541; 1877 p 113 § 545; 1869 p 129 § 493; RRS § 796.]

Reviser's note: Compare the last sentence of this section with RCW 7.28.160 through 7.28.180.

7.28.160 Defendant's counterclaim for permanent improvements and taxes paid. In an action for the recovery of real property upon which permanent improvements have been made or general or special taxes or local assessments have been paid by a defendant, or those under whom he claims, holding in good faith under color or claim of title adversely to the claim of plaintiff, the value of such improvements and the amount of such taxes or assessments with interest thereon from date of payment must be allowed as a counterclaim to the defendant. [1903 c 137 § 1; RRS § 797.]

7.28.170 Defendant's counterclaim for permanent improvements and taxes paid—Pleadings, issues and trial on counterclaim. The counterclaim shall set forth the value of the land apart from the improvements, and the nature and value of the improvements apart from the land and the amount of said taxes and assessments so paid, and the date of payment. Issues shall be joined and tried as in other actions, and the value of the land and the amount of said taxes and assessments apart from the improvements, and the value of the improvements apart from the land must be specifically found by the verdict of the jury, report of the referee, or findings of the court as the case may be. [1903 c 137 § 2; RRS § 798.]

7.28.180 Defendant's counterclaim for permanent improvements and taxes paid—Judgment on counterclaim—Payment. If the judgment be in favor of the plaintiff for the recovery of the realty, and of the defendant upon the counterclaim, the plaintiff shall be entitled to recover such damages as he may be found to have suffered

through the withholding of the premises and waste committed thereupon by the defendant or those under whom he claims, but against this recovery shall be offset pro tanto the value of the permanent improvements and the amount of said taxes and assessments with interest found as above provided. Should the value of improvements or taxes or assessments with interest exceed the recovery for damages, the plaintiff, shall, within two months, pay to the defendant the difference between the two sums and upon proof, after notice, to the defendant, that this has been done, the court shall make an order declaring that fact, and that title to the improvements is vested in him. Should the plaintiff fail to make such payment, the defendant may at any time within two months after the time limited for such payment to be made, pay to the plaintiff the value of the land apart from the improvements, and the amount of the damages awarded against him, and he thereupon shall be vested with title to the land, and, after notice to the plaintiff, the court shall make an order reciting the fact and adjudging title to be in him. Should neither party make the payment above provided, within the specified time, they shall be deemed to be tenants in common of the premises, including the improvements, each holding an interest proportionate to the value of his property determined in the manner specified in RCW 7.28.170: PROVIDED, That the interest of the owner of the improvements shall be the difference between the value of the improvements and the amount of damages recovered against him by the plaintiff. [1903 c 137 § 3; RRS § 799.]

7.28.190 Verdict where plaintiff's right to possession expires before trial. If the right of the plaintiff to the possession of the property expire, after the commencement of the action and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages. [Code 1881 § 542; 1877 p 114 § 546; 1869 p 130 § 494; RRS § 800.]

7.28.200 Order for survey of property. The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof, for the purposes of the action. [Code 1881 § 543; 1877 p 114 § 547; 1869 p 130 § 495; RRS § 801.]

7.28.210 Order for survey of property—Contents of order—Service. The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement; but if any unnecessary injury be done to the premises, he shall be liable therefor. [Code 1881 § 544; 1877 p 114 § 548; 1869 p 130 § 496; RRS § 802.]

7.28.220 Alienation by defendant, effect of. An action for the recovery of the possession of real property against a person in possession, cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant do not satisfy the judgment recovered for damages for withhold-

ing the possession, such damages may be recovered by action against the purchaser. [Code 1881 § 545; 1877 p 114 § 549; 1869 p 130 § 497; RRS § 803.]

7.28.230 Mortgagee cannot maintain action for possession—Possession to collect mortgaged, pledged, or assigned rents and profits—Perfection of security interest. (1) A mortgage of any interest in real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale according to law: PROVIDED, That nothing in this section shall be construed as any limitation upon the right of the owner of real property to mortgage, pledge or assign the rents and profits thereof, nor as prohibiting the mortgagee, pledgee or assignee of such rents and profits, or any trustee under a mortgage or trust deed either contemporaneously or upon the happening of a future event of default, from entering into possession of any real property, other than farm lands or the homestead of the mortgagor or his successor in interest, for the purpose of collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of such real property and collect such rents and profits thereof for application in accordance with the terms of such mortgage, trust deed or assignment.

(2) Until paid, the rents and profits of real property constitute real property for the purposes of mortgages, trust deeds or assignments whether or not said rents and profits have accrued. The provisions of RCW 65.08.070 as now or hereafter amended shall be applicable to such rents and profits, and such rents and profits are excluded from Article 62A.9 RCW.

(3) The recording of an assignment, mortgage, or pledge of unpaid rents and profits of real property, intended as security, in accordance with RCW 65.08.070, shall immediately perfect the security interest in the assignee, mortgagee, or pledgee and shall not require any further action by the holder of the security interest to be perfected as to any subsequent purchaser, mortgagee, or assignee. Any lien created by such assignment, mortgage, or pledge shall, when recorded, be deemed specific, perfected, and choate even if recorded prior to July 23, 1989. [1991 c 188 § 1; 1989 c 73 § 1; 1969 ex.s. c 122 § 1; Code 1881 § 546; 1877 p 114 § 550; 1869 p 130 § 498; RRS § 804.]

7.28.240 Action between cotenants. In an action by a tenant in common, or a joint tenant of real property against his cotenant, the plaintiff must show, in addition to his evidence of right, that the defendant either denied the plaintiff's right or did some act amounting to such denial. [Code 1881 § 547; 1877 p 114 § 551; 1869 p 130 § 499; RRS § 805.]

7.28.250 Action against tenant on failure to pay rent. When in the case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to reenter for such failure; he may bring an action to recover the possession of such property, and such action is equivalent to a demand of the rent and a reentry upon the

property. But if at any time before the judgment in such action, the lessee or his successor in interest as to the whole or a part of the property, pay to the plaintiff, or bring into court the amount of rent then in arrear, with interest and cost of action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease. [Code 1881 § 548; 1877 p 114 § 552; 1869 p 131 § 500; No RRS.]

Forcible entry, detainer: Chapter 59.12 RCW.

Rent default, less than forty dollars: Chapter 59.08 RCW.

Tenancies: Chapter 59.04 RCW.

7.28.260 Effect of judgment—Lis pendens—Vacation. In an action to recover possession of real property, the judgment rendered therein shall be conclusive as to the estate in such property and the right of possession thereof, so far as the same is thereby determined, upon all persons claiming by, through, or under the party against whom the judgment is rendered, by title or interest passing after the commencement of the action, if the party in whose favor the judgment is rendered shall have filed a notice of the pendency of the action as required by RCW 4.28.320. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order, vacating the judgment and granting him a new trial, upon the payment of the costs of the action. [1909 c 35 § 1; Code 1881 § 549; 1877 p 114 § 553; 1869 p 131 § 501; RRS § 806.]

Rules of court: Cf. CR 58, 60(e).

New trials: Chapter 4.76 RCW.

Vacation of judgments: Chapter 4.72 RCW.

7.28.270 Effect of vacation of judgment. If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in RCW 7.28.260, such possession shall not be thereby affected in any way; and if judgment be given for defendant in the new trial, he shall be entitled to restitution by execution in the same manner as if he were plaintiff. [Code 1881 § 550; 1877 p 115 § 554; 1869 p 131 § 502; RRS § 807.]

Rules of court: Cf. CR 58, 60(e).

7.28.280 Conflicting claims, donation law, generally—Joinder of parties. In an action at law, for the recovery of the possession of real property, if either party claims the property as a donee of the United States, and under the act of congress approved September 27th, 1850, commonly called the "Donation law," or the acts amendatory thereof, such party, from the date of his settlement thereon, as provided in said act, shall be deemed to have a legal estate in fee, in such property, to continue upon condition that he perform the conditions required by such acts, which estate is unconditional and indefeasible after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property, by virtue of settlement, under such acts, such settlement and performance of the subsequent condition shall be prima facie presumed in favor of the party having or claiming under the elder certificate, or

patent, as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. Any person in possession, by himself or his tenant, of real property, and any private or municipal corporation in possession by itself or its tenant of any real property, or when such real property is not in the actual possession of anyone, any person or private or municipal corporation claiming title to any real property under a patent from the United States, or during his or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons, corporations or associations claiming an interest in said real property or any part thereof, or any right thereto adverse to him, them, or it, for the purpose of determining such claim, estate, or interest; and where several persons, or private or municipal corporations are in possession of, or claim as aforesaid, separate parcels of real property, and an adverse interest is claimed or claim made in or to any such parcels, by any other person, persons, corporations or associations, arising out of a question, conveyance, statute, grant, or other matter common to all such parcels of real estate, all or any portion of such persons or corporations so in possession, or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all persons, corporations or associations claiming such adverse interest. [Code 1881 § 551; 1877 p 116 § 556; 1869 p 132 § 504; RRS §§ 808, 809. Formerly RCW 7.28.280 and 7.28.290.]

7.28.300 Quieting title against outlawed mortgage. The record owner of real estate may maintain an action to quiet title against the lien of a mortgage on the real estate where an action to foreclose such mortgage would be barred by the statute of limitations, and, upon proof sufficient to satisfy the court, may have judgment quieting title against such mortgage lien. [1937 c 124 § 1; RRS § 785-1.]

Limitation of actions, generally: Chapter 4.16 RCW.

Real estate mortgages, foreclosure: Chapter 61.12 RCW.

7.28.310 Quieting title to personal property. Any person or corporation claiming to be the owner of or interested in any tangible or intangible personal property may institute and maintain a suit against any person or corporation also claiming title to or any interest in such property for the purpose of adjudicating the title of the plaintiff to such property, or any interest therein, against any and all adverse claims; removing all such adverse claims as clouds upon the title of the plaintiff and quieting the title of the plaintiff against any and all such adverse claims. [1929 c 100 § 1; RRS § 809-1.]

7.28.320 Possession no defense. The fact that any person or corporation against whom such action may be brought is in the possession of such property, or evidence of title to such property, shall not prevent the maintenance of such suit. [1929 c 100 § 2; RRS § 809-2.]

Chapter 7.36 HABEAS CORPUS

Sections

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Rules of court: RAP 16.3 through 16.15.

7.36.010 Who may prosecute writ. Every person restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal. [Code 1881 § 666; 1877 p 138 § 669; 1869 p 156 § 606; 1854 p 212 § 434; RRS § 1063.]

7.36.020 Parents, guardians, etc., may act for persons under disability. Writs of habeas corpus shall be granted in favor of parents, guardians, limited guardians where appropriate, spouses, and next of kin, and to enforce the rights, and for the protection of infants and incompetent or disabled persons within the meaning of RCW 11.88.010; and the proceedings shall in all cases conform to the provisions of this chapter. [1977 ex.s. c 80 § 8; 1973 1st ex.s. c 154 § 17; Code 1881 § 688; 1877 p 141 § 692; 1869 p 159 § 628; 1854 p 214 § 456; RRS § 1064.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

7.36.030 Petition—Contents. Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

(1) By whom the petitioner is restrained of his liberty, and the place where, (naming the parties if they are known, or describing them if they are not known).

(2) The cause or pretense of the restraint according to the best of the knowledge and belief of the applicant.

(3) If the restraint be alleged to be illegal, in what the illegality consists. [Code 1881 § 667; 1877 p 138 § 670; 1869 p 156 § 607; 1854 p 212 § 435; RRS § 1065.]

7.36.040 Who may grant writ. Writs of habeas corpus may be granted by the supreme court, the court of appeals, or superior court, or by any judge of such courts, and upon application the writ shall be granted without delay. [1971 c 81 § 31; 1957 c 9 § 10; Code 1881 § 668; 1877 p 138 § 671; 1869 p 156 § 608; 1854 p 212 § 436; RRS § 1066.]

Rules of court: Cf. RAP 16.3, 18.22.

7.36.050 To whom directed—Contents. The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court or judge at such time and place as the court or judge shall direct to do and receive what shall be ordered concerning him, and have then and there the writ. [Code 1881 § 669; 1877 p 138 § 672; 1869 p 156 § 609; 1854 p 212 § 437; RRS § 1067.]

7.36.060 Delivery to sheriff if to him directed. If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay. [Code 1881 § 670; 1877 p 138 § 673; 1869 p 156 § 610; 1854 p 212 § 438; RRS § 1068.]

7.36.070 Service by sheriff if directed to another. If the writ be directed to any other person, it shall be delivered to the sheriff and shall be by him served by delivering the same to such person without delay. [Code 1881 § 671; 1877 p 139 § 674; 1869 p 156 § 611; 1854 p 212 § 430; RRS § 1069.]

7.36.080 Service when person not found. If the person to whom such writ is directed cannot be found or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by posting the same on [in] some conspicuous place, either of [on] his dwelling house or where the party is confined or under restraint. [Code 1881 § 672; 1877 p 139 § 675; 1869 p 157 § 612; 1854 p 212 § 440; RRS § 1070.]

7.36.090 Return—Attachment for refusal. The sheriff or other person to whom the writ is directed shall make immediate return thereof, and if he refuse after due service to make return, the court shall enforce obedience by attachment. [Code 1881 § 673; 1877 p 139 § 676; 1869 p 157 § 613; 1854 p 213 § 441; RRS § 1071.]

7.36.100 Form of return—Production of person. The return must be signed and verified by the person making it, who shall state:

(1) The authority or cause of the restraint of the party in his custody.

(2) If the authority shall be in writing, he shall return a copy and produce the original on the hearing.

(3) If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party at the hearing unless prevented by sickness or infirmity, which must be shown in the return. [Code

1881 § 674; 1877 p 139 § 677; 1869 p 157 § 614; 1854 p 213 § 442; RRS § 1072.]

7.36.110 Procedure—Pleadings—Amendment. The court or judge, if satisfied of the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in evidence. The new matter shall be verified, except in cases of commitment on a criminal charge. The return and pleadings may be amended without causing a delay. [Code 1881 § 675; 1877 p 139 § 678; 1869 p 157 § 615; 1854 p 213 § 443; RRS § 1073.]

7.36.120 Hearing—Determination. The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuation thereof, shall discharge the party. [Code 1881 § 676; 1877 p 139 § 679; 1869 p 157 § 616; 1854 p 213 § 444; RRS § 1074.]

Rules of court: ER 1101.

7.36.130 Limitation upon inquiry. No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge the party when the term of commitment has not expired, in either of the cases following:

(1) Upon any process issued on any final judgment of a court of competent jurisdiction except where it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the state of Washington or of the United States have been violated and the petition is filed within the time allowed by RCW 10.73.090 and 10.73.100.

(2) For any contempt of any court, officer or body having authority in the premises to commit; but an order of commitment, as for a contempt upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications.

(3) Upon a warrant issued from the superior court upon an indictment or information. [1989 c 395 § 3; 1947 c 256 § 3; 1891 c 43 § 1; Code 1881 § 677; 1869 p 157 § 617; 1854 p 213 § 445; Rem. Supp. 1947 § 1075.]

7.36.140 Duty of courts when federal question is raised. In the consideration of any petition for a writ of habeas corpus by the supreme court or the court of appeals, whether in an original proceeding or upon an appeal, if any federal question shall be presented by the pleadings, it shall be the duty of the supreme court to determine in its opinion whether or not the petitioner has been denied a right guaranteed by the Constitution of the United States. [1971 c 81 § 32; 1947 c 256 § 2; Rem. Supp. 1947 § 1085-2.]

7.36.150 Admission to bail or discharge—Duty of court. No person shall be discharged from an order of commitment issued by any judicial or peace officer for want of bail, or in cases not bailable on account of any defect in the charge or process, or for alleged want of probable cause; but in all cases the court or judge shall summon the prose-

cutting witnesses, investigate the criminal charge, and discharge, admit to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper. [Code 1881 § 678; 1877 p 140 § 681; 1869 p 157 § 618; 1854 p 213 § 446; RRS § 1076.]

7.36.160 Writ to admit prisoner to bail. The writ may be had for the purpose of admitting a prisoner to bail in civil and criminal actions. When any person has an interest in the detention, and the prisoner shall not be discharged until the person having such interest is notified. [Code 1881 § 679; 1877 p 140 § 682; 1869 p 158 § 619; 1854 p 214 § 447; RRS § 1077.]

7.36.170 Compelling attendance of witnesses. The court or judge shall have power to require and compel the attendance of witnesses, and to do all other acts necessary to determine the case. [Code 1881 § 680; 1877 p 140 § 683; 1869 p 158 § 620; 1854 p 214 § 448; RRS § 1078.]

Witnesses, compelling attendance: Chapter 5.56 RCW.

7.36.180 Officers protected from civil liability. No sheriff or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge made thereon. [Code 1881 § 681; 1877 p 140 § 684; 1869 p 158 § 621; 1854 p 214 § 449; RRS § 1079.]

7.36.190 Warrant to prevent removal. Whenever it shall appear by affidavit that any one is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued reciting the facts, and directed to the sheriff or any constable of the county, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the court or judge to be dealt with according to the law. [Code 1881 § 682; 1877 p 140 § 685; 1869 p 158 § 622; 1854 p 214 § 450; RRS § 1080.]

7.36.200 Warrant may call for apprehension of offending party. The court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint. [Code 1881 § 683; 1877 p 141 § 687; 1869 p 159 § 623; 1854 p 214 § 451; RRS § 1081.]

7.36.210 Execution of warrant. The officer shall execute the writ [warrant] by bringing the person therein named before the court or judge, and the like return of proceedings shall be required and had as in case of writs of habeas corpus. [Code 1881 § 684; 1877 p 141 § 688; 1869 p 159 § 624; 1854 p 214 § 452; RRS § 1082.]

7.36.220 Temporary orders. The court or judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party restrained may be changed from one person to another, by order of the court or

judge. [Code 1881 § 685; 1877 p 141 § 689; 1869 p 159 § 625; 1854 p 214 § 453; RRS § 1083.]

7.36.230 Emergency acts on Sunday authorized.

Any writ or process authorized by this chapter may be issued and served, in cases of emergency, on Sunday. [Code 1881 § 686; 1877 p 141 § 690; 1869 p 159 § 626; 1854 p 214 § 454; RRS § 1084.]

Superior court, issuance of habeas corpus on nonjudicial days: State Constitution Art. 4 § 6 (Amendment 28).

7.36.240 Writs and process—Issuance—Service—Defects—Amendments. All writs and other process authorized by this chapter shall be issued by the clerk of the court, and sealed with the seal of such court, and shall be served and returned forthwith, unless the court or judge shall specify a particular time for such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed and temporary commitments when necessary. [Code 1881 § 687; 1877 p 141 § 691; 1869 p 159 § 627; 1854 p 214 § 455; RRS § 1085.]

7.36.250 Proceeding in forma pauperis. Any person entitled to prosecute a writ of habeas corpus who, by reason of poverty is unable to pay the costs of such proceeding or give security therefor, may file in the court having original jurisdiction of the proceeding an affidavit setting forth such facts and that he believes himself to be entitled to the redress sought. Upon the filing of such an affidavit the court may, if satisfied that the proceeding or appeal is instituted or taken in good faith, order that such proceeding, including appeal, may be prosecuted without prepayment of fees or costs or the giving of security therefor. [1947 c 256 § 1; Rem. Supp. 1947 § 1085-1.]

Rules of court: RAP 16.15(f), 16.15(g).

Chapter 7.40 INJUNCTIONS

Sections

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7.40.230 Injunctions—Fraud in obtaining telecommunications service.

Rules of court: Cf. CR 65, 52(a)(2)(A).

Camping resorts, relating to: RCW 19.105.470, 19.105.490.

Injunctions in labor disputes: Chapter 49.32 RCW.

Term papers, theses, dissertations, sale of prohibited—Injunctions: RCW 28B.10.584.

7.40.010 Who may grant restraining orders and injunctions. Restraining orders and injunctions may be granted by the superior court, or by any judge thereof. [1957 c 9 § 11; Code 1881 § 153; 1877 p 32 § 153; 1869 p 38 § 151; 1854 p 152 § 111; RRS § 718.]

7.40.020 Grounds for issuance. When it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff; or when during the litigation, it appears that the defendant is doing, or threatened, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property. [Code 1881 § 154; 1877 p 33 § 154; 1869 p 38 § 152; 1854 p 152 § 112; RRS § 719.]

7.40.030 Malicious erection of structure may be enjoined. An injunction may be granted to restrain the malicious erection, by any owner or lessee of land, of any structure intended to spite, injure or annoy an adjoining proprietor. And where any owner or lessee of land has maliciously erected such a structure with such intent, a mandatory injunction will lie to compel its abatement and removal. [1883 p 44 § 1, part; Code 1881 § 154 1/2; RRS § 720.]

7.40.040 Time of granting. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment in that proceeding. [Code 1881 § 155; 1877 p 33 § 155; 1869 p 39 § 153; 1854 p 153 § 113; RRS § 721.]

7.40.050 Notice—Restraining orders in emergencies. No injunction shall be granted until it shall appear to the court or judge granting it, that some one or more of the opposite party concerned, has had reasonable notice of the time and place of making application, except that in cases of emergency to be shown in the complaint, the court may grant a restraining order until notice can be given and

hearing had thereon. [Code 1881 § 156; 1877 p 33 § 156; 1869 p 39 § 154; 1854 p 153 § 114; RRS § 722.]

Rules of court: CR 52(a)(2)(A), 65.

7.40.060 Affidavits at hearing. On the hearing of an application for an injunction, each party may read affidavits. [Code 1881 § 157; 1877 p 33 § 157; 1869 p 39 § 155; 1854 p 153 § 115; RRS § 723.]

Rules of court: CR 65.

7.40.070 Terms and conditions may be imposed. Upon the granting or continuing an injunction, such terms and conditions may be imposed upon the party obtaining it as may be deemed equitable. [Code 1881 § 158; 1877 p 33 § 158; 1869 p 39 § 156; 1854 p 153 § 116; RRS § 724.]

Rules of court: Cf. CR 65(d).

7.40.080 Injunction bond. No injunction or restraining order shall be granted until the party asking it shall enter into a bond, in such a sum as shall be fixed by the court or judge granting the order, with surety to the satisfaction of the clerk of the superior court, to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify as provided by law, and until they so justify, the clerk shall be responsible for their sufficiency. [1957 c 51 § 9; Code 1881 § 159; 1877 p 33 § 159; 1869 p 39 § 157; 1854 p 153 § 117; RRS § 725.]

Rules of court: Cf. CR 65(c).

Corporate surety—Insurance: Chapter 48.28 RCW.

7.40.085 Injunction bonds for injunctions affecting public construction contracts. In determining the amount of the bond required by RCW 7.40.080 as now or hereafter amended, with respect to an injunction or restraining order that will delay or enjoin a notice to proceed or the performance of work under a construction contract for a public contracting body among the factors regarded in the exercise of its discretion, the court shall consider:

(1) All costs and liquidated damages provided for in the contract or otherwise that may result from such delay;

(2) The probable costs to the public in terms of inconvenience, delayed use of the proposed facilities, and escalation of costs of delayed construction of the proposed facilities that may be incurred as a result of a delay subsequently found to be without good cause; and

(3) The procedures for consideration of objections to proposed construction and the opportunity the one seeking the injunction had for objecting prior to the letting of the contract. [1974 ex.s. c 153 § 1.]

7.40.090 Bond for injunction after temporary restraining order. When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be required to enter into a second bond, unless the former shall be deemed insufficient, but the plaintiff and his surety shall remain liable upon his original bond. [Code 1881 § 160; 1877 p 33 § 160; 1869 p 39 § 158; 1854 p 153 § 118; RRS § 726.]

Rules of court: Cf. CR 65(c).

7.40.100 Copy of order serves as writ. It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order of injunction duly certified by him, which shall be forthwith served by delivering the same to the adverse party. [Code 1881 § 161; 1877 p 33 § 161; 1869 p 39 § 159; 1854 p 153 § 119; RRS § 727.]

7.40.110 Stay of judgment—Release of errors. In application to stay proceedings after judgment, the plaintiff shall endorse upon his complaint a release of errors in the judgment whenever required to do so by the judge or court. [Code 1881 § 162; 1877 p 33 § 162; 1869 p 39 § 160; 1854 p 153 § 120; RRS § 728.]

7.40.120 Injunction, who is bound by. An order of injunction shall bind every person and officer restrained from the time he is informed thereof. [Code 1881 § 163; 1877 p 33 § 163; 1869 p 40 § 161; 1854 p 153 § 121; RRS § 729.]

7.40.130 When adverse party becomes bound. When notice of the application for an injunction has been served upon the adverse party, it shall not be necessary to serve the order upon him, but he shall be bound by the injunction as soon as the bond required of the plaintiff is executed and delivered to the proper officer. [Code 1881 § 164; 1877 p 34 § 164; 1869 p 40 § 162; 1854 p 154 § 122; RRS § 730.]

7.40.140 Disposition of money collected on enjoined judgment. Money collected upon a judgment afterward enjoined, remaining in the hands of the collecting officer, shall be paid to the clerk of the court granting the injunction, subject to the order of the court. [Code 1881 § 165; 1877 p 34 § 165; 1869 p 40 § 163; 1854 p 154 § 123; RRS § 731.]

7.40.150 Contempt for disobedience. Whenever it shall appear to any court granting a restraining order or an order of injunction, or by affidavit, that any person has wilfully disobeyed the order after notice thereof, such court shall award an attachment for contempt against the party charged, or an order to show cause why it should not issue. The attachment or order shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by him. [1957 c 9 § 12; Code 1881 § 166; 1877 p 34 § 166; 1869 p 40 § 164; 1854 p 154 § 124; RRS § 732.]

7.40.160 Attachment and arrest—Indemnity of plaintiff. The attachment for contempt shall be immediately served, by arresting the party charged, and bringing him into court, if in session, to be dealt with as in other cases of contempt; and the court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises. [Code 1881 § 167; 1877 p 34 § 167; 1869 p 40 § 165; 1854 p 154 § 125; RRS § 733.]

7.40.170 Bond for appearance. If the court is not in session the officer making the arrest shall cause the person

to enter into a bond, with surety, to be approved by the officer, conditioned that he personally appear in open court whenever his appearance shall be required, to answer such contempt, and that he will pay to the plaintiff all his damages and costs occasioned by the breach of the order; and in default thereof he shall be committed to the jail of the county until he shall enter into such bond with surety, or be otherwise legally discharged. [1891 c 56 § 1; Code 1881 § 168; 1877 p 34 § 168; 1869 p 40 § 166; 1854 p 154 § 126; RRS § 734.]

7.40.180 Motion to dissolve or modify. Motions to dissolve or modify injunctions may be made in open court, or before a judge of the superior court, at any time after reasonable notice to the adverse party. [1891 c 36 § 1; Code 1881 § 169; 1877 p 34 § 169; 1869 p 40 § 167; 1854 p 154 § 127; RRS § 735.]

Rules of court: CR 65.

7.40.190 Damages on dissolution of injunction to stay judgment. When an injunction to stay proceedings after judgment for debt or damages shall be dissolved, the court shall award such damages not exceeding ten percent on the judgment, as the court may deem right, against the party in whose favor the injunction issued. [Code 1881 § 170; 1877 p 34 § 170; 1869 p 41 § 168; 1854 p 154 § 128; RRS § 736.]

7.40.200 Damages for rents and waste. If an injunction to stay proceedings after verdict or judgment in an action for the recovery of real estate, or the possession thereof, be dissolved, the damages assessed against the party obtaining the injunction, shall include the reasonable rents and profits of the lands recovered, and all waste committed after granting injunction. [Code 1881 § 171; 1877 p 35 § 171; 1869 p 41 § 169; 1854 p 154 § 129; RRS § 737.]

7.40.210 Motion to reinstate. Upon an order being made dissolving or modifying an order of injunction, the plaintiff may move the court to reinstate the order, and the court may, in its discretion, allow the motion, and appoint a time for hearing the same before the court, or a time and place for hearing before some judge thereof, and upon the hearing, the parties may produce such additional affidavits or depositions as the court shall direct, and the order of injunction shall be dissolved, modified, or reinstated, as the court or judge may deem right. Until the hearing of the motion to reinstate the order of injunction, the order to dissolve or modify it, shall be suspended. [Code 1881 § 172; 1877 p 35 § 172; 1869 p 41 § 170; 1854 p 154 § 130; RRS § 738.]

7.40.230 Injunctions—Fraud in obtaining telecommunications service. (1) Whenever it appears that any person is engaged in or about to engage in any act that constitutes or will constitute a violation of RCW 9.26A.110 or 9.26A.090, the prosecuting attorney, a telecommunications company, or any person harmed by an alleged violation of RCW 9.26A.110 or 9.26A.090 may initiate a civil proceeding in superior court to enjoin such violation, and may

petition the court to issue an order for the discontinuance of the specific telephone service being used in violation of RCW 9.26A.110 or 9.26A.090.

(2) An action under this section shall be brought in the county in which the unlawful act or acts are alleged to have taken place, and shall be commenced by the filing of a verified complaint, or shall be accompanied by an affidavit.

(3) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or about to engage in any act that constitutes a violation of RCW 9.26A.110 or 9.26A.090, the court may issue a temporary restraining order to abate and prevent the continuance or recurrence of the act. The court may direct the sheriff to seize and retain until further order of the court any device that is being used in violation of RCW 9.26A.110 or 9.26A.090. All property seized pursuant to the order of the court shall remain in the custody of the court.

(4) The court may issue a permanent injunction to restrain, abate or prevent the continuance or recurrence of the violation of RCW 9.26A.110 or 9.26A.090. The court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction. The court may retain jurisdiction of the case for the purpose of enforcing its orders.

(5) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or is about to engage in any act that constitutes a violation of RCW 9.26A.110 or 9.26A.090, the court may issue an order which shall be promptly served upon the person in whose name the telecommunications device is listed, requiring the party, within a reasonable time, to be fixed by the court, from the time of service of the petition on said party, to show cause before the judge why telephone service should not promptly be discontinued. At the hearing the burden of proof shall be on the complainant.

(6) Upon a finding by the court that the telecommunications device is being used or has been used in violation of RCW 9.26A.110, the court may issue an order requiring the telephone company which is rendering service over the device to disconnect such service. Upon receipt of such order, which shall be served upon an officer of the telephone company by the sheriff or deputy of the county in which the telecommunications device is installed, the telephone company shall proceed promptly to disconnect and remove such device and discontinue all telephone service until further order of the court, provided that the telephone company may do so without breach of the peace or trespass.

(7) The telecommunications company that petitions the court for the removal of any telecommunications device under this section shall be a necessary party to any proceeding or action arising out of or under RCW 9.26A.110.

(8) No telephone company shall be liable for any damages, penalty, or forfeiture, whether civil or criminal, for any legal act performed in compliance with any order issued by the court.

(9) Property seized pursuant to the direction of the court that the court has determined to have been used in violation of RCW 9.26A.110 shall be forfeited after notice and hearing. The court may remit or mitigate the forfeiture upon terms and conditions as the court deems reasonable if it finds that such forfeiture was incurred without gross negligence or without any intent of the petitioner to violate the law, or it

finds the existence of such mitigating circumstances as to justify the remission or the mitigation of the forfeiture. In determining whether to remit or mitigate forfeiture, the court shall consider losses that may have been suffered by victims as the result of the use of the forfeited property. [1990 c 11 § 4.]

Severability—1990 c 11: See RCW 9.26A.900.

Chapter 7.42

INJUNCTIONS—OBSCENE MATERIALS

Sections

7.42.010	Obscene prints and articles—Jurisdiction to enjoin.
7.42.020	Injunction authorized.
7.42.030	Trial by jury—Judgment.
7.42.040	Matter to be surrendered to sheriff—Seizure, destruction.
7.42.050	Prosecuting attorney need not file undertaking prior to order—Nonliability.
7.42.060	Knowledge of contents chargeable after service.
7.42.070	Exemptions.
7.42.900	Severability—1959 c 105.

Rules of court: Cf. CR 65.

Crimes, obscenity: Chapter 9.68 RCW.

Criminal procedure, sufficiency of indictment, information for obscene literature: RCW 10.37.130.

7.42.010 Obscene prints and articles—Jurisdiction to enjoin. The superior courts shall have jurisdiction to enjoin the sale or distribution of obscene prints and articles as hereinafter specified. [1959 c 105 § 1.]

7.42.020 Injunction authorized. The prosecuting attorney of every county of the state, in which a person, firm, or corporation sells or distributes or offers to sell or distribute or has in his possession with intent to sell or distribute any book, magazine, pamphlet, comic book, story paper, writing, paper, newspaper, phonograph record, magnetic tape, electric or mechanical transcription, picture, drawing, photograph, figure, image or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy or indecent, or which contains an article or instrument of indecent use or purports to be for indecent use or purpose, may maintain an action in the name of the state for an injunction against such person, firm, or corporation in the superior court to prevent the sale or further sale or the distribution or further distribution or the acquisition or possession of any book, magazine, pamphlet, comic book, story paper, writing, paper, newspaper, phonograph record, magnetic tape, electric or mechanical transcription, picture, drawing, photograph, figure or image or any written or printed matter of indecent character, herein described. [1959 c 105 § 2.]

7.42.030 Trial by jury—Judgment. The person, firm, or corporation sought to be enjoined shall be entitled to a trial by jury of the issues within a reasonable time after joinder of issue and a judgment shall be entered by the court within two days of the conclusion of the trial. No injunction or restraining order shall be issued prior to the conclusion of the trial. [1959 c 105 § 3.]

7.42.040 Matter to be surrendered to sheriff—Seizure, destruction. In the event that a final order or judgment of injunction be entered in favor of the state and against the person, firm, or corporation sought to be enjoined, such final order or judgment shall contain a provision directing the person, firm, or corporation to surrender to the sheriff of the county in which the action was brought any of the matter described in RCW 7.42.020, and each sheriff shall be directed to seize and destroy the same. [1959 c 105 § 4.]

7.42.050 Prosecuting attorney need not file undertaking prior to order—Nonliability. In any action brought as herein provided, the prosecuting attorney shall not be required to file any undertaking before the issuance of an injunction order provided for in RCW 7.42.040, shall not be liable for costs and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm, or corporation sought to be enjoined. [1959 c 105 § 5.]

7.42.060 Knowledge of contents chargeable after service. Every person, firm, or corporation who sells, distributes, or acquires possession with intent to sell or distribute any of the matter described in RCW 7.42.020, after the service upon him of a summons and complaint in an action brought by the prosecuting attorney pursuant to this chapter is chargeable with knowledge of the contents thereof. [1959 c 105 § 6.]

7.42.070 Exemptions. Nothing in this chapter shall apply to any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1959 c 105 § 7.]

7.42.900 Severability—1959 c 105. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1959 c 105 § 8.]

Chapter 7.43

INJUNCTIONS—DRUG NUISANCES

Sections	
7.43.010	Injunction authorized.
7.43.020	Complaint—Affidavit.
7.43.030	Temporary restraining order or preliminary injunction.
7.43.040	Temporary restraining order or preliminary injunction—Bond required.
7.43.050	Priority of actions.
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7.43.070	Service of complaint.
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7.43.090	Final order of abatement.
7.43.100	Sale of items subject to forfeiture—Use of proceeds.
7.43.110	Violation of injunction—Contempt of court.
7.43.120	Fine constitutes lien.
7.43.130	Recovery of damages not precluded.
7.43.900	Severability—1988 c 141.

7.43.010 Injunction authorized. (1) Every building or unit within a building used for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance as defined in chapter 69.50 RCW, legend drug as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, and every building or unit within a building wherein or upon which such acts take place, is a nuisance which shall be enjoined, abated, and prevented, whether it is a public or private nuisance.

(2) As used in this chapter, "building" includes, but is not limited to, any structure or any separate part or portion thereof, whether permanent or not, or the ground itself. [1988 c 141 § 4.]

7.43.020 Complaint—Affidavit. The action provided for in RCW 7.43.010 shall be brought in the superior court in the county in which the property is located. Such action shall be commenced by the filing of a complaint alleging the facts constituting the nuisance.

Any complaint filed under this chapter shall be verified or accompanied by affidavit. For purposes of showing that the owner or his or her agent has had an opportunity to abate the nuisance, the affidavit shall contain a description of all attempts by the applicant to notify and locate the owner of the property or the owner's agent.

In addition, the affidavit shall describe in detail the adverse impact associated with the property on the surrounding neighborhood. "Adverse impact" includes, but is not limited to, the following: Any search warrants served on the property where controlled substances were seized; investigative purchases of controlled substances on or near the property by law enforcement or their agents; arrests of persons who frequent the property for violation of controlled substances laws; increased volume of traffic associated with the property; and the number of complaints made to law enforcement of illegal activity associated with the property.

After filing the complaint, the court shall grant a hearing within three business days after the filing. [1988 c 141 § 5.]

7.43.030 Temporary restraining order or preliminary injunction. Upon application for a temporary restraining order or preliminary injunction, the court may, upon a showing of good cause, issue an ex parte restraining order or preliminary injunction, preventing the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the nuisance is alleged to exist and may grant such preliminary equitable relief as is necessary to prevent the continuance or recurrence of the nuisance pending final resolution of the matter on the merits. However, pending the decision, the stock in trade may not be so restrained, but an inventory and full accounting of all business transactions may be required.

The restraining order or preliminary injunction may be served by handing to and leaving a copy with any person in charge of the place or residing in the place, or by posting a copy in a conspicuous place at or upon one or more of the principal doors or entrances to the place, or by both delivery and posting. The officer serving the order or injunction shall forthwith make and return into court an inventory of the

personal property and contents situated in and used in conducting or maintaining the nuisance.

Any violation of the order or injunction is a contempt of court, and where such order or injunction is posted, mutilation or removal thereof while the same remains in force is a contempt of court if such posted order or injunction contains a notice to that effect. [1988 c 141 § 6.]

7.43.040 Temporary restraining order or preliminary injunction—Bond required. A temporary restraining order or preliminary injunction shall not issue under this chapter except upon the giving of a bond or security by the applicant, in the sum that the court deems proper, but not less than one thousand dollars, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully restrained or enjoined. A bond or security shall not be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington. [1988 c 141 § 7.]

7.43.050 Priority of actions. An action under this chapter shall have precedence over all other actions, except prior matters of the same character, criminal proceedings, election contests, hearings on temporary restraining orders and injunctions, and actions to forfeit vehicles used in violation of the uniform controlled substances act. [1988 c 141 § 8.]

7.43.060 Dismissal of citizen complaint—Limitations. (1) If the complaint under this chapter is filed by a citizen, the complaint shall not be dismissed by the citizen for want of prosecution except upon a sworn statement made by the citizen and the citizen's attorney, if the citizen has one. The statement shall set forth the reasons why the action should be dismissed. The case shall only be dismissed if so ordered by the court.

(2) In case of failure to prosecute the action with reasonable diligence, or at the request of the plaintiff, the court, in its discretion, may substitute any other citizen consenting to be substituted for the plaintiff. [1988 c 141 § 9.]

7.43.070 Service of complaint. A copy of the complaint, together with a notice of the time and place of the hearing of the action shall be served upon the defendant at least one business day before the hearing. Service may also be made by posting the papers in the same manner as is provided for in RCW 7.43.030. If the hearing is then continued at the request of any defendant, all temporary orders and injunctions shall be extended as a matter of course. [1988 c 141 § 10.]

7.43.080 Order of abatement. (1) Except as provided in subsection (2) of this section, if the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the final judgment in the case. Plaintiff's costs in the action, including those of abatement, are a lien upon the building or unit within a building. The lien is enforceable and collectible by execution issued by order of the court.

(2) If the court finds and concludes that the owner of the building or unit within a building: (a) Had no knowledge of the existence of the nuisance or has been making reasonable efforts to abate the nuisance, (b) has not been guilty of any contempt of court in the proceedings, and (c) will immediately abate any such nuisance that may exist at the building or unit within a building and prevent it from being a nuisance within a period of one year thereafter, the court shall, if satisfied of the owner's good faith, order the building or unit within a building to be delivered to the owner, and no order of abatement shall be entered. If an order of abatement has been entered and the owner subsequently meets the requirements of this subsection, the order of abatement shall be canceled. [1988 c 141 § 11.]

7.43.090 Final order of abatement. Any final order of abatement issued under this chapter shall:

(1) Direct the removal of all personal property subject to seizure and forfeiture pursuant to RCW 69.50.505 from the building or unit within a building, and direct their disposition pursuant to the forfeiture provisions of RCW 69.50.505;

(2) Provide for the immediate closure of the building or unit within a building against its use for any purpose, and for keeping it closed for a period of one year unless released sooner as provided in this chapter; and

(3) State that while the order of abatement remains in effect the building or unit within a building shall remain in the custody of the court. [1988 c 141 § 12.]

7.43.100 Sale of items subject to forfeiture—Use of proceeds. In all actions brought under this chapter, the proceeds and all moneys forfeited pursuant to the forfeiture provisions of RCW 69.50.505 shall be applied as follows:

(1) First, to the fees and costs of the removal and sale;

(2) Second, to the allowances and costs of closing and keeping closed the building or unit within a building;

(3) Third, to the payment of the plaintiff's costs in the action; and

(4) Fourth, the balance, if any, to the owner of the property.

If the proceeds of the sale of items subject to seizure and forfeiture do not fully discharge all of the costs, fees, and allowances, the building or unit within a building shall then also be sold under execution issued upon the order of the court, and the proceeds of the sale shall be applied in a like manner.

A building or unit within a building shall not be sold under this section unless the court finds and concludes by clear and convincing evidence that the owner of the building or unit within a building had actual or constructive knowledge or notice of the existence of the nuisance. However, this shall not be construed as limiting or prohibiting the entry of any final order of abatement as provided in this chapter. [1988 c 141 § 13.]

7.43.110 Violation of injunction—Contempt of court. An intentional violation of a restraining order, preliminary injunction, or order of abatement under this chapter is a contempt of court as provided in chapter 7.21 RCW. [1989 c 373 § 9; 1988 c 141 § 14.]

Severability—1989 c 373: See RCW 7.21.900.

7.43.120 Fine constitutes lien. Whenever the owner of a building or unit within a building upon which the act or acts constituting the contempt have been committed, or the owner of any interest in the building or unit has been found in contempt of court, and fined in any proceedings under this chapter, the fine is a lien upon the building or unit within a building to the extent of the owner's interest. The lien is enforceable and collectible by execution issued by order of the court. [1989 c 373 § 10; 1988 c 141 § 15.]

Severability—1989 c 373: See RCW 7.21.900.

7.43.130 Recovery of damages not precluded. The abatement of a nuisance under this chapter does not prejudice the right of any person to recover damages for its past existence. [1988 c 141 § 16.]

7.43.900 Severability—1988 c 141. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 141 § 18.]

Chapter 7.44 NE EXEAT

Sections

7.44.010	Affidavit for writ.
7.44.020	Complaint.
7.44.021	Arrest and bail—Bond.
7.44.030	Recognizance of defendant.
7.44.031	Recognizance of defendant—Discharge by securing performance.
7.44.040	Subrogation of surety—Rights of contractor.
7.44.050	Habeas corpus available to defendant.
7.44.060	District judges have jurisdiction.
7.44.070	Venue.

7.44.010 Affidavit for writ. Actions may be commenced upon any agreement in writing before the time for the performance of the contract expires, when the plaintiff or his agent shall make and file an affidavit with the clerk of the proper court, that the defendant is about to leave the state without performing or making provisions for the performance of the contract, taking with him property, moneys, credits or effects subject to execution, with intent to defraud plaintiff. [Code 1881 § 636; 1877 p 133 § 639; 1869 p 149 § 576; 1854 p 209 § 418; RRS § 778.]

7.44.020 Complaint. At the time of filing the affidavit the plaintiff shall also file his complaint in the action, and thenceforth the action shall proceed as other actions at law, except as otherwise provided in this chapter. [1891 c 42 (p 81) § 1; Code 1881 § 637; 1877 p 133 § 640; 1869 p 149 § 577; 1854 p 209 § 419; RRS § 779, part: FORMER PARTS OF SECTION: 1891 c 42 § 2 now codified as RCW 7.44.021.]

7.44.021 Arrest and bail—Bond. Upon such affidavit and complaint being filed, the clerk shall issue an order of arrest and bail, directed to the sheriff, which shall

be issued, served and returned in all respects as such orders in other cases; before such order shall issue the plaintiff shall file in the office of the clerk a bond, with sufficient surety, to be approved by the clerk, conditioned that the plaintiff will pay the defendant such damages and costs as he shall wrongfully sustain by reason of the action, which surety shall justify as provided by law. [1957 c 51 § 10; 1891 c 42 § 2. Formerly RCW 7.44.020, part.]

Corporate surety—Insurance: Chapter 48.28 RCW.

7.44.030 Recognizance of defendant. The sheriff shall require the defendant to enter into a bond, with sufficient surety, personally to appear within the time allowed by law for answering the complaint, and to abide the order of the court; and in default thereof the defendant shall be committed to prison until discharged in due course of law; such special bail shall be liable for the principal, and shall have a right to arrest and deliver him up, as in other cases, and the defendant may give other bail. [1891 c 42 § 3; Code 1881 § 638; 1877 p 133 § 641; 1869 p 149 § 578; 1854 p 209 § 420; RRS § 780, part. FORMER PARTS OF SECTION: Code 1881 § 639; 1877 p 133 § 642; 1869 p 150 § 579; 1854 p 209 § 421 now codified as RCW 7.44.031.]

7.44.031 Recognizance of defendant—Discharge by securing performance. Instead of giving special bail, as above provided, the defendant shall be entitled to his discharge from custody if he will secure the performance of the contract to the satisfaction of the plaintiff. [Code 1881 § 639; 1877 p 133 § 642; 1869 p 150 § 579; 1854 p 209 § 421; RRS § 780, part. Formerly RCW 7.44.030, part.]

7.44.040 Subrogation of surety—Rights of contractor. This proceeding may be had in favor of any surety or other person jointly bound with the defendant. It may also be prosecuted by the person in whose favor the contract exists, against any one or more of the persons bound thereby, upon filing such affidavit, when the co-contractors are nonresidents or probably insolvent, or at the request of any of them when they are residents and solvent. [Code 1881 § 640; 1877 p 133 § 643; 1869 p 150 § 580; 1854 p 210 § 422; RRS § 781.]

7.44.050 Habeas corpus available to defendant. The defendant may have the same remedy by writ of habeas corpus as in other cases of arrest and bail. [Code 1881 § 641; 1877 p 134 § 644; 1869 p 150 § 581; 1854 p 210 § 423; RRS § 782.]

7.44.060 District judges have jurisdiction. The proceedings provided for in this chapter may be had before district judges in all cases within their jurisdiction. [1987 c 202 § 135; 1891 c 42 § 4; Code 1881 § 642; 1877 p 134 § 644; 1869 p 150 § 582; 1854 p 210 § 424; RRS § 783.]

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

7.44.070 Venue. The affidavit and bond may be filed, and proceedings had in any county where the defendants

may be found. [Code 1881 § 643; 1877 p 134 § 646; 1869 p 150 § 583; 1854 p 210 § 425; RRS § 784.]

Chapter 7.48 NUISANCES

Sections

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- 7.48.300 Agricultural activities and forest practices—Legislative finding and purpose.
- 7.48.305 Agricultural activities and forest practices—Presumed reasonable and not a nuisance—Exception—Damages.
- 7.48.310 Agricultural activities and forest practices—Definitions.
- 7.48.900 Severability—Initiative Measure No. 335.
- 7.48.905 Severability—1979 c 122.

Nuisances

criminal: Chapter 9.66 RCW.

drug, injunctions: Chapter 7.43 RCW.

jurisdiction of superior court: State Constitution Art. 4 § 6 (Amendment 28).

7.48.010 Actionable nuisance defined. The obstruction of any highway or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health or indecent or offensive to the

senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance and the subject of an action for damages and other and further relief. [Code 1881 § 605; 1877 p 126 § 610; 1869 p 144 § 599; 1854 p 207 § 405; RRS § 943.]

Crimes

malicious mischief: Chapter 9.61 RCW.

public nuisance: RCW 9.66.010.

7.48.020 Who may sue—Judgment for damages—Warrant for abatement—Injunction. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance. If judgment be given for the plaintiff in such action, he may, in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the sheriff to abate such nuisance. Such motion shall be allowed, of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may have the defendant enjoined. [1891 c 50 § 1; Code 1881 § 606; 1877 p 126 § 611; 1869 p 144 § 560; 1854 p 207 § 406; RRS § 944.]

7.48.030 Issuance and execution of warrant. If the order be made, the clerk shall thereafter, at any time within six months, when requested by the plaintiff, issue such warrant directed to the sheriff, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings indorsed thereon. The expenses of abating the nuisance may be levied by the sheriff on the property of the defendant, and in this respect the warrant is to be deemed an execution against property. [Code 1881 § 607; 1877 p 126 § 612; 1869 p 145 § 561; 1854 p 207 § 407; RRS § 945.]

7.48.040 Stay of issuance of warrant. At any time before the order is made or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself, upon his giving bond to the plaintiff in a sufficient amount with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order. The sureties shall justify as provided by law. If the defendant fails to abate such nuisance within the time specified, the warrant for the abatement of the nuisance may issue as if the same had not been stayed. [1957 c 51 § 11; Code 1881 § 608; 1877 p 127 § 613; 1869 p 145 § 562; RRS § 946.]

Corporate surety—Insurance: Chapter 48.28 RCW.

7.48.050 Moral nuisances—Definitions. The definitions set forth in this section shall apply throughout this chapter as they relate to moral nuisances.

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd

matter, or knowledge of the acts of lewdness, assignation, or prostitution which occur on the premises.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which depicts or describes patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, excretory functions, or lewd exhibition of the genitals or genital area.

Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, or scientific value.

(3) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(4) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, in person or by electronic transmission, with or without consideration.

(5) "Matter" shall mean a live performance, a motion picture film, or a publication or any combination thereof.

(6) "Moral nuisance" means a nuisance which is injurious to public morals.

(7) "Motion picture film" shall include any:

(a) Film or plate negative;

(b) Film or plate positive;

(c) Film designed to be projected on a screen for exhibition;

(d) Films, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

(e) Video tape or any other medium used to electronically reproduce images on a screen.

(8) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(9) "Place" includes, but is not limited to, any building, structure, or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(10) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(11) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter. [1990 c 152 § 1; 1979 c 1 § 1 (Initiative Measure No. 335, approved November 8, 1977); 1913 c 127 § 1; RRS § 946-1.]

Severability—1990 c 152: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 152 § 6.]

7.48.052 Moral nuisances. The following are declared to be moral nuisances:

(1) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition, or where lewd live performances are publicly exhibited as a regular course of business;

(2) Any and every place in the state where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition, or where a lewd live performance is publicly and repeatedly exhibited;

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;

(4) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;

(5) Any and every lewd publication possessed at a place which is a moral nuisance under this section;

(6) Every place which, as a regular course of business, is used for the purpose of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution are conducted, permitted, carried on, continued, or exist;

(7) All public houses or places of resort where illegal gambling is carried on or permitted; all houses or places within any city, town, or village, or upon any public road, or highway where drunkenness, illegal gambling, fighting, or breaches of the peace are carried on or permitted; all houses, housing units, other buildings, or places of resort where controlled substances identified in Article II of chapter 69.50 RCW and not authorized by that chapter, are manufactured, delivered or possessed, or where any such substance not obtained in a manner authorized by chapter 69.50 RCW is consumed by ingestion, inhalation, injection or any other means. [1990 c 152 § 2; 1988 c 141 § 1; 1979 c 1 § 2 (Initiative Measure No. 335, approved November 8, 1977).]

Severability—1990 c 152: See note following RCW 7.48.050.

Severability—1988 c 141: See RCW 7.43.900.

7.48.054 Moral nuisance—Personal property—Effects of notice. The following are also declared to be moral nuisances, as personal property used in conducting and maintaining a moral nuisance:

(1) All moneys paid as admission price to the exhibition of any lewd film or lewd live performance found to be a moral nuisance;

(2) All valuable consideration received for the sale of any lewd publication which is found to be a moral nuisance;

(3) The furniture, fixtures, and contents of a place which is a moral nuisance.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in RCW 7.48.064, upon the place or its manager, acting manager, or person then in charge, all such persons are deemed to have knowledge of the acts, conditions, or things which make such place a moral nuisance. Where the circumstantial proof warrants a determination that a person had knowledge of the moral nuisance prior to such service of process, the court shall make such finding. [1990 c 152 § 3; 1979 c 1 § 3 (Initiative Measure No. 335, approved November 8, 1977).]

Severability—1990 c 152: See note following RCW 7.48.050.

7.48.056 Abate moral nuisance—Enjoin owner. In addition to any other remedy provided by law, any act, occupation, structure, or thing which is a moral nuisance may be abated, and the person doing such act or engaged in such occupation, and the owner and agent of the owner of any such structure or thing, may be enjoined as provided in this chapter. [1979 c 1 § 4 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.058 Maintaining action to abate moral nuisance—Bond. The attorney general, prosecuting attorney, city attorney, city prosecutor, or any citizen of the county may maintain an action of an equitable nature in the name of the state of Washington upon the relation of such attorney general, prosecuting attorney, city attorney, city prosecutor, or citizen, to abate a moral nuisance, to perpetually enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a moral nuisance.

If such action is instituted by a private person, the complainant shall execute a bond to the person against whom complaint is made, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than five hundred dollars, to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, and the court finds there was no reasonable grounds or cause for said action and the case is dismissed for that reason before trial or for want of prosecution. No bond shall be required of the attorney general, prosecuting attorney, city attorney, or city prosecutor, and no action shall be maintained against such public official for his official action when brought in good faith. [1979 c 1 § 5 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.060 Moral nuisance—Jurisdiction—Filing a complaint. The action provided for in RCW 7.48.058 shall be brought in any court of competent jurisdiction in the county in which the property is located. Such action shall be commenced by the filing of a verified complaint alleging the facts constituting the nuisance. After the filing of said complaint, application for a temporary injunction may be made to the court in which the action is filed, or to a judge thereof, who shall grant a hearing within ten days after the filing. [1979 c 1 § 6 (Initiative Measure No. 335, approved November 8, 1977); 1913 c 127 § 2; RRS § 946-2.]

7.48.062 Moral nuisance—Restraining order—Violations. Where such application for a temporary injunction is made, the court or judge thereof may, on application of the complainant showing good cause, issue an ex parte restraining order, restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon, except that pending such decision, the stock in trade may not be so restrained, but an inventory and full accounting of all business transactions may be required.

The restraining order may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof

in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by both such delivery and posting. The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof while the same remains in force is a contempt of court if such posted order contains therein a notice to that effect. [1979 c 1 § 7 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.064 Moral nuisance—Hearing—Notice—Consolidation with trial. A copy of the complaint, together with a notice of the time and place of the hearing of the application for a temporary injunction, shall be served upon the defendant at least three days before such hearing. The place may also be served by posting such papers in the same manner as is provided for in RCW 7.48.062 in the case of a restraining order. If the hearing is then continued at the instance of any defendant, the temporary writ as prayed shall be granted as a matter of course.

Before or after the commencement of the hearing of an application for a temporary injunction, the court, on application of either of the parties or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the temporary injunction. Any evidence received upon an application for a temporary injunction which would be admissible in the trial on the merits becomes a part of the record of the trial and need not be repeated as to such parties at the trial on the merits. [1979 c 1 § 8 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.066 Finding of moral nuisance—Orders. If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court or judge, the court or judge shall issue a temporary injunction without additional bond, restraining the defendant and any other person from continuing the nuisance.

If at the time the temporary injunction is granted, it further appears that the person owning, in control of, or in charge of the nuisance so enjoined had received three days notice of the hearing, then the court shall declare a temporary forfeiture of the use of the real property upon which such public nuisance is located and the personal property located therein, and shall forthwith issue an order closing such place against its use for any purpose until a final decision is rendered on the application for a permanent injunction, unless:

(1) The person owning, in control of, or in charge of such nuisance shows to the satisfaction of the court or judge, by competent and admissible evidence which is subject to cross-examination, that the nuisance complained of has been abated by such person; or

(2) The owner of such property, as a "good faith" lessor, has taken action to void said lease as is authorized by RCW 7.48.085.

Such order shall also continue in effect for such further period as the order authorized in RCW 7.48.062 provides.

If no order has been issued pursuant to RCW 7.48.062, then an order restraining the removal or interference with the personal property and contents located therein shall be issued. Such restraining order shall be served and the inventory of such property shall be made and filed as provided for in RCW 7.48.062.

Such order shall also require such persons to show cause within thirty days why such closing order should not be made permanent, as provided for in RCW 7.48.078. [1979 c 1 § 9 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.068 Abatement of moral nuisance by owner—Effect on injunction. The owner of any real or personal property to be closed or restrained, or which has been closed or restrained, may appear after the filing of the complaint and before the hearing on the application for a permanent injunction.

The court, if satisfied of the good faith of the owner of the real property and of the innocence on the part of any owner of the personal property of any knowledge of its use as a nuisance, and that with reasonable care and diligence such owner could not have known thereof shall, at the time of the hearing on the application for the temporary injunction and upon payment of all costs incurred and upon the filing of a bond by the owner of the real property with sureties to be approved by the clerk in the full value of the property to be ascertained by the court, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept, refrain from issuing any order closing such real property or restraining the removal or interference with such personal property, and, if such temporary injunction has already been issued, shall cancel said order and shall deliver such real or personal property, or both, to the respective owners thereof. The release of any real or personal property under this section shall not release it from any judgment, lien, penalty, or liability to which it may be subjected by law. [1979 c 1 § 10 (Initiative Measure No. 335, approved November 8, 1977).]

Voluntary abatement: RCW 7.48.110.

7.48.070 Moral nuisance—Priority of action on calendar. The action provided for in RCW 7.48.058 shall be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions. [1979 c 1 § 11 (Initiative Measure No. 335, approved November 8, 1977); 1913 c 127 § 3; RRS § 946-3.]

7.48.072 Moral nuisance—Effects of admission or finding of guilt. In such action, an admission or finding of guilty of any person under the criminal laws against lewdness, prostitution, or assignation at any such place is admissible for the purpose of proving the existence of such nuisance, and is prima facie evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining such nuisance. [1979 c 1 § 12 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.074 Moral nuisance—Evidence of reputation—Admissibility. At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance. [1979 c 1 § 13 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.076 Moral nuisance—Trial—Costs—Dismissal—Judgment. If the action is brought by a person who is a citizen of the county, and the court finds that there were no reasonable grounds or probable cause for bringing said action, and the case is dismissed before trial for that reason or for want of prosecution, the costs, including attorney's fees, may be taxed to such person.

If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere. The entire expenses of such abatement, including attorney's fees, shall be recoverable by the plaintiff as a part of his costs of the lawsuit.

If the complaint is filed by a person who is a citizen of the county, it shall not be dismissed except upon a sworn statement by the complainant and his attorney, setting forth the reason why the action should be dismissed and the dismissal approved by the prosecuting attorney in writing or in open court. If the judge is of the opinion that the action should not be dismissed, he may direct the prosecuting attorney to prosecute said action to judgment at the expense of the county, and if the action is continued for more than one term of court, any person who is a citizen of the county or has an office therein, or the attorney general, the prosecuting attorney, city attorney, or city prosecutor, may be substituted for the complainant and prosecute said action to judgment. [1979 c 1 § 14 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.078 Moral nuisance—Judgment—Penalties—Disposal of personal property. If the existence of a nuisance is admitted or established in an action as provided for in RCW 7.48.058 or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance and not already released under authority of the court as provided for in RCW 7.48.066 and 7.48.068, and shall direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. Lewd matter shall be destroyed and shall not be sold.

Such judgment shall impose a penalty of three hundred dollars for the maintenance of such nuisance, which penalty shall be imposed against the person or persons found to have maintained the nuisance, and, in case any owner or agent of the building found to have had actual or constructive notice of the maintenance of such nuisance, against such owner or agent, and against the building kept or used for the purposes of maintaining a moral nuisance, which penalty shall be collected by execution as in civil actions, and when collect-

ed, shall be paid into the current expense fund of the county in which the judgment is had.

Such order shall also require the renewal for one year of any bond furnished by the owner of the real property, as provided in RCW 7.48.068 or, if not so furnished, shall continue for one year any closing order issued at the time of granting the temporary injunction, or, if no such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any purpose and keeping it closed for a period of one year unless sooner released.

The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in RCW 7.48.068.

Owners of unsold personal property and contents so seized must appear and claim the same within ten days after such order of abatement is made, and prove innocence to the satisfaction of the court of any knowledge of such use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court. [1979 c 1 § 15 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.080 Moral nuisance—Violation of injunction—Contempt of court. A violation of any injunction granted under RCW 7.48.050 through 7.48.100 is a contempt of court as provided in chapter 7.21 RCW. [1989 c 373 § 11; 1979 c 1 § 16 (Initiative Measure No. 335, approved November 8, 1977); 1913 c 127 § 4; RRS § 946-4.]

Severability—1989 c 373: See RCW 7.21.900.

7.48.085 Moral nuisance—Property owner may repossess. If a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of maintaining a moral nuisance, such use makes void at the option of the owner the lease or other title under which he holds, and without any act of the owner causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises. [1979 c 1 § 17 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.090 Moral nuisance—Contraband—Forfeitures. Lewd matter is contraband, and there are no property rights therein. All personal property declared to be a moral nuisance in RCW 7.48.052 and 7.48.054 and all moneys and other consideration declared to be a moral nuisance under RCW 7.48.056 are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited, or otherwise used. Such moneys may be traced to and shall be recoverable from persons who, under RCW 7.48.064, have

knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendants in legal proceedings brought pursuant to RCW 7.48.050 through 7.48.100 as now or hereafter amended, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a public nuisance under this section. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such matter is sold or exhibited, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise and as partial restitution for damages done to the public welfare, public health, and public morals.

Where the action is brought pursuant to RCW 7.48.050 through 7.48.100 as now or hereafter amended, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to the following:

- (1) Investigative costs;
- (2) Court costs;
- (3) Reasonable attorney's fees arising out of the preparation for and trial of the cause, appeals therefrom, and other costs allowed on appeal;
- (4) Printing costs of trial and appellate briefs, and all other papers filed in such proceedings. [1979 c 1 § 18 (Initiative Measure No. 335, approved November 8, 1977); 1927 c 94 § 1; 1913 c 127 § 5; RRS § 946-5.]

7.48.100 Moral nuisance—Immunity of certain motion picture theatre employees. The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, if such projectionist, usher, or ticket taker (1) has no financial interest in the place wherein he is so employed, other than his salary, and (2) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under RCW 7.48.050 through 7.48.100 as now or hereafter amended, including pretrial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters. [1979 c 1 § 19 (Initiative Measure No. 335, approved November 8, 1977); 1927 c 94 § 2; 1913 c 127 § 6; RRS § 946-6.]

7.48.110 Houses of lewdness, assignation or prostitution may be abated—Voluntary abatement. If the owner of the building in which a nuisance is found to be maintained, appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the clerk in the full value of the property to be ascertained by the court, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court or judge may, if satisfied of his good faith, order the premises, closed under the order of abatement, to be delivered to said owner, and said order closing the building canceled. The release of

the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subject by law. [1927 c 94 § 3; 1913 c 127 § 7; RRS § 946-7.]

7.48.120 Nuisance defined. Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property. [Code 1881 § 1235; 1875 p 79 § 1; RRS § 9914.]

Crimes

malicious mischief: Chapter 9.61 RCW.

nuisances: Chapter 9.66 RCW.

7.48.130 Public nuisance defined. A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal. [Code 1881 § 1236; 1875 p 79 § 2; RRS § 9912.]

Crimes, nuisances: Chapter 9.66 RCW.

7.48.140 Public nuisances enumerated. It is a public nuisance:

(1) To cause or suffer the carcass of any animal or any offal, filth, or noisome substance to be collected, deposited, or to remain in any place to the prejudice of others;

(2) To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, stream, lake, pond, spring, well, or common sewer, street, or public highway, or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake, or well, to the injury or prejudice of others;

(3) To obstruct or impede, without legal authority, the passage of any river, harbor, or collection of water;

(4) To obstruct or encroach upon public highway, private ways, streets, alleys, commons, landing places, and ways to burying places;

(5) To carry on the business of manufacturing gun powder, nitroglycerine, or other highly explosive substance, or mixing or grinding the materials therefor, in any building within fifty rods of any valuable building erected at the time such business may be commenced;

(6) To establish powder magazines near incorporated cities or towns, at a point different from that appointed by the corporate authorities of such city or town; or within fifty rods of any occupied dwelling house;

(7) To erect, continue, or use any building, or other place, for the exercise of any trade, employment, or manufacture, which, by occasioning obnoxious exhalations, offensive smells, or otherwise is offensive or dangerous to the health of individuals or of the public;

(8) To suffer or maintain on one's own premises, or upon the premises of another, or to permit to be maintained on one's own premises, any place where wines, spirituous,

fermented, malt, or other intoxicating liquors are kept for sale or disposal to the public in contravention of law;

(9) For an owner or occupier of land, knowing of the existence of a well, septic tank, cesspool, or other hole or excavation ten inches or more in width at the top and four feet or more in depth, to fail to cover, fence or fill the same, or provide other proper and adequate safeguards: PROVIDED, That this section shall not apply to a hole one hundred square feet or more in area or one that is open, apparent, and obvious.

Every person who has the care, government, management, or control of any building, structure, powder magazine, or any other place mentioned in this section shall, for the purposes of this section, be taken and deemed to be the owner or agent of the owner or owners of such building, structure, powder magazine or other place, and, as such, may be proceeded against for erecting, contriving, causing, continuing, or maintaining such nuisance. [1955 c 237 § 1; 1895 c 14 § 1; Code 1881 § 1246; RRS § 9913.]

Crimes

malicious mischief: Chapter 9.61 RCW.

nuisance: Chapter 9.66 RCW.

Devices simulating traffic control signs declared public nuisance: RCW 47.36.180.

7.48.150 Private nuisance defined. Every nuisance not included in the definition of RCW 7.48.130 is private. [Code 1881 § 1237; 1875 p 79 § 3; RRS § 9915.]

7.48.155 Unlawful use of firearm or deadly weapon—Arrest required. The unlawful use of a firearm or other deadly weapon by a person in, or adjacent to his or her dwelling, that imminently threatens the physical safety of other people in the adjacent area, so as to essentially interfere with the comfortable enjoyment of their residences, is a nuisance and may be abated, and the person who unlawfully used the firearm or deadly weapon is subject to the punishment provided in this chapter. This section does not apply unless the person who unlawfully used the firearm or other deadly weapon is arrested for this activity. [1992 c 38 § 10.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

7.48.160 Authorized act not a nuisance. Nothing which is done or maintained under the express authority of a statute, can be deemed a nuisance. [Code 1881 § 1238; 1875 p 79 § 4; RRS § 9916.]

7.48.170 Successive owners liable. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property caused by a former owner, is liable therefor in the same manner as the one who first created it. [Code 1881 § 1239; 1875 p 79 § 5; RRS § 9917.]

7.48.180 Abatement does not preclude action for damages. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. [Code 1881 § 1240; 1875 p 79 § 6; RRS § 9918.]

7.48.190 Nuisance does not become legal by prescription. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right. [Code 1881 § 1241; 1875 p 80 § 7; RRS § 9919.]

7.48.200 Remedies. The remedies against a public nuisance are: Indictment or information, a civil action, or abatement. The remedy by indictment or information shall be as regulated and prescribed in this chapter. When a civil action for damage is resorted to, the practice shall conform to RCW 7.48.010 through 7.48.040. [1957 c 51 § 12; Code 1881 § 1242; 1875 p 80 § 8; RRS § 9920.]

7.48.210 Civil action, who may maintain. A private person may maintain a civil action for a public nuisance, if it is specially injurious to himself but not otherwise. [Code 1881 § 1243; 1875 p 80 § 9; RRS § 9921.]

7.48.220 Abatement, by whom. A public nuisance may be abated by any public body or officer authorized thereto by law. [Code 1881 § 1244; 1875 p 80 § 10; RRS § 9922.]

7.48.230 Public nuisance—Abatement. Any person may abate a public nuisance which is specially injurious to him by removing, or if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. [Code 1881 § 1245; 1875 p 80 § 11; RRS § 9923.]

7.48.240 Certain places of resort declared nuisances. Houses of ill fame, kept for the purpose, where persons are employed for purposes of prostitution; all public houses or places of resort where gambling is carried on, or permitted; all houses or places within any city, town, or village, or upon any public road, or highway where drunkenness, gambling, fighting or breaches of the peace are carried on, or permitted; all opium dens, or houses, or places of resort where opium smoking is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge thereof, and persons carrying on such unlawful business shall be punished as provided in this chapter. [1973 1st ex.s. c 154 § 18; Code 1881 § 1247; 1875 p 81 § 13; RRS § 9924.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

7.48.250 Penalty—Abatement. Whoever is convicted of erecting, causing or contriving a public or common nuisance as described in this chapter, or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be punished by a fine not exceeding one thousand dollars, and the court with or without such fine, may order such nuisance to be abated, and issue a warrant as hereinafter provided: PROVIDED, That orders and warrants of abatement shall not be issued by district judges. [1987 c 202 § 136; 1957 c 45 § 1; Code 1881 § 1248; 1875 p 81 § 14; RRS § 9925.]

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

7.48.260 Warrant of abatement. When, upon indictment or information, complaint or action, any person is adjudged guilty of a nuisance, if it be in superior court the court may in addition to the fine imposed, if any, or to the judgment for damages or costs, for which a separate execution may issue, order that such nuisance be abated, or removed at the expense of the defendant, and after inquiry into and estimating, as nearly as may be, the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor: PROVIDED, That if the conviction was had in a district court, the district judge shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein. [1987 c 202 § 137; 1957 c 45 § 2; Code 1881 § 1249; 1875 p 81 § 15; RRS § 9926, part. FORMER PARTS OF SECTION: Code 1881 § 1250; 1875 p 81 § 16.]

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

7.48.270 Stay of warrant. Instead of issuing such warrant, the court may order the same to be stayed upon motion of the defendant, and upon his entering into a bond in such sum and with such surety as the court may direct to the state, conditioned either that the defendant will discontinue said nuisance, or that within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court, and upon his default to perform the condition of his bond, the same shall be forfeited, and the court, upon being satisfied of such default, may order such warrant forthwith to issue, and an order to show cause why judgment should not be entered against the sureties of said bond. [1957 c 45 § 3; Code 1881 § 1251; 1875 p 81 § 17; RRS § 9927.]

7.48.280 Costs of abatement. The expense of abating a nuisance, by virtue of a warrant, can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant or to the owner of the property levied upon, and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof. [Code 1881 § 1252; 1875 p 82 § 18; RRS § 9928.]

7.48.300 Agricultural activities and forest practices—Legislative finding and purpose. The legislature finds that agricultural activities conducted on farmland and forest practices in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses and timber production. It is therefore the purpose of RCW 7.48.300 through 7.48.310 and 7.48.905 to provide that agricultural activities conducted on farmland and forest practices be protected from nuisance lawsuits. [1992 c 52 § 2; 1979 c 122 § 1.]

7.48.305 Agricultural activities and forest practices—Presumed reasonable and not a nuisance—Exception—Damages. Notwithstanding any other provision of this chapter, agricultural activities conducted on farmland and forest practices, if consistent with good agricultural and forest practices and established prior to surrounding nonagricultural and nonforestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.

If those agricultural activities and forest practices are undertaken in conformity with all applicable laws and rules, the activities are presumed to be good agricultural and forest practices not adversely affecting the public health and safety for purposes of this section and RCW 7.48.300. An agricultural activity that is in conformity with such laws and rules shall not be restricted as to the hours of the day or day or days of the week during which it may be conducted.

Nothing in this section shall affect or impair any right to sue for damages. [1992 c 151 § 1; 1992 c 52 § 3; 1979 c 122 § 2.]

Reviser's note: This section was amended by 1992 c 52 § 3 and by 1992 c 151 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

7.48.310 Agricultural activities and forest practices—Definitions. As used in RCW 7.48.305:

(1) "Agricultural activity" means a condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses; and conversion from one agricultural activity to another.

(2) "Farm" means the land, buildings, freshwater ponds, freshwater culturing and growing facilities, and machinery used in the commercial production of farm products.

(3) "Farmland" means land or freshwater ponds devoted primarily to the production, for commercial purposes, of livestock, freshwater aquacultural, or other agricultural commodities.

(4) "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, dairy and dairy products, poultry and poultry products, livestock, including breeding, grazing, and recreational equine use, fruits, vegetables, flowers, seeds, grasses, trees, freshwater fish and fish products, apiaries, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur.

(5) "Forest practice" means "forest practice" as defined in RCW 76.09.020. [1992 c 52 § 4; 1991 c 317 § 2; 1979 c 122 § 3.]

7.48.900 Severability—Initiative Measure No. 335. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1979 c 1 § 20 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.905 Severability—1979 c 122. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 122 § 4.]

Chapter 7.48A MORAL NUISANCES

Sections

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7.48A.901	Severability—1989 c 70.

Drug nuisances—Injunctions: Chapter 7.43 RCW.

7.48A.010 Definitions. The definitions set forth in this section shall apply throughout this chapter.

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual or violent conduct which appears in the lewd matter, or knowledge of the acts of lewdness or prostitution which occur on the premises, or knowledge that controlled substances identified in Article II of chapter 69.50 RCW and not authorized by that chapter, are manufactured, delivered or possessed, or where any such substance not obtained in a manner authorized by chapter 69.50 RCW is consumed by ingestion, inhalation, or injection or any other means.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which explicitly depicts or describes patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or

(iii) Violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

(c) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value.

(3) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(4) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, in person or by electronic transmission, with or without consideration.

(5) "Matter" shall mean a live performance, a motion picture film, or a publication or any combination thereof.

(6) "Motion picture film" shall include any:

(a) Film or plate negative;

(b) Film or plate positive;

(c) Film designed to be projected on a screen for exhibition;

(d) Film, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

(e) Video tape or any other medium used to electronically reproduce images on a screen.

(7) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(8) "Place" includes, but is not limited to, any building, structure, or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(9) "Prurient" means that which incites lasciviousness or lust.

(10) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or coin-operated machine.

(11) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter. [1990 c 152 § 4; 1988 c 141 § 2; 1982 c 184 § 1.]

Severability—1990 c 152: See note following RCW 7.48.050.

Severability—1988 c 141: See RCW 7.43.900.

7.48A.020 Moral nuisances—Declaration of. The following are declared to be moral nuisances:

(1) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition, or where lewd live performances are publicly exhibited as a regular course of business;

(2) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;

(3) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;

(4) Every place which, as a regular course of business, is used for the purpose of lewdness or prostitution, and every such place in or upon which acts of lewdness or prostitution are conducted, permitted, carried on, continued, or exist;

(5) All houses, housing units, other buildings, or places of resort where controlled substances identified in Article II of chapter 69.50 RCW and not authorized by that chapter, are manufactured, delivered, or possessed, or where any such substance not obtained in a manner authorized by chapter 69.50 RCW is consumed by ingestion, inhalation, injection, or any other means. [1990 c 152 § 5; 1988 c 141 § 3; 1982 c 184 § 2.]

Severability—1990 c 152: See note following RCW 7.48.050.

Severability—1988 c 141: See RCW 7.43.900.

7.48A.030 Civil actions—Who may bring. Any of the following parties may bring a civil action in the superior court of any county where a moral nuisance is alleged to have been maintained:

(1) The prosecuting attorney for the county where the alleged moral nuisance is located;

(2) The city attorney for the city where the alleged moral nuisance is located; or

(3) The attorney general.

The rules of evidence, burden of proof, and all other rules of court shall be the court rules generally applicable to civil cases in this state: PROVIDED, That the standard of proof on the issue of obscenity shall be clear, cogent, and convincing evidence. [1982 c 184 § 3.]

7.48A.040 Maintenance of moral nuisance—Fine—Maximum. (1) No person shall with knowledge maintain a moral nuisance.

(2) Upon a determination that a defendant has with knowledge maintained a moral nuisance, the court shall impose a civil fine and judgment of an amount as the court shall determine to be appropriate. In imposing the civil fine, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the lewd matter, lewdness, or prostitution, whichever is applicable. In no event shall the civil fine exceed the greater of twenty-five thousand dollars or these profits. [1985 c 235 § 1; 1982 c 184 § 4.]

Severability—1985 c 235: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 235 § 4.]

7.48A.050 Fines—Payment. All civil fines assessed under RCW 7.48A.040 shall be paid into the general treasury of the governmental unit commencing the civil action. [1985 c 235 § 2; 1982 c 184 § 5.]

Severability—1985 c 235: See note following RCW 7.48A.040.

7.48A.060 Exceptions to application of chapter. Nothing in this chapter applies to the circulation of any material by any recognized historical society or museum, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1982 c 184 § 6.]

7.48A.070 Findings. The legislature finds that actions against moral nuisances as declared in RCW 7.48A.020 (1) through (4) involve balancing the safeguards necessary to

protect constitutionally protected speech and the community and law enforcement efforts to curb dissemination of obscene matters. The legislature finds that the difficulty in ascertaining and obtaining originals and copies of obscene matters for evidentiary purposes thwarts legitimate enforcement efforts. The legislature finds that the balancing of the concerns warrants specific discovery procedures applicable to actions against moral nuisances involving obscene matters. [1989 c 70 § 1.]

7.48A.080 Temporary injunction. After the plaintiff files a civil action under this chapter, the plaintiff may apply to the superior court in which the plaintiff filed the action for a temporary or preliminary injunction. The court shall grant a hearing within ten days after the plaintiff applies for a temporary injunction. [1989 c 70 § 2.]

7.48A.090 Restraining order—Service—Violation of order or injunction. After the plaintiff applies for a temporary or preliminary injunction, the court may, upon a showing of good cause, issue an ex parte restraining order restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the nuisance is alleged to exist, until the court grants or denies the plaintiff's application for a temporary or preliminary injunction or until further order of the court. However, pending the court's decision on the injunction, the temporary restraining order shall not restrain the exhibition or sale of any film, publication or item of stock in trade. The order may require that at least one original of each film or publication shall be preserved pending the hearing on the injunction. The court may require an inventory and full accounting of all business transactions.

The officer serving the restraining order or preliminary injunction may serve the order by handing to and leaving a copy with any person in charge of the place or residing in the place, or by posting a copy in a conspicuous place at or upon one or more of the principal doors or entrances to the place, or by both delivery and posting. The officer serving the restraining order or injunction shall forthwith make and return to the court, an inventory of the personal property and contents situated in and used in conducting or maintaining the alleged nuisance.

Any violation of the temporary order or injunction is a contempt of court. Mutilation or removal of a posted order that is in force is a contempt of court if the posted order or injunction contains a notice to that effect. [1989 c 70 § 3.]

7.48A.100 When bond or security not required. A bond or security shall not be required of the city attorney, the prosecuting attorney, or the attorney general. [1989 c 70 § 4.]

7.48A.110 Hearing—Service of notice. A copy of the complaint, together with a notice of the time and place of the hearing on the application for a temporary injunction, shall be served upon the defendant at least three business days before the hearing. Service may also be made by posting the required documents in the same manner as is provided in RCW 7.48A.090. If the defendant requests a

continuance of the hearing, all temporary restraining orders and injunctions shall be extended as a matter of course. [1989 c 70 § 5.]

7.48A.120 Production of discovery materials—Temporary injunction. If the court finds at the hearing for an injunction, that the accounting, inventory, personal property, and contents of the place alleged to be a nuisance provide evidence of a moral nuisance as defined by RCW 7.48A.020 (1) through (4), the court may order the defendant to produce to the plaintiff a limited number of original films, film plates, publications, videotapes, any other obscene matter, and other discovery materials the court determines is necessary for evidentiary purposes to resolve the action on the merits.

The court may issue a temporary injunction enjoining the defendant and all other persons from removing or in any manner interfering with the court-ordered discovery. This discovery procedure supplements and does not replace any other discovery procedures and rules generally applicable to civil cases in this state. [1989 c 70 § 6.]

7.48A.130 Precedence of hearing on injunction. The hearing on the injunction shall have precedence over all other actions, except prior matters of the same character, criminal proceedings, election contests, hearings on temporary restraining orders and injunctions, and actions to forfeit vehicles used in violation of the uniform controlled substances act, chapter 69.50 RCW. [1989 c 70 § 7.]

7.48A.140 Violation of order or injunction—Penalties. An intentional violation of a restraining order, preliminary injunction, or injunction under this chapter is punishable as a contempt of court. [1989 c 70 § 8.]

7.48A.900 Severability—1982 c 184. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 184 § 9.]

7.48A.901 Severability—1989 c 70. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 70 § 9.]

Chapter 7.52 PARTITION

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7.52.010 Persons entitled to bring action. When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, an action may be maintained by one or more of such persons, for a partition thereof, according to the respective rights of the persons interested therein, and for sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners. [Code 1881 § 552; 1877 p 117 § 557; 1869 p 133 § 505; RRS § 838.]

7.52.020 Requisites of complaint. The interest of all persons in the property shall be set forth in the complaint specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint. [Code 1881 § 553; 1877 p 117 § 558; 1869 p 133 § 506; RRS § 839.]

7.52.030 Lien creditors as parties defendant. The plaintiff may, at his option, make creditors having a lien upon the property or any portion thereof, other than by a

judgment or decree, defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien. [Code 1881 § 554; 1877 p 117 § 559; 1869 p 133 § 507; RRS § 840.]

7.52.040 Notice. The notice shall be directed by name to all the tenants in common, who are known, and in the same manner to all lien creditors who are made parties to the suit, and generally to all persons unknown, having or claiming an interest or estate in the property. [Code 1881 § 555; 1877 p 117 § 560; 1869 p 133 § 508; RRS § 841.]

7.52.050 Service by publication. If a party, having a share or interest in, or lien upon the property, be unknown, or either of the known parties reside out of the state or cannot be found therein, and such fact be made to appear by affidavit, the notice may be served by publication, as in ordinary cases. When service is made by publication, the notice must contain a brief description of the property which is the subject of the suit. [Code 1881 § 556; 1877 p 117 § 561; 1869 p 134 § 509; RRS § 842.]

Publication of legal notices: Chapter 65.16 RCW.

7.52.060 Answer—Contents. The defendant shall set forth in his answer, the nature, and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security. [Code 1881 § 557; 1877 p 118 § 562; 1869 p 134 § 510; RRS § 843.]

7.52.070 Trial—Proof must be taken. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined in such suit, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the decree for partition or sale is given. [Code 1881 § 558; 1877 p 118 § 563; 1869 p 134 § 511; RRS § 844.]

7.52.080 Order of sale or partition. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees, therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained. [Code 1881 § 559; 1877 p 118 § 564; 1869 p 134 § 512; RRS § 845.]

7.52.090 Partition, how made. In making the partition, the referees shall divide the property, and allot the

several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share. [Code 1881 § 560; 1877 p 118 § 565; 1869 p 134 § 513; RRS § 846.]

7.52.100 Report of referees, confirmation—Effect. The court may confirm or set aside the report in whole or in part, and if necessary, appoint new referees. Upon the report being confirmed a decree shall be entered that such partition be effectual forever, which decree shall be binding and conclusive:

(1) On all parties named therein, and their legal representatives who have at the time any interest in the property divided, or any part thereof as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder or inheritance of such property or any part thereof, after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life.

(2) On all persons interested in the property to whom notice shall have been given by publication.

(3) On all other persons claiming from or through such parties or persons or either of them. [Code 1881 § 561; 1877 p 118 § 566; 1869 p 135 § 514; RRS § 847.]

7.52.110 Decree does not affect tenant. Such decree and partition shall not affect any tenants for years or for life, of the whole of the property which is the subject of partition, nor shall such decree and partition preclude any persons, except such as are specified in RCW 7.52.100, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made. [Code 1881 § 562; 1877 p 119 § 567; 1869 p 135 § 515; RRS § 848.]

7.52.120 Costs. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff and may be allowed as costs. [Code 1881 § 563; 1877 p 119 § 568; 1869 p 135 § 516; RRS § 849.]

7.52.130 Sale of property. If the referees report to the court that the property, of which partition shall have been decreed, or any separate portion thereof is so situated that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that such report is correct, it may thereupon by an order direct the referees to sell the property or separate portion thereof. [Code 1881 § 564; 1877 p 119 § 569; 1869 p 135 § 517; RRS § 850.]

7.52.140 Estate for life or years to be set off. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered sold. [Code 1881 § 565; 1877 p 119 § 570; 1869 p 136 § 518; RRS § 851.]

7.52.150 Lien creditors to be brought in. Before making an order of sale, if lien creditors, other than those by judgment or decree, have not been made parties, the court, on motion of either party, shall order the plaintiff to file a supplemental complaint, making such creditors defendants. [Code 1881 § 566; 1877 p 119 § 571; 1869 p 136 § 519; RRS § 852.]

7.52.160 Clerk's certificate of unsatisfied judgment liens. If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the clerk of the county where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree upon the property or any portion thereof, and unless he do so the court shall order a referee to ascertain them. [1957 c 51 § 13; Code 1881 § 567; 1877 p 119 § 570; 1869 p 136 § 520; RRS § 853.]

7.52.170 Ascertainment of liens—Priority. If it appear by such certificate or reference, in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby respectively, and the order of priority in which they are entitled to be paid out of the property. [Code 1881 § 568; 1877 p 119 § 571; 1869 p 136 § 521; RRS § 854.]

7.52.180 Notice to lienholders. The plaintiff must cause a notice to be served at least twenty days before the time for appearance on each person having such lien by judgment or decree, to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely on his judgment or decree. [Code 1881 § 569; 1877 p 120 § 572; 1869 p 136 § 522; RRS § 855.]

7.52.190 Proceedings and report of referee. The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts due thereon, or secured thereby, and their priority respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him. [Code 1881 § 570; 1877 p 120 § 573; 1869 p 136 § 523; RRS § 856.]

7.52.200 Exceptions to report—Service of notice on absentee. The report of the referee may be excepted to by either party to the suit, or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the state, or his residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that

service of the notice may be made upon his agent or attorney of record, or by publication thereof, for such time and in such manner as the order may prescribe. [Code 1881 § 571; 1877 p 120 § 574; 1869 p 137 § 524; RRS § 857.]

7.52.210 Order of confirmation is conclusive. If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the suit, and upon the lien creditors who have been duly served with the notice to appear before the referee, as provided in RCW 7.52.180. [Code 1881 § 572; 1877 p 120 § 575; 1869 p 137 § 525; RRS § 858.]

7.52.220 Distribution of proceeds of sale. The proceeds of the sale of the encumbered property shall be distributed by the decree of the court, as follows:

- (1) To pay its just proportion of the general costs of the suit.
- (2) To pay the costs of the reference.
- (3) To satisfy the several liens in their order of priority, by payment of the sums due, and to become due, according to the decree.
- (4) The residue among the owners of the property sold, according to their respective shares. [Code 1881 § 573; 1877 p 120 § 576; 1869 p 137 § 526; RRS § 859.]

7.52.230 Other securities to be first exhausted. Whenever any party to the suit, who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may in its discretion, order such sureties to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof. [Code 1881 § 574; 1877 p 121 § 577; 1869 p 137 § 527; RRS § 860.]

7.52.240 Lien proceedings not to delay sale. The proceedings to ascertain the amount of the liens, and to determine their priority as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale, nor affect any other party, whose rights are not involved in such proceedings. [Code 1881 § 575; 1877 p 121 § 578; 1869 p 137 § 528; RRS § 861.]

7.52.250 Distribution at direction of court. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no such direction be given, all such proceeds and securities shall be paid into court, or deposited as directed by the court. [Code 1881 § 576; 1877 p 121 § 579; 1869 p 138 § 529; RRS § 862.]

7.52.260 Continuance of suit to determine claims. When the proceeds of sale of any shares or parcel belonging to persons who are parties to the suit and who are known, are paid into court, the suit may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the

court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original suit. [Code 1881 § 577; 1877 p 121 § 580; 1869 p 138 § 530; RRS § 863.]

7.52.270 Sales to be by public auction. All sales of real property made by the referees shall be made by public auction, to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice. [Code 1881 § 578; 1877 p 121 § 581; 1869 p 138 § 531; RRS § 864.]

7.52.280 Terms of sale to be directed by court. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants or parties out of the state. [Code 1881 § 579; 1877 p 121 § 583; 1869 p 138 § 532; RRS § 865.]

7.52.290 Referee may take security. The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successors in office; and for the shares of any known owner of full age, in the name of such owner. [Code 1881 § 580; 1877 p 121 § 584; 1869 p 138 § 533; RRS § 866.]

7.52.300 Estate of tenant for life or years may be sold. When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the suit, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if in the judgment of the court, a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered. [Code 1881 § 581; 1877 p 122 § 585; 1869 p 138 § 534; RRS § 867.]

7.52.310 Tenant for life or years may receive sum in gross—Consent. Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged and filed with the clerk. [Code 1881 § 582; 1877 p 122 § 586; 1869 p 139 § 535; RRS § 868.]

7.52.320 Court to determine sum if consent not given. If such consent be not given, as provided in RCW

7.52.310, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life, or years, and shall order the same to be deposited in court for that purpose. [Code 1881 § 583; 1877 p 122 § 587; 1869 p 139 § 536; RRS § 869.]

7.52.330 Protection of unknown tenant. If the persons entitled to such estate, for life or years, be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared. [Code 1881 § 584; 1877 p 122 § 589; 1869 p 139 § 538; RRS § 870.]

7.52.340 Contingent or vested estates. In all cases of sales in partition, when it appears that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties. [1957 c 51 § 14; Code 1881 § 585; RRS § 871. Cf. Laws 1881 § 586; 1877 p 122 § 590; 1869 p 140 § 539.]

7.52.350 Terms of sale must be made known. In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately or otherwise, if the court so directs. [Code 1881 § 586; 1877 p 122 § 591; 1869 p 140 § 540; RRS § 872.]

7.52.360 Referees or guardians not to be interested in purchase. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase, nor shall the guardian of an infant be an interested party in the purchase of any real property being the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void. [Code 1881 § 587; 1877 p 122 § 592; 1869 p 140 § 541; RRS § 873.]

7.52.370 Referees' report of sale—Contents. After completing the sale, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed with the clerk. [Code 1881 § 588; 1877 p 122 § 593; 1869 p 140 § 542; RRS § 874.]

7.52.380 Exceptions—Confirmation. The report of sale may be excepted to in writing by any party entitled to a share of the proceeds. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale. [Code 1881 § 589; 1877 p 123 § 594; 1869 p 140 § 543; RRS § 875.]

7.52.390 Purchase by interested party. When a party entitled to a share of the property, or an encumbrancer

entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belong to him. [Code 1881 § 590; 1877 p 123 § 595; 1869 p 140 § 544; RRS § 876.]

7.52.400 Investment of proceeds of unknown owner. When there are proceeds of sale belonging to an unknown owner, or to a person without the state who has no legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same shall be invested in securities on interest for the benefit of the persons entitled thereto. [Code 1881 § 591; 1877 p 123 § 596; 1869 p 140 § 545; RRS § 877.]

7.52.410 Investment in name of clerk. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court. [Code 1881 § 592; 1877 p 123 § 597; 1869 p 141 § 546; RRS § 878.]

7.52.420 Securities to parties entitled to share when proportions determined. When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon the share and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk. [Code 1881 § 593; 1877 p 123 § 598; 1869 p 141 § 547; RRS § 879.]

7.52.430 Duties of clerk in making investments. The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof. [Code 1881 § 594; 1877 p 123 § 599; 1869 p 141 § 548; RRS § 880.]

7.52.440 Unequal partition—Compensation adjudged. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

[Code 1881 § 595; 1877 p 124 § 600; 1869 p 141 § 549; RRS § 881.]

7.52.450 Infant's share of proceeds to guardian.

When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale, to his general guardian, or the special guardian appointed for him in the suit, upon giving the security required by law, or directed by order of the court. [Code 1881 § 596; 1877 p 124 § 601; 1869 p 142 § 550; RRS § 882.]

7.52.460 Guardian or limited guardian of incompetent or disabled person may receive proceeds—Bond.

The guardian or limited guardian who may be entitled to the custody and management of the estate of an incompetent or disabled person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing a bond with sufficient sureties, approved by the judge of the court, conditioned that he faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative. [1977 ex.s. c 80 § 9; Code 1881 § 597; 1877 p 124 § 602; 1869 p 142 § 551; RRS § 883.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

7.52.470 Guardian or limited guardian may consent to partition.

The general guardian of an infant, and the guardian or limited guardian entitled to the custody and management of the estate of an incompetent or disabled person adjudged incapable of conducting his own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without suit and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares or parts to which they may respectively be entitled, and upon an order of the court. [1977 ex.s. c 80 § 10; Code 1881 § 598; 1877 p 124 § 603; 1869 p 142 § 552; RRS § 884.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

7.52.480 Apportionment of costs. The cost of partition, including fees of referees and other disbursements including reasonable attorney fees to be fixed by the court and in case the land is ordered sold, costs of an abstract of title, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the decree. In that case there shall be a lien on the several shares, and the decree may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them. [1923 c 9 § 1; Code 1881 § 599; 1877 p 124 § 604; 1869 p 142 § 553; RRS § 885.]

**Chapter 7.56
QUO WARRANTO**

Sections

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7.56.010 Against whom information may be filed.

An information may be filed against any person or corporation in the following cases:

(1) When any person shall usurp, intrude upon, or unlawfully hold or exercise any public office or franchise within the state, or any office in any corporation created by the authority of the state.

(2) When any public officer shall have done or suffered any act, which, by the provisions of law, shall work a forfeiture of his office.

(3) When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons in order to try their respective rights to the office or franchise.

(4) When any association or number of persons shall act within this state as a corporation, without being legally incorporated.

(5) Or where any corporation do, or omit acts which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or where they exercise powers not conferred by law. [Code 1881 § 702; 1877 p 143 § 706; 1854 p 216 § 468; RRS § 1034.]

7.56.020 Who may file. The information may be filed by the prosecuting attorney in the superior court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise or corporation which is the subject of the information. [Code 1881 § 703; 1877 p 143 § 707; 1854 p 216 § 469; RRS § 1035.]

7.56.030 Contents of information. The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court. [Code 1881 § 704; 1877 p 143 § 708; 1854 p 216 § 470; RRS § 1036.]

7.56.040 Information for usurping office—Requisites—Damages. Whenever an information shall be filed against a person for usurping an office, by the prosecuting attorney, he shall also set forth therein the name of the

person rightfully entitled to the office, with an averment of his right thereto; and when filed by any other person he shall show his interest in the matter, and he may claim the damages he has sustained. [Code 1881 § 705; 1877 p 143 § 709; 1854 p 216 § 471; RRS § 1037.]

7.56.050 Notice—Pleadings—Proceedings. Whenever an information is filed, a notice signed by the relator shall be served and returned, as in other actions. The defendant shall appear and answer, or suffer default, and subsequent proceeding be had as in other cases. [Code 1881 § 706; 1877 p 144 § 710; 1854 p 217 § 472; RRS § 1038.]

7.56.060 Judgment. In every case wherein the right to an office is contested, judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself entitled to, if any, at the time of the judgment. [Code 1881 § 707; 1877 p 144 § 711; 1854 p 217 § 473; RRS § 1039.]

7.56.070 Judgment for relator—Ouster of defendant. If judgment be rendered in favor of the relator, he shall proceed to exercise the functions of the office, after he has been qualified as required by law, and the court shall order the defendant to deliver over all books and papers in his custody or within his power, belonging to the office from which he has been ousted. [Code 1881 § 708; 1877 p 144 § 712; 1854 p 217 § 474; RRS § 1040.]

7.56.080 Delivery of books and papers—Enforcement of order. If the defendant shall refuse or neglect to deliver over the books and papers pursuant to the order, the court or judge thereof shall enforce the order by attachment and imprisonment. [Code 1881 § 709; 1877 p 144 § 713; 1854 p 217 § 475; RRS § 1041.]

7.56.090 Action for damages—Limitation. When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the information, have his action for the damages at any time within one year after the judgment. [Code 1881 § 710; 1877 p 144 § 714; 1854 p 217 § 476; RRS § 1042.]

7.56.100 Judgment of ouster or forfeiture. Whenever any defendant shall be found guilty of any usurpation of or intrusion into, or unlawfully exercising any office or franchise within this state, or any office in any corporation created by the authority of this state, or when any public officer thus charged shall be found guilty of having done or suffered any act which by the provisions of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation without having been legally incorporated, the court shall give judgment of ouster against the defendant or defendants, and exclude him or them from the office, franchise or corporate rights, and in case of corporations that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff. [Code 1881 § 711; 1877 p 144 § 715; 1854 p 217 § 478; RRS § 1043.]

7.56.110 Judgment against corporation—Costs—Receivership. If judgment be rendered against any corporation or against any persons claiming to be a corporation, the court may cause the costs to be collected by executions against the persons claiming to be a corporation or by attachment against the directors or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account and make a distribution thereof among the creditors. The prosecuting attorney shall immediately institute proceedings for that purpose. [Code 1881 § 712; 1877 p 144 § 716; 1854 p 217 § 479; RRS § 1044.]

7.56.120 Action to recover forfeited property. Whenever any property shall be forfeited to the state for its use, the legal title shall be deemed to be in the state from the time of the forfeiture, and an information may be filed by the prosecuting attorney in the superior court for the recovery of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in civil action for the recovery of the property. [Code 1881 § 713; 1877 p 145 § 717; 1854 p 218 § 480; RRS § 1045.]

Escheats: Chapter 11.08 RCW.

Uniform unclaimed property act: Chapter 63.29 RCW.

7.56.130 Costs. When an information is filed by the prosecuting attorney, he shall not be liable for the costs, but when it is filed upon the relation of a private person such person shall be liable for costs unless the same are adjudged against the defendant. [Code 1881 § 714; 1877 p 145 § 718; 1854 p 218 § 481; RRS § 1046.]

7.56.140 Information to annul patent, certificate, or deed. An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate or deed, granted by the proper authorities of this state, when there is reason to believe that the same were obtained by fraud or through mistake or ignorance of a material fact, or when the patentee or those claiming under him have done or omitted an act in violation of the terms on which the letters, deeds or certificates were granted, or have by any other means forfeited the interests acquired under the same. [Code 1881 § 715; 1877 p 145 § 719; 1854 p 218 § 482; RRS § 1047.]

7.56.150 Proceedings to annul. In such cases, the information may be filed by the prosecuting attorney upon his relation, or by any private person upon his relation showing his interest in the subject matter; and the subsequent proceedings, judgment of the court and awarding of costs, shall conform to the above provisions, and such letters patent, deed or certificate shall be annulled or sustained, according to the right of the case. [Code 1881 § 716; 1877 p 145 § 720; 1854 p 218 § 483; RRS § 1048.]

Chapter 7.60
RECEIVERS

Sections

7.60.010	Receiver defined.
7.60.020	Grounds for appointment.
7.60.030	Oath—Bond.
7.60.040	Powers of receiver.
7.60.050	Order when part of claim admitted.

Rules of court: Cf. CR 66, 43(e)(2).

7.60.010 Receiver defined. A receiver is a person appointed by a court or judicial officer to take charge of property during the pending of a civil action or proceeding, or upon a judgment, decree or order therein, and to manage and dispose of it as the court or officer may direct. [1891 c 52 § 1; RRS § 740.]

7.60.020 Grounds for appointment. A receiver may be appointed by the court in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim;

(2) In an action between partners, or other persons jointly interested in any property or fund;

(3) In all actions where it is shown that the property, fund, or rents and profits in controversy are in danger of being lost, removed or materially injured;

(4) In an action by a mortgagee for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; (or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had);

(5) When a corporation has been dissolved, or is in the process of dissolution or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights, and when the court in its sound discretion deems that the appointment of a receiver is necessary to secure ample justice to the parties.

(6) And in such other cases as may be provided by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties: PROVIDED, That no party or attorney or other person interested in an action shall be appointed receiver therein. [1937 c 47 § 1; Code 1881 § 193; 1877 p 40 § 197; 1869 p 48 § 196; 1854 p 162 § 171; RRS § 741.]

7.60.030 Oath—Bond. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court, execute a bond to such person as the court may direct, conditioned that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein. [Code 1881 § 194; 1877 p 41 § 198; 1869 p 48 § 198; 1854 p 162 § 173; RRS § 742.]

7.60.040 Powers of receiver. The receiver shall have power, under control of the court, to bring and defend actions, to take and keep possession of the property, to receive rents, collect debts, and generally to do such acts

respecting the property, as the court may authorize. [Code 1881 § 198; 1877 p 41 § 202; 1869 p 49 § 202; 1854 p 163 § 177; RRS § 743.]

Rules of court: Cf. SPR 98.10W.

7.60.050 Order when part of claim admitted. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order by execution or attachment. [Code 1881 § 199; 1877 p 41 § 203; 1869 p 49 § 203; 1854 p 163 § 178; RRS § 744.]

Chapter 7.64
REPLEVIN

Sections

7.64.010	Plaintiff may claim and obtain immediate delivery.
7.64.020	Application for delivery—Order to show cause—Petition—Hearing.
7.64.035	Order awarding possession of property to plaintiff—Bond by plaintiff—Final judgment.
7.64.045	Plaintiff's duties upon issuance of order awarding possession of property.
7.64.047	Sheriff to take possession of property.
7.64.050	Redelivery bond.
7.64.070	Qualification and justification of sureties.
7.64.100	Claim by third party.
7.64.110	Return of proceedings by sheriff.
7.64.115	Execution of final judgment.
7.64.900	Severability—1979 ex.s. c 132.
7.64.901	Severability—1990 c 227.

7.64.010 Plaintiff may claim and obtain immediate delivery. The plaintiff in an action to recover the possession of personal property may claim and obtain the immediate delivery of such property, after a hearing, as provided in this chapter.

The remedies provided under this chapter are in addition to any other remedy available to the plaintiff, including a secured creditor's right of self-help repossession. [1990 c 227 § 1; 1979 ex.s. c 132 § 1; Code 1881 § 142; 1877 p 30 § 142; 1869 p 35 § 140; 1854 p 150 § 100; RRS § 707.]

7.64.020 Application for delivery—Order to show cause—Petition—Hearing. (1) At the time of filing the complaint or any time thereafter, the plaintiff may apply to the judge or court commissioner to issue an order directing the defendant to appear and show cause why an order putting the plaintiff in immediate possession of the personal property should not be issued.

(2) In support of the application, the plaintiff, or someone on the plaintiff's behalf, shall make an affidavit, or a declaration as permitted under RCW 9A.72.085, showing:

(a) That the plaintiff is the owner of the property or is lawfully entitled to the possession of the property by virtue of a special property interest, including a security interest, specifically describing the property and interest;

(b) That the property is wrongfully detained by defendant;

(c) That the property has not been taken for a tax, assessment, or fine pursuant to a statute and has not been seized under an execution or attachment against the property

of the plaintiff, or if so seized, that it is by law exempt from such seizure; and

(d) The approximate value of the property.

(3) The order to show cause shall state the date, time, and place of the hearing, which shall be set no earlier than ten and no later than twenty-five days after the date of the order.

(4) A certified copy of the order to show cause, with a copy of the plaintiff's affidavit or declaration attached, shall be served upon the defendant no later than five days before the hearing date. [1990 c 227 § 2; 1979 ex.s. c 132 § 2; Code 1881 § 143; 1877 p 30 § 143; 1869 p 35 § 141; 1854 p 150 § 101; RRS § 708.]

7.64.035 Order awarding possession of property to plaintiff—Bond by plaintiff—Final judgment. (1) At the hearing on the order to show cause, the judge or court commissioner may issue an order awarding possession of the property to the plaintiff and directing the sheriff to put the plaintiff in possession of the property:

(a)(i) If the plaintiff establishes the right to obtain possession of the property pending final disposition, or (ii) if the defendant, after being served with the order to show cause, fails to appear at the hearing; and

(b) If the plaintiff executes to the defendant and files in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute the action without delay and that if the order is wrongfully sued out, the plaintiff will pay all costs that may be adjudged to the defendant and all damages, court costs, reasonable attorneys' fees, and costs of recovery that the defendant may incur by reason of the order having been issued.

(2) An order awarding possession shall: (a) State that a show cause hearing was held; (b) describe the property and its location; (c) direct the sheriff to take possession of the property and put the plaintiff in possession as provided in this chapter; (d) if deemed necessary, direct the sheriff to break and enter a building or enclosure to obtain possession of the property if it is concealed in the building or enclosure; and (e) be signed by the judge or commissioner.

(3) If at the time of the hearing more than twenty days have elapsed since service of the summons and complaint and the defendant does not raise an issue of fact prior to or at the hearing that requires a trial on the issue of possession or damages, the judge or court commissioner may also, in addition to entering an order awarding possession, enter a final judgment awarding plaintiff possession of the property or its value if possession cannot be obtained, damages, court costs, reasonable attorneys' fees, and costs of recovery. [1990 c 227 § 3; 1979 ex.s. c 132 § 5.]

7.64.045 Plaintiff's duties upon issuance of order awarding possession of property. After issuance of the order awarding possession, the plaintiff shall deliver a copy of the bond and a certified copy of the order awarding possession to the sheriff of the county where the property is located and shall provide the sheriff with all available information as to the location and identity of the defendant and the property claimed. If the property is returned to the plaintiff by the defendant or if the plaintiff otherwise obtains

possession of the property, the plaintiff shall notify the sheriff of this fact as soon as possible. [1990 c 227 § 4; 1979 ex.s. c 132 § 6.]

7.64.047 Sheriff to take possession of property. (1) After receiving an order awarding possession, the sheriff shall take possession of the property. If the property or any part of it is concealed in a building or enclosure, the sheriff shall publicly demand delivery of the property. If the property is not delivered and if the order awarding possession so directs, the sheriff shall cause the building or enclosure to be broken open and take possession of the property.

(2) At the time of taking possession of the property, the sheriff shall serve copies of the bond and the order awarding possession on the defendant or, if someone other than the defendant is in possession of the property, shall serve the copies on that person. If the copies of the bond and the order are not served on the defendant at the time of taking possession, the sheriff shall, within a reasonable time after taking possession, give notice to the defendant either by serving copies of the bond and order on the defendant in the same manner as a summons in a civil action or by causing the copies to be mailed to the defendant by both regular mail and certified mail, return receipt requested.

(3) As soon as possible after taking possession of the property and after receiving lawful fees for taking possession and necessary expenses for keeping the property, the sheriff shall release the property to the plaintiff, unless before the release the defendant has, as provided in RCW 7.64.050, given a redelivery bond to the sheriff or filed a redelivery bond with the court and notified the sheriff of that fact. [1990 c 227 § 5.]

7.64.050 Redelivery bond. (1) At the hearing on the order to show cause or at any time before the sheriff takes possession of the property, the defendant may post a redelivery bond and retain possession of the property pending final judgment in the action for possession. At any time after the sheriff takes possession and before release of the property to the plaintiff as provided in RCW 7.64.047, the defendant may require the sheriff to return the property by posting a redelivery bond.

(2) A redelivery bond may be given to the sheriff or filed with the court. If the bond is filed with the court after a certified copy of the order awarding possession has been issued to the sheriff, the defendant shall give notice of the filing to the sheriff.

(3) The redelivery bond shall be executed by one or more sufficient sureties to the effect that they are bound in an amount equal to the value of the bond filed by the plaintiff, conditioned that the defendant will deliver the property to the plaintiff if judgment is entered for the plaintiff in the action for possession and will pay any sum recovered by the plaintiff in that action.

(4) The defendant's sureties, upon a notice to the plaintiff or the plaintiff's attorney, of not less than two, nor more than six days, shall justify as provided by law; upon such justification, the sheriff shall release the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is

completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, the sheriff shall release the property to the plaintiff. [1990 c 227 § 6; 1979 ex.s. c 132 § 3; Code 1881 § 146; 1877 p 31 § 146; 1869 p 36 § 144; 1854 p 151 § 104; RRS § 711.]

7.64.070 Qualification and justification of sureties.

The qualification of sureties and their justification shall be as prescribed by law. [1957 c 51 § 17; Code 1881 § 148; 1877 p 31 § 148; 1869 p 37 § 146; 1854 p 151 § 106; RRS § 713.]

Corporate surety—Insurance: Chapter 48.28 RCW.

7.64.100 Claim by third party. If the property taken by the sheriff is claimed by any person other than the defendant or the defendant's agent, the claimant may assert the claim by intervening in the plaintiff's action for possession. [1990 c 227 § 7; 1979 ex.s. c 132 § 4; Code 1881 § 151; 1877 p 32 § 151; 1869 p 37 § 149; 1854 p 151 § 109; RRS § 716.]

7.64.110 Return of proceedings by sheriff. The sheriff shall file a return of proceedings with the clerk of the court in which the action is pending within twenty days after taking possession of the property. [1990 c 227 § 8; 1891 c 34 § 1; Code 1881 § 152; 1877 p 32 § 152; 1869 p 38 § 150; 1854 p 152 § 110; RRS § 717.]

7.64.115 Execution of final judgment. To the extent the final judgment entered at a show cause hearing or at any other time is not satisfied by proceedings under an order awarding possession issued at the show cause hearing, the judgment shall be executed in the same manner as any other judgment. [1990 c 227 § 9.]

7.64.900 Severability—1979 ex.s. c 132. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 132 § 9.]

7.64.901 Severability—1990 c 227. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 227 § 11.]

Chapter 7.68

VICTIMS OF CRIMES—COMPENSATION, ASSISTANCE

Sections

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Domestic violence, official response: Chapter 10.99 RCW.

Victims of sexual assault, programs and plans in aid of: Chapter 70.125 RCW.

7.68.010 Intent.

Reviser's note: RCW 7.68.010 was both amended and repealed during the 1989 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

7.68.015 Program to be operated within conditions and limitations. The department of labor and industries shall operate the crime victims' compensation program within the appropriations and the conditions and limitations on the appropriations provided for this program. [1989 1st ex.s. c 5 § 1.]

Severability—1989 1st ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 5 § 15.]

Application—1989 1st ex.s. c 5: "Except as provided in section 4 of this act, sections 1 through 8 of this act shall apply to all claims filed on or after July 1, 1989." [1989 1st ex.s. c 5 § 16.] "Sections 1 through 8 of this act" consist of the enactment of RCW 7.68.015 and 7.68.085, the 1989 1st ex.s. c 5 amendments to RCW 7.68.030, 7.68.070, and 7.68.080, uncodified sections, and a vetoed section. "Section 4 of this act" is a note following RCW 7.68.085.

Effective dates—1989 1st ex.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and sections 3 and 7 of this act shall take effect immediately [May 14, 1989]. The remaining sections shall take effect July 1, 1989." [1989 1st ex.s. c 5 § 17.]

7.68.020 Definitions. The following words and phrases as used in this chapter have the meanings set forth in this section unless the context otherwise requires.

(1) "Department" means the department of labor and industries.

(2) "Criminal act" means an act committed or attempted in this state which is punishable as a felony or gross misdemeanor under the laws of this state, or an act committed outside the state of Washington against a resident of the state of Washington which would be compensable had it occurred inside this state; and the crime occurred in a state which does not have a crime victims compensation program, for which the victim is eligible as set forth in the Washington compensation law except as follows:

(a) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law does not constitute a "criminal act" unless:

(i) The injury or death was intentionally inflicted;

(ii) The operation thereof was part of the commission of another non-vehicular criminal act as defined in this section;

(iii) The death or injury was the result of the operation of a motor vehicle after July 24, 1983, and a preponderance of the evidence establishes that the death was the result of vehicular homicide under RCW 46.61.520, or a conviction of vehicular assault under RCW 46.61.522, has been obtained: PROVIDED, That in cases where a probable criminal defendant has died in perpetration of vehicular assault or, because of physical or mental infirmity or disability the perpetrator is incapable of standing trial for vehicular assault, the department may, by a preponderance of the evidence, establish that a vehicular assault had been committed and authorize benefits; or

(iv) Injury or death caused by a driver in violation of RCW 46.61.502;

(b) Neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in subsection (2)(a)(iii) of this section;

(c) Evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter is admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; and

(d) Acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this chapter.

(3) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "workman" as defined in chapter 51.08 RCW as now or hereafter amended.

(4) "Child," "accredited school," "dependent," "beneficiary," "average monthly wage," "director," "injury," "invalid," "permanent partial disability," and "permanent total

disability" have the meanings assigned to them in chapter 51.08 RCW as now or hereafter amended.

(5) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

(6) "Private insurance" means any source of recompense provided by contract available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(7) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter. [1990 c 73 § 1; 1987 c 281 § 6; 1985 c 443 § 11; 1983 c 239 § 4; 1980 c 156 § 2; 1977 ex.s. c 302 § 2; 1975 1st ex.s. c 176 § 1; 1973 1st ex.s. c 122 § 2.]

Effective date—1990 c 73: "This act shall take effect October 1, 1990." [1990 c 73 § 2.]

Application—1987 c 281 § 6: "The 1987 amendments to RCW 7.68.020 by section 5 [6] of this act apply only to vehicular assault under RCW 46.61.522 or vehicular homicide under RCW 46.61.520 that occurs after the effective date of this section." [1987 c 281 § 7.] The effective date referred to is June 30, 1987.

Effective date—1987 c 281: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1987." [1987 c 281 § 9.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Legislative intent—"Public or private insurance"—1980 c 156: "Sections 2 through 4 of this 1980 act are required to clarify the legislative intent concerning the phrase "public or private insurance" as used in section 13, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.130 which was the subject of *Wagner v. Labor & Indus.*, 92 Wn.2d 463 (1979). It has continuously been the legislative intent to include as "public insurance" both state and federal statutory social welfare and insurance schemes which make available to victims or their beneficiaries recompense as a result of the claimed injury or death, such as but not limited to old age and survivors insurance, medicare, medicaid, benefits under the veterans' benefits act, longshore and harbor workers act, industrial insurance act, law enforcement officers' and fire fighters' retirement system act, Washington public employees' retirement system act, teachers' retirement system act, and firemen's relief and pension act. "Private insurance" continuously has been intended to include sources of recompense available by contract, such as but not limited to policies insuring a victim's life or disability." [1980 c 156 § 1.] For codification of 1980 c 156, see Codification Tables, Volume 0.

7.68.030 Duties of department—General provisions.

It shall be the duty of the director to establish and administer a program of benefits to innocent victims of criminal acts within the terms and limitations of this chapter. In so doing, the director shall, in accordance with chapter 34.05 RCW, adopt rules and regulations necessary to the administration of this chapter, and the provisions contained in chapter 51.04 RCW, including but not limited to RCW 51.04.020, 51.04.030, 51.04.040, 51.04.050 and 51.04.100 as now or hereafter amended, shall apply where appropriate in keeping with the intent of this chapter. The director may apply for and, subject to appropriation, expend federal funds under Public Law 98-473 and any other federal program providing financial assistance to state crime victim compensation programs. The federal funds shall be deposited in the public safety and education account in the general fund and may be expended only for purposes authorized by applicable federal law. [1989 1st ex.s. c 5 § 2; 1985 c 443 § 12; 1973 1st ex.s. c 122 § 3.]

Severability—Application—Effective dates—1989 1st ex.s. c 5: See notes following RCW 7.68.015.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

7.68.035 Penalty assessments in addition to fine or bail forfeiture—Distribution—Establishment of crime victim and witness programs in county—Contribution required from cities and towns. (1) Whenever any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and seventy-five dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504, 46.52.100, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.090(2), and 46.09.120(2).

(3) Whenever any person accused of having committed a crime posts bail in superior court pursuant to the provisions of chapter 10.19 RCW and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the crime.

(4) Such penalty assessments shall be paid by the clerk of the superior court to the county treasurer who shall monthly transmit the money as provided in RCW 10.82.070. Each county shall deposit not less than one and seventy-five one-hundredths percent of the money it retains under RCW 10.82.070 and chapter 3.62 RCW and all money it receives under subsection (8) of this section into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crime;

(c) Make a reasonable effort to inform the known victim or his surviving dependents of the existence of this chapter and the procedure for making application for benefits;

(d) Assist victims in the restitution and adjudication process; and

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it shall be submitted for review and comment to each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program, the prosecuting attorney shall retain the money deposited by the county under subsection (4) of this section until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the money deposited under subsection (4) of this section until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the county treasurer shall monthly transmit one hundred percent of the money deposited by the county under subsection (4) of this section to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Penalty assessments under this section shall also be imposed in juvenile offense dispositions under Title 13 RCW. Upon motion of a party and a showing of good cause, the court may modify the penalty assessment in the disposition of juvenile offenses under Title 13 RCW.

(8) Every city and town shall transmit monthly one and seventy-five one-hundredths percent of all money, other than money received for parking infractions, retained under RCW 3.46.120, 3.50.100, and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of this section. [1991 c 293 § 1; 1989 c 252 § 29; 1987 c 281 § 1; 1985 c 443 § 13; 1984 c 258 § 311; 1983 c 239 § 1; 1982 1st ex.s. c 8 § 1; 1977 ex.s. c 302 § 10.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Effective date—1987 c 281: See note following RCW 7.68.020.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Effective dates—1982 1st ex.s. c 8: "Chapter 8, Laws of 1982 1st ex. sess. is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing

public institutions, and shall take effect immediately [March 27, 1982], except sections 2, 3, and 6 of chapter 8, Laws of 1982 1st ex. sess. shall take effect on January 1, 1983." [1982 1st ex.s. c 47 § 29; 1982 1st ex.s. c 8 § 9.] For codification of 1982 1st ex.s. c 8, see Codification Tables, Volume 0.

Intent—Reports—1982 1st ex.s. c 8: "The intent of the legislature is that the victim of crime program will be self-funded. Toward that end, the department of labor and industries shall not pay benefits beyond the resources of the account. The department of labor and industries and the administrator for the courts shall cooperatively prepare a report on the collection of penalty assessments and the level of expenditures, and recommend adjustments to the revenue collection mechanism to the legislature before January 1, 1983. It is further the intent of the legislature that the percentage of funds devoted to comprehensive programs for victim assistance, as provided in RCW 7.68.035, be re-examined to ensure that it does not unreasonably conflict with the higher priority of compensating victims. To that end, the county prosecuting attorneys shall report to the legislature no later than January 1, 1984, either individually or as a group, on their experience and costs associated with such programs, describing the nature and extent of the victim assistance provided." [1982 1st ex.s. c 8 § 10.]

7.68.050 Right of action for damages—Election—Effect of election or recovery—Lien of state. (1) No right of action at law for damages incurred as a consequence of a criminal act shall be lost as a consequence of being entitled to benefits under the provisions of this chapter. The victim or his beneficiary may elect to seek damages from the person or persons liable for the claimed injury or death, and such victim or beneficiary is entitled to the full compensation and benefits provided by this chapter regardless of any election or recovery made pursuant to this section.

(2) For the purposes of this section, the rights, privileges, responsibilities, duties, limitations, and procedures contained in RCW 51.24.050 through 51.24.100 as now existing or hereafter amended apply.

(3) If the recovery involved is against the state, the lien of the department includes the interest on the benefits paid by the department to or on behalf of such person under this chapter computed at the rate of eight percent per annum from the date of payment.

(4) The 1980 amendments to this section apply only to injuries which occur on or after April 1, 1980. [1980 c 156 § 3; 1977 ex.s. c 302 § 3; 1973 1st ex.s. c 122 § 5.]

Legislative intent—"Public or private insurance"—1980 c 156: See note following RCW 7.68.020.

7.68.060 Applications for benefits—Accrual of rights. (1) For the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 as now or hereafter amended shall apply: PROVIDED, That no compensation of any kind shall be available under this chapter if:

(a) An application for benefits is not received by the department within one year after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of dependents or beneficiaries accrued; or

(b) The criminal act is not reported by the victim or someone on his or her behalf to a local police department or sheriff's office within twelve months of its occurrence or, if it could not reasonably have been reported within that period, within twelve months of the time when a report could reasonably have been made. In making determinations

as to reasonable time limits, the department shall give greatest weight to the needs of the victims.

(2) This section shall apply only to criminal acts reported after December 31, 1985.

(3) Because victims of childhood criminal acts may repress conscious memory of such criminal acts far beyond the age of eighteen, the rights of adult victims of childhood criminal acts shall accrue at the time the victim discovers or reasonably should have discovered the elements of the crime. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victim. [1990 c 3 § 501; 1986 c 98 § 1; 1985 c 443 § 14; 1977 ex.s. c 302 § 4; 1975 1st ex.s. c 176 § 2; 1973 1st ex.s. c 122 § 6.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

7.68.070 Benefits—Right to and amount—Limitations. The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW as now or hereafter amended except as provided in this section:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 as now or hereafter amended are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 as now or hereafter amended are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 as now or hereafter amended are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 as now or hereafter amended shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed the maximum cost used by the department of social and health services for

the funeral and burial of a deceased indigent person under chapter 74.08 RCW in any claim: PROVIDED FURTHER, That if the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 as now or hereafter amended for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018 as now or hereafter amended:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 as now or hereafter amended for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 as now or hereafter amended for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 as now or hereafter amended for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 as now or hereafter amended apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 as now or hereafter amended are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be

determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Except for medical benefits authorized under RCW 7.68.080, no more than thirty thousand dollars shall be granted as a result of a single injury or death, except that benefits granted as the result of total permanent disability or death shall not exceed forty thousand dollars.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars.

(15) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

(16) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act, except to the extent that the costs for such services exceed service limits established by the department of social and health services.

(17) In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992. [1992 c 203 § 1; 1990 c 3 § 502; 1989 1st ex.s. c 5 § 5; 1989 c 12 § 2; 1987 c 281 § 8; 1985 c 443 § 15; 1983 c 239 § 2; 1982 1st ex.s. c 8 § 2; 1981 1st ex.s. c 6 § 26; 1977 ex.s. c 302 § 5; 1975 1st ex.s. c 176 § 3; 1973 1st ex.s. c 122 § 7.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—Application—Effective dates—1989 1st ex.s. c 5: See notes following RCW 7.68.015.

Effective date—1987 c 281: See note following RCW 7.68.020.

Application—1985 c 443 § 15: "The amendments to RCW 7.68.070 by this act apply only to criminal acts occurring after December 31, 1985." [1986 c 98 § 3; 1985 c 443 § 17.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Effective dates—Intent—Reports—1982 1st ex.s. c 8: See notes following RCW 7.68.035.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

7.68.075 Marital status—Payment for or on account of children. Notwithstanding the provisions of any of the sections, as now or hereafter amended, of Title 51 RCW which are made applicable to this chapter, the marital status of all victims shall be deemed to be fixed as of the date of the criminal act. All references to the child or children living or conceived of the victim in this chapter shall be deemed to refer to such child or children as of the date of

the criminal act unless the context clearly indicates the contrary.

Payments for or on account of any such child or children shall cease when such child is no longer a "child" as defined in RCW 51.08.030, as now or hereafter amended, or on the death of any such child whichever occurs first.

Payments to the victim or surviving spouse for or on account of any such child or children shall be made only when the victim or surviving spouse has legal custody of any such child or children. Where the victim or surviving spouse does not have such legal custody any payments for or on account of any such child or children shall be made to the person having legal custody of such child or children and the amount of payments shall be subtracted from the payments which would have been due the victim or surviving spouse had legal custody not been transferred to another person. [1977 ex.s. c 302 § 6; 1975 1st ex.s. c 176 § 9.]

7.68.080 Medical aid—Construction. The provisions of chapter 51.36 RCW as now or hereafter amended govern the provision of medical aid under this chapter to victims injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, except that:

(1) The provisions contained in RCW 51.36.030, 51.36.040, and 51.36.080 as now or hereafter amended do not apply to this chapter;

(2) The specific provisions of RCW 51.36.020 as now or hereafter amended relating to supplying emergency transportation do not apply: PROVIDED, That:

(a) When the injury to any victim is so serious as to require the victim's being taken from the place of injury to a place of treatment, reasonable transportation costs to the nearest place of proper treatment shall be reimbursed from the fund established pursuant to RCW 7.68.090; and

(b) In the case of alleged rape or molestation of a child the reasonable costs of a colposcope examination shall be reimbursed from the fund pursuant to RCW 7.68.090. Hospital, clinic, and medical charges along with all related fees under this chapter shall conform to regulations promulgated by the director. The director shall set these service levels and fees at a level no lower than those established by the department of social and health services under Title 74 RCW. In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner. The director shall establish rules adopted in accordance with chapter 34.05 RCW. Nothing in this chapter may be construed to require the payment of interest on any billing, fee, or charge. [1990 c 3 § 503; 1989 1st ex.s. c 5 § 6; 1986 c 98 § 2; 1983 c 239 § 3; 1981 1st ex.s. c 6 § 27; 1975 1st ex.s. c 176 § 4; 1973 1st ex.s. c 122 § 8.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—Application—Effective dates—1989 1st ex.s. c 5: See notes following RCW 7.68.015.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

7.68.085 Cap on medical benefits—Alternative programs—Plan for reduction of expenditures. The director of labor and industries shall institute a cap on

medical benefits of one hundred fifty thousand dollars per injury or death. Payment for medical services in excess of the cap shall be made available to any innocent victim under the same conditions as other medical services and if the medical services are:

- (1) Necessary for a previously accepted condition;
- (2) Necessary to protect the victim's life or prevent deterioration of the victim's previously accepted condition; and
- (3) Not available from an alternative source.

The director of financial management and the director of labor and industries shall monitor expenditures from the public safety and education account. Once each fiscal quarter, the director of financial management shall determine if expenditures from the public safety and education account during the prior fiscal quarter exceeded allotments by more than ten percent. Within thirty days of a determination that expenditures exceeded allotments by more than ten percent, the director of financial management shall develop and implement a plan to reduce expenditures from the account to a level that does not exceed the allotments. Such a plan may include across-the-board reductions in allotments from the account to all nonjudicial agencies except for the crime victims compensation program. In implementing the plan, the director of financial management shall seek the cooperation of judicial agencies in reducing their expenditures from the account. The director of financial management shall notify the legislative fiscal committees prior to implementation of the plan.

Development and implementation of the plan is not required if the director of financial management notifies the legislative fiscal committees that increases in the official revenue forecast for the public safety and education account for that fiscal quarter will eliminate the need to reduce expenditures from the account. The official revenue forecast for the public safety and education account shall be prepared by the economic and revenue forecast council pursuant to RCW 82.33.020 and 82.33.010.

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services. [1990 c 3 § 504; 1989 1st ex.s. c 5 § 3.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Application—Transition plans—1989 1st ex.s. c 5 § 3: "The cap on medical benefits established by section 3 of this act shall apply equally to current and future recipients of crime victims' compensation benefits. The director shall prepare individual transition plans for individuals who exceed the medical benefit cap on July 1, 1989. The transition plans must be completed within ninety days of July 1, 1989." [1989 1st ex.s. c 5 § 4.]

Severability—Application—Effective dates—1989 1st ex.s. c 5: See notes following RCW 7.68.015.

7.68.090 Establishment of funds. The director shall establish such fund or funds, separate from existing funds, necessary to administer this chapter, and payment to these

funds shall be from legislative appropriation, reimbursement and subrogation as provided in this chapter, and from any contributions or grants specifically so directed. [1973 1st ex.s. c 122 § 9.]

7.68.100 Physicians' reporting. The requirements relating to physicians' reporting contained in RCW 51.36.060 and 51.48.060 as now or hereafter amended shall apply under this chapter. Any funds collected pursuant to RCW 51.48.060 as now or hereafter amended shall be paid into the fund established pursuant to RCW 7.68.090. [1973 1st ex.s. c 122 § 10.]

7.68.110 Appeals. The provisions contained in chapter 51.52 RCW relating to appeals shall govern appeals under this chapter: PROVIDED, That no provision contained in chapter 51.52 RCW concerning employers as parties to any settlement, appeal, or other action shall apply to this chapter: PROVIDED FURTHER, That appeals taken from a decision of the board of industrial insurance appeals under this chapter shall be governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department shall have the same right of review from a decision of the board of industrial insurance appeals as does the claimant. [1989 c 175 § 40; 1977 ex.s. c 302 § 7; 1975 1st ex.s. c 176 § 5; 1973 1st ex.s. c 122 § 11.]

Effective date—1989 c 175: See note following RCW 34.05.010.

7.68.120 Reimbursement. Any person who has committed a criminal act which resulted in injury compensated under this chapter may be required to make reimbursement to the department as hereinafter provided.

(1) Any payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the department by any person found to have committed such criminal act in either a civil or criminal court proceeding in which he is a party: PROVIDED, That where there has been a superior or district court order, or an order of the *board of prison terms and paroles or the department of social and health services, as hereinafter provided, the debt shall be limited to the amount provided for in said order. A court order shall prevail over any other order.

(2) Upon being placed on work release pursuant to chapter 72.65 RCW, or upon release from custody of a state correctional facility on parole, any convicted person who owes a debt to the department as a consequence of a criminal act may have the schedule or amount of payments therefor set as a condition of work release or parole by the department of social and health services or *board of prison terms and paroles respectively, subject to modification based on change of circumstances. Such action shall be binding on the department.

(3) Any requirement for payment due and owing the department by a convicted person under this chapter may be waived, modified downward or otherwise adjusted by the department in the interest of justice and the rehabilitation of the individual. [1973 1st ex.s. c 122 § 12.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

7.68.125 Erroneous or fraudulent payment—Repayment, when—Penalty. (1) Whenever any payment under this chapter is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter: PROVIDED, That the department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed that any claim therefor has been waived: PROVIDED FURTHER, That the department may exercise its discretion to waive, in whole or in part, the amount of any such timely claim.

(2) Whenever any payment under this chapter has been made pursuant to an adjudication by the department, board, or any court and timely appeal therefrom has been made and the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter: PROVIDED, That the department may exercise its discretion to waive, in whole or in part, the amount thereof.

(3) Whenever any payment under this chapter has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient under this chapter and the amount of the penalty shall be placed in the fund or funds established pursuant to RCW 7.68.090 as now or hereafter amended. [1975 1st ex.s. c 176 § 8.]

7.68.130 Public or private insurance. Benefits payable pursuant to this chapter shall be reduced by the amount of any other public or private insurance available. Benefits payable after 1980 to victims injured or killed before 1980 shall be reduced by any other public or private insurance including but not limited to social security. Payment by the department under this chapter shall be secondary to such other insurance benefits, notwithstanding the provision of any contract or coverage to the contrary: PROVIDED, That in the case of private life insurance proceeds, the first forty thousand dollars of such proceeds shall not be considered for purposes of any such reduction in benefits. [1985 c 443 § 16; 1980 c 156 § 4; 1977 ex.s. c 302 § 8; 1973 1st ex.s. c 122 § 13.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Legislative intent—"Public or private insurance"—1980 c 156: See note following RCW 7.68.020.

7.68.140 Confidentiality. Information contained in the claim files and records of victims, under the provisions of this chapter, shall be deemed confidential and shall not be open to public inspection: PROVIDED, That, except as limited by state or federal statutes or regulations, such information may be provided to public employees in the performance of their official duties: PROVIDED FURTHER, That except as otherwise limited by state or federal

statutes or regulations a representative of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant: PROVIDED FURTHER, That physicians treating or examining victims claiming benefits under this chapter or physicians giving medical advice to the department regarding any claim may, at the discretion of the department and as not otherwise limited by state or federal statutes or regulations, inspect the claim files and records of such victims, and other persons may, when rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter, inspect the claim files and records of such victims at the discretion of the department and as not otherwise limited by state or federal statutes or regulations. [1975 1st ex.s. c 176 § 6; 1973 1st ex.s. c 122 § 14.]

7.68.145 Release of information in performance of official duties. Notwithstanding any other provision of law, all law enforcement, criminal justice, or other governmental agencies, or hospital; any physician or other practitioner of the healing arts; or any other organization or person having possession or control of any investigative or other information pertaining to any alleged criminal act or victim concerning which a claim for benefits has been filed under this chapter, shall, upon request, make available to and allow the reproduction of any such information by the section of the department administering this chapter or other public employees in their performance of their official duties under this chapter.

No person or organization, public or private, shall incur any legal liability by reason of releasing any such information to the director of labor and industries or the section of the department which administers this chapter or other public employees in the performance of their official duties under this chapter. [1975 1st ex.s. c 176 § 7.]

7.68.150 Benefits, payments and costs to be funded and accounted for separately. All benefits and payments made, and all administrative costs accrued, pursuant to this chapter shall be funded and accounted for separate from the other operations and responsibilities of the department. [1973 1st ex.s. c 122 § 15.]

7.68.160 Claims of persons injured prior to effective date. Any person who has been injured as a result of a "criminal act" as herein defined on or after January 1, 1972 up to the effective date of this 1973 act, who would otherwise be eligible for benefits under this chapter, may for a period of ninety days from the effective date of this 1973 act, file a claim for benefits with the department on a form provided by the department. The department shall investigate and review such claims, and, within two hundred ten days of the effective date of this 1973 act, shall report to the governor its findings and recommendations as to such claims, along with a statement as to what special legislative relief, if any, the department recommends should be provided. [1986 c 158 § 2; 1973 1st ex.s. c 122 § 16.]

Effective date—1973 1st ex.s. c 122: See RCW 7.68.900 and note following.

7.68.165 Application of chapter to claims filed under RCW 7.68.160. The rights, privileges, responsibilities, duties, limitations and procedures contained in this chapter shall apply to those claims filed pursuant to RCW 7.68.160. In respect to such claims, the department shall proceed in the same manner and with the same authority as provided in this chapter with respect to those claims filed pursuant to RCW 7.68.060 as now or hereafter amended. [1975 1st ex.s. c 176 § 10.]

7.68.170 Examination costs of sexual assault victims paid by state. No costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sexual assault, when such examination is performed for the purposes of gathering evidence for possible prosecution, shall be billed or charged directly or indirectly to the victim of such assault. Such costs shall be paid by the state pursuant to this chapter. [1979 ex.s. c 219 § 11.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.200 Payment for reenactments of crimes—Contracts—Deposits—Damages. After hearing, as provided in RCW 7.68.210, every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinion or emotions regarding such crime, shall submit a copy of such contract to the department and pay over to the department any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives. The department shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by: (i) such convicted person; or (ii) such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives. [1979 ex.s. c 219 § 13.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.210 Payment may be directed based on contract. The prosecutor or the department may, at any time after the person's arraignment petition any superior court for an order, following notice and hearing, directing that any contract described in RCW 7.68.200 shall be paid in accordance with RCW 7.68.200 through 7.68.280. [1979 ex.s. c 219 § 12.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.220 Notice published of moneys in escrow. The department, at least once every six months for five years

from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in the county wherein the crime was committed and in counties contiguous to such county advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section. For crimes committed in a city located within a county having a population of one million or more, the notice provided for in this section shall be in newspapers having general circulation in such city. The department may, in its discretion, provide for such additional notice as it deems necessary. [1979 ex.s. c 219 § 14.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.230 Payment to accused if charges dismissed, acquitted. Upon dismissal of charges or acquittal of any accused person the department shall immediately pay over to such accused person the moneys in the escrow account established on behalf of such accused person. [1979 ex.s. c 219 § 15.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.240 Payment if no actions pending. Upon a showing by any convicted person or the state that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to RCW 7.68.200 through 7.68.280, the department shall immediately pay over fifty percent of any moneys in the escrow account to such person or his legal representatives and fifty percent of any moneys in the escrow account to the fund under RCW 7.68.035(4). [1988 c 155 § 4; 1979 ex.s. c 219 § 16.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.250 Persons not guilty for mental reasons deemed convicted. For purposes of *this act, a person found not guilty as a result of the defense of mental disease or defect shall be deemed to be a convicted person. [1979 ex.s. c 219 § 17.]

***Reviser's note:** "this act" literally refers to 1979 ex.s. c 219. As used in this section, the term apparently refers to only sections 12 through 20 of that act, which are codified as RCW 7.68.200 through 7.68.280.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.260 Time for filing action begins when escrow account established. Notwithstanding any inconsistent provision of the civil practice and rules with respect to the timely bringing of an action, the five year period provided for in RCW 7.68.200 shall not begin to run until an escrow account has been established. [1979 ex.s. c 219 § 18.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.270 Escrow moneys may be used for legal representation. Notwithstanding the foregoing provisions of *this act the department shall make payments from an escrow account to any person accused or convicted of a crime upon the order of a court of competent jurisdiction

after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process. [1979 ex.s. c 219 § 19.]

***Reviser's note:** "this act," see note following RCW 7.68.250.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.280 Actions to avoid law null and void. Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of *this act shall be null and void as against the public policy of this state. [1979 ex.s. c 219 § 20.]

***Reviser's note:** "this act," see note following RCW 7.68.250.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.290 Restitution—Disposition when victim dead or not found. If a defendant has paid restitution pursuant to court order under RCW 9.92.060, 9.95.210, or 9A.20.030 and the victim entitled to restitution cannot be found or has died, the clerk of the court shall deposit with the county treasurer the amount of restitution unable to be paid to the victim. The county treasurer shall monthly transmit the money to the state treasurer for deposit as provided in RCW 43.08.250. Moneys deposited under this section shall be used to compensate victims of crimes through the crime victims compensation fund. [1987 c 281 § 2.]

Effective date—1987 c 281: See note following RCW 7.68.020.

7.68.900 Effective date—1973 1st ex.s. c 122. This chapter shall take effect on July 1, 1974. [1973 1st ex.s. c 122 § 17.]

Funding required: "This bill shall not take effect until the funds necessary for its implementation have been specifically appropriated by the legislature and such appropriation itself has become law. It is the intention of the legislature that if the governor shall veto this section or any item thereof, none of the provisions of this bill shall take effect." [1973 1st ex.s. c 122 § 21.]

7.68.905 Severability—Construction—1977 ex.s. c 302. (1) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected.

(2) Subsection (1) of this section shall be effective retroactively to July 1, 1974. [1977 ex.s. c 302 § 12.]

7.68.910 Section captions. Section captions as used in this act do not constitute any part of the law. [1973 1st ex.s. c 122 § 20.]

7.68.915 Savings—Statute of limitations—1982 1st ex.s. c 8. Nothing in *this act affects or impairs any right to benefits existing prior to **the effective date of this act. For injuries occurring on and after July 1, 1981, and before **the effective date of this act, the statute of limitations for filing claims under this chapter shall begin to run on **the effective date of this act. [1982 1st ex.s. c 8 § 3.]

Reviser's note: *(1) "This act" [1982 1st ex.s. c 8] consists of RCW 2.56.035 and 7.68.915, amendments to RCW 7.68.035, 7.68.070, 9.92.060, 9.95.210, and several uncodified sections.

** (2) For "the effective date of this act," see note following RCW 7.68.035.

Effective dates—Intent—Reports—1982 1st ex.s. c 8: See notes following RCW 7.68.035.

Chapter 7.69

CRIME VICTIMS, SURVIVORS, AND WITNESSES

Sections

7.69.010	Intent.
7.69.020	Definitions.
7.69.030	Rights of victims, survivors, and witnesses.
7.69.040	Representation of incapacitated or incompetent victim.
7.69.050	Construction of chapter—Other remedies or defenses.

7.69.010 Intent. In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a significant role in the criminal justice system. The legislature further intends to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants. [1985 c 443 § 1; 1981 c 145 § 1.]

Severability—1985 c 443: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 443 § 27.]

Effective date—1985 c 443: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1985." [1985 c 443 § 28.]

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

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Survivor" or "survivors" of a victim of crime means a spouse, child, parent, legal guardian, sibling, or grandparent. If there is more than one survivor of a victim of crime, one survivor shall be designated by the prosecutor to represent all survivors for purposes of providing the notice to survivors required by this chapter.

(3) "Victim" means a person against whom a crime has been committed or the representative of a person against whom a crime has been committed.

(4) "Victim impact statement" means a statement submitted to the court by the victim or a survivor, individually or with the assistance of the prosecuting attorney if assistance is requested by the victim or survivor, which may include but is not limited to information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors.

(5) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced. [1985 c 443 § 2; 1981 c 145 § 2.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

7.69.030 Rights of victims, survivors, and witnesses.

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights:

(1) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

(2) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(3) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(4) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

(5) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

(6) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

(7) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

(8) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;

(9) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

(10) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;

(11) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

(12) With respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions; and

(13) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment. [1985 c 443 § 3; 1981 c 145 § 3.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Child victims and witnesses, additional rights: Chapter 7.69A RCW.

7.69.040 Representation of incapacitated or incompetent victim. For purposes of this chapter, a victim who is incapacitated or otherwise incompetent shall be represented by a parent or present legal guardian, or if none exists, by a representative designated by the prosecuting attorney without court appointment or legal guardianship proceedings. Any victim may designate another person as the victim's representative for purposes of the rights enumerated in RCW 7.69.030. [1985 c 443 § 4.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

7.69.050 Construction of chapter—Other remedies or defenses. Nothing contained in this chapter may be construed to provide grounds for error in favor of a criminal defendant in a criminal proceeding, nor may anything in this chapter be construed to grant a new cause of action or remedy against the state, its political subdivisions, law enforcement agencies, or prosecuting attorneys. The failure of a person to make a reasonable effort to ensure that victims, survivors, and witnesses under this chapter have the rights enumerated in RCW 7.69.030 shall not result in civil liability against that person. This chapter does not limit other civil remedies or defenses of the offender or the victim or survivors of the victim. [1985 c 443 § 5.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Chapter 7.69A

CHILD VICTIMS AND WITNESSES

Sections

- 7.69A.010 Legislative intent.
 7.69A.020 Definitions.
 7.69A.030 Rights of child victims and witnesses.
 7.69A.040 Liability for failure to notify or assure child's rights.

7.69A.010 Legislative intent. The legislature recognizes that it is important that child victims and child witnesses of crime cooperate with law enforcement and prosecutorial agencies and that their assistance contributes to state and local enforcement efforts and the general effectiveness of the criminal justice system of this state. Therefore, it is the intent of the legislature by means of this chapter, to insure that all child victims and witnesses of crime are treated with the sensitivity, courtesy, and special care that must be afforded to each child victim of crime and that their rights be protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded the adult victim, witness, or criminal defendant. [1985 c 394 § 1.]

Reviser's note: "This chapter" has been substituted for "this act" in this section.

7.69A.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Child" means any living child under the age of eighteen years.

(3) "Victim" means a living person against whom a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.

(5) "Family member" means child, parent, or legal guardian.

(6) "Advocate" means any person, including a family member not accused of a crime, who provides support to a child victim or child witness during any legal proceeding.

(7) "Court proceedings" means any court proceeding conducted during the course of the prosecution of a crime committed against a child victim, including pretrial hearings, trial, sentencing, or appellate proceedings.

(8) "Identifying information" means the child's name, address, location, and photograph, and in cases in which the child is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. [1992 c 188 § 2; 1985 c 394 § 2.]

Findings—Intent—1992 c 188: "The legislature recognizes that the cooperation of child victims of sexual assault and their families is integral to the successful prosecution of sexual assaults against children. The legislature finds that release of information identifying child victims of sexual assault may subject the child to unwanted contacts by the media, public scrutiny and embarrassment, and places the child victim and the victim's family at risk when the assailant is not in custody. Release of

information to the press and the public harms the child victim and has a chilling effect on the willingness of child victims and their families to report sexual abuse and to cooperate with the investigation and prosecution of the crime. The legislature further finds that public dissemination of the child victim's name and other identifying information is not essential to accurate and necessary release of information to the public concerning the operation of the criminal justice system. Therefore, the legislature intends to assure child victims of sexual assault and their families that the identities and locations of child victims will remain confidential." [1992 c 188 § 1.]

Severability—1992 c 188: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 188 § 10.]

7.69A.030 Rights of child victims and witnesses. In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. The enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights:

(1) To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved.

(2) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.

(3) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents, or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.

(4) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

(5) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.

(6) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the child is involved.

(7) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.

(8) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the child testifies in order to promote the child's feelings of security and safety.

(9) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of the child victim. [1985 c 394 § 3.]

7.69A.040 Liability for failure to notify or assure child's rights. The failure to provide notice to a child victim or witness under this chapter of the rights enumerated in RCW 7.69A.030 shall not result in civil liability so long as the failure to notify was in good faith and without gross negligence. The failure to make a reasonable effort to assure that child victims and witnesses are afforded the rights enumerated in RCW 7.69A.030 shall not result in civil liability so long as the failure to make a reasonable effort was in good faith and without gross negligence. [1985 c 394 § 4.]

Chapter 7.70

ACTIONS FOR INJURIES RESULTING FROM HEALTH CARE

Sections

- 7.70.010 Declaration of modification of actions for damages based upon injuries resulting from health care.
- 7.70.020 Definitions.
- 7.70.030 Propositions required to be established—Burden of proof.
- 7.70.040 Necessary elements of proof that injury resulted from failure to follow accepted standard of care.
- 7.70.050 Failure to secure informed consent—Necessary elements of proof—Emergency situations.
- 7.70.060 Consent form—Contents—Prima facie evidence—Failure to use.
- 7.70.065 Informed consent—Persons authorized to provide for patients who are not competent—Priority.
- 7.70.070 Attorneys' fees.
- 7.70.080 Evidence of compensation from other source.
- 7.70.090 Hospital governing bodies—Liability—Limitations.

Complaint in personal injury actions not to include statement of damages: RCW 4.28.360.

Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: Chapter 5.64 RCW.

Immunity of members of professional review committees, societies, examining, licensing or disciplinary boards from civil suit: RCW 4.24.240.

Malpractice insurance for retired physicians providing health care services: RCW 43.70.460.

Statute of limitations in actions for injuries resulting from health care: RCW 4.16.350.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

7.70.010 Declaration of modification of actions for damages based upon injuries resulting from health care. The state of Washington, exercising its police and sovereign power, hereby modifies as set forth in this chapter and in RCW 4.16.350, as now or hereafter amended, certain substantive and procedural aspects of all civil actions and causes of action, whether based on tort, contract, or otherwise, for damages for injury occurring as a result of health care which is provided after June 25, 1976. [1975-'76 2nd ex.s. c 56 § 6.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.020 Definitions. As used in this chapter "health care provider" means either:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a certified acupuncturist, a physician, osteopathic physician, dentist,

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nurse, optometrist, *podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, midwife, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in part (1) above, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in part (1) above, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including in the event such officer, director, employee, or agent is deceased, his estate or personal representative. [1985 c 326 § 27; 1981 c 53 § 1; 1975-'76 2nd ex.s. c 56 § 7.]

***Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Effective date—1981 c 53: See note following RCW 18.50.005.

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.030 Propositions required to be established—Burden of proof. No award shall be made in any action or arbitration for damages for injury occurring as the result of health care which is provided after June 25, 1976, unless the plaintiff establishes one or more of the following propositions:

(1) That injury resulted from the failure of a health care provider to follow the accepted standard of care;

(2) That a health care provider promised the patient or his representative that the injury suffered would not occur;

(3) That injury resulted from health care to which the patient or his representative did not consent.

Unless otherwise provided in this chapter, the plaintiff shall have the burden of proving each fact essential to an award by a preponderance of the evidence. [1975-'76 2nd ex.s. c 56 § 8.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.040 Necessary elements of proof that injury resulted from failure to follow accepted standard of care. The following shall be necessary elements of proof that injury resulted from the failure of the health care provider to follow the accepted standard of care:

(1) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he belongs, in the state of Washington, acting in the same or similar circumstances;

(2) Such failure was a proximate cause of the injury complained of. [1983 c 149 § 2; 1975-'76 2nd ex.s. c 56 § 9.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.050 Failure to secure informed consent—Necessary elements of proof—Emergency situations. (1) The following shall be necessary elements of proof that injury resulted from health care in a civil negligence case or arbitration involving the issue of the alleged breach of the duty to secure an informed consent by a patient or his representatives against a health care provider:

(a) That the health care provider failed to inform the patient of a material fact or facts relating to the treatment;

(b) That the patient consented to the treatment without being aware of or fully informed of such material fact or facts;

(c) That a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts;

(d) That the treatment in question proximately caused injury to the patient.

(2) Under the provisions of this section a fact is defined as or considered to be a material fact, if a reasonably prudent person in the position of the patient or his representative would attach significance to it deciding whether or not to submit to the proposed treatment.

(3) Material facts under the provisions of this section which must be established by expert testimony shall be either:

(a) The nature and character of the treatment proposed and administered;

(b) The anticipated results of the treatment proposed and administered;

(c) The recognized possible alternative forms of treatment; or

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment administered and in the recognized possible alternative forms of treatment, including nontreatment.

(4) If a recognized health care emergency exists and the patient is not legally competent to give an informed consent and/or a person legally authorized to consent on behalf of the patient is not readily available, his consent to required treatment will be implied. [1975-'76 2nd ex.s. c 56 § 10.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.060 Consent form—Contents—Prima facie evidence—Failure to use. If a patient while legally competent, or his representative if he is not competent, signs a consent form which sets forth the following, the signed consent form shall constitute prima facie evidence that the patient gave his informed consent to the treatment administered and the patient has the burden of rebutting this by a preponderance of the evidence:

(1) A description, in language the patient could reasonably be expected to understand, of:

(a) The nature and character of the proposed treatment;

(b) The anticipated results of the proposed treatment;

(c) The recognized possible alternative forms of treatment; and

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment, including nontreatment;

(2) Or as an alternative, a statement that the patient elects not to be informed of the elements set forth in subsection (1) of this section.

Failure to use a form shall not be admissible as evidence of failure to obtain informed consent. [1975-'76 2nd ex.s. c 56 § 11.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.065 Informed consent—Persons authorized to provide for patients who are not competent—Priority.

(1) Informed consent for health care for a patient who is not competent, as defined in RCW 11.88.010(1)(b), to consent may be obtained from a person authorized to consent on behalf of such patient. Persons authorized to provide informed consent to health care on behalf of a patient who is not competent to consent shall be a member of one of the following classes of persons in the following order of priority:

(a) The appointed guardian of the patient, if any;

(b) The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;

(c) The patient's spouse;

(d) Children of the patient who are at least eighteen years of age;

(e) Parents of the patient; and

(f) Adult brothers and sisters of the patient.

(2) If the physician seeking informed consent for proposed health care of the patient who is not competent to consent makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. However, no person under this section may provide informed consent to health care:

(a) If a person of higher priority under this section has refused to give such authorization; or

(b) If there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

(3) Before any person authorized to provide informed consent on behalf of a patient not competent to consent exercises that authority, the person must first determine in good faith that that patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests. [1987 c 162 § 1.]

7.70.070 Attorneys' fees. The court shall, in any action under this chapter, determine the reasonableness of each party's attorneys fees. The court shall take into consideration the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) Whether the fee is fixed or contingent. [1975-'76 2nd ex.s. c 56 § 12.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

Attorneys' fees: Chapter 4.84 RCW.

7.70.080 Evidence of compensation from other source. Any party may present evidence to the trier of fact that the patient has already been compensated for the injury complained of from any source except the assets of the patient, his representative, or his immediate family, or insurance purchased with such assets. In the event such evidence is admitted, the plaintiff may present evidence of an obligation to repay such compensation. Insurance bargained for or provided on behalf of an employee shall be considered insurance purchased with the assets of the employee. Compensation as used in this section shall mean payment of money or other property to or on behalf of the patient, rendering of services to the patient free of charge to the patient, or indemnification of expenses incurred by or on behalf of the patient. Notwithstanding this section, evidence of compensation by a defendant health care provider may be offered only by that provider. [1975-'76 2nd ex.s. c 56 § 13.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.090 Hospital governing bodies—Liability—Limitations. Members of the board of directors or other governing body of a public or private hospital are not individually liable for personal injuries or death resulting from health care administered by a health care provider granted privileges to provide health care at the hospital unless the decision to grant the privilege to provide health care at the hospital constitutes gross negligence. [1987 c 212 § 1201; 1986 c 305 § 905.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Chapter 7.71

HEALTH CARE PEER REVIEW

Sections

7.71.010	Legislative finding.
7.71.020	Federal law applicable in Washington state.
7.71.030	Actions by health care peer review body—Exclusive remedy.
7.71.040	Chapter does not limit or repeal other immunities conferred by law.

7.71.010 Legislative finding. The legislature finds the assurance of quality and cost-effectiveness in the delivery of health care can be assisted through the review of health care

by health care providers. It also recognizes that some peer review decisions may be based on factors other than competence or professional conduct. Although it finds that peer review decisions based on matters unrelated to quality and utilization review need redress, it concludes that it is necessary to balance carefully the rights of the consuming public who benefit by peer review with the rights of those who are occasionally hurt by peer review decisions based on matters other than competence or professional conduct.

The legislature intends to foreclose federal antitrust actions to the extent *Parker v. Brown*, 317 U.S. 341 (1943), allows and to permit only those actions in RCW 7.71.020 and 7.71.030. [1987 c 269 § 1.]

7.71.020 Federal law applicable in Washington state. Pursuant to P.L. 99-660 Sec. 411(c)(2), Title IV of that act shall apply in Washington state as of July 26, 1987. [1987 c 269 § 2.]

7.71.030 Actions by health care peer review body—Exclusive remedy. (1) This section shall provide the exclusive remedy for any action taken by a professional peer review body of health care providers as defined in RCW 7.70.020, that is found to be based on matters not related to the competence or professional conduct of a health care provider.

(2) Actions shall be limited to appropriate injunctive relief, and damages shall be allowed only for lost earnings directly attributable to the action taken by the professional review body, incurred between the date of such action and the date the action is functionally reversed by the professional peer review body.

(3) Reasonable attorneys' fees and costs as approved by the court shall be awarded to the prevailing party, if any, as determined by the court.

(4) The statute of limitations for actions under this section shall be one year from the date of the action of the professional review body. [1987 c 269 § 3.]

7.71.040 Chapter does not limit or repeal other immunities conferred by law. Nothing in this chapter limits or repeals any other immunities conferred upon participants in the peer review process contained in any other state or federal law. [1987 c 269 § 4.]

Chapter 7.72

PRODUCT LIABILITY ACTIONS

Sections

7.72.010	Definitions.
7.72.020	Scope.
7.72.030	Liability of manufacturer.
7.72.040	Liability of product seller other than manufacturer—Exception.
7.72.050	Relevance of industry custom, technological feasibility, and nongovernmental, legislative or administrative regulatory standards.
7.72.060	Length of time product sellers are subject to liability.

Reviser's note: Section and subsection captions used in this chapter were enacted as a part of chapter 27, Laws of 1981.

Contributory fault: Chapter 4.22 RCW.

7.72.010 Definitions. For the purposes of this chapter, unless the context clearly indicates to the contrary:

(1) **Product seller.** "Product seller" means any person or entity that is engaged in the business of selling products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant product. The term also includes a party who is in the business of leasing or bailing such products. The term "product seller" does not include:

(a) A seller of real property, unless that person is engaged in the mass production and sale of standardized dwellings or is otherwise a product seller;

(b) A provider of professional services who utilizes or sells products within the legally authorized scope of the professional practice of the provider;

(c) A commercial seller of used products who resells a product after use by a consumer or other product user: PROVIDED, That when it is resold, the used product is in essentially the same condition as when it was acquired for resale;

(d) A finance lessor who is not otherwise a product seller. A "finance lessor" is one who acts in a financial capacity, who is not a manufacturer, wholesaler, distributor, or retailer, and who leases a product without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(e) A licensed pharmacist who dispenses a prescription product manufactured by a commercial manufacturer pursuant to a prescription issued by a licensed prescribing practitioner if the claim against the pharmacist is based upon strict liability in tort or the implied warranty provisions under the uniform commercial code, Title 62A RCW, and if the pharmacist complies with recordkeeping requirements pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related administrative rules as provided in RCW 7.72.040. Nothing in this subsection (1)(e) affects a pharmacist's liability under RCW 7.72.040(1).

(2) **Manufacturer.** "Manufacturer" includes a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer. The term also includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer.

A product seller acting primarily as a wholesaler, distributor, or retailer of a product may be a "manufacturer" but only to the extent that it designs, produces, makes, fabricates, constructs, or remanufactures the product for its sale. A product seller who performs minor assembly of a product in accordance with the instructions of the manufacturer shall not be deemed a manufacturer. A product seller that did not participate in the design of a product and that constructed the product in accordance with the design specifications of the claimant or another product seller shall not be deemed a manufacturer for the purposes of RCW 7.72.030(1)(a).

(3) **Product.** "Product" means any object possessing intrinsic value, capable of delivery either as an assembled whole or as a component part or parts, and produced for introduction into trade or commerce. Human tissue and

organs, including human blood and its components, are excluded from this term.

The "relevant product" under this chapter is that product or its component part or parts, which gave rise to the product liability claim.

(4) **Product liability claim.** "Product liability claim" includes any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product. It includes, but is not limited to, any claim or action previously based on: Strict liability in tort; negligence; breach of express or implied warranty; breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation, concealment, or nondisclosure, whether negligent or innocent; or other claim or action previously based on any other substantive legal theory except fraud, intentionally caused harm or a claim or action under the consumer protection act, chapter 19.86 RCW.

(5) **Claimant.** "Claimant" means a person or entity asserting a product liability claim, including a wrongful death action, and, if the claim is asserted through or on behalf of an estate, the term includes claimant's decedent. "Claimant" includes any person or entity that suffers harm. A claim may be asserted under this chapter even though the claimant did not buy the product from, or enter into any contractual relationship with, the product seller.

(6) **Harm.** "Harm" includes any damages recognized by the courts of this state: PROVIDED, That the term "harm" does not include direct or consequential economic loss under Title 62A RCW. [1991 c 189 § 3; 1981 c 27 § 2.]

Preamble—1981 c 27: "Tort reform in this state has for the most part been accomplished in the courts on a case-by-case basis. While this process has resulted in significant progress and the harshness of many common law doctrines has to some extent been ameliorated by decisional law, the legislature has from time to time felt it necessary to intervene to bring about needed reforms such as those contained in the 1973 comparative negligence act.

The purpose of this amendatory act is to enact further reforms in the tort law to create a fairer and more equitable distribution of liability among parties at fault.

Of particular concern is the area of tort law known as product liability law. Sharply rising premiums for product liability insurance have increased the cost of consumer and industrial goods. These increases in premiums have resulted in disincentives to industrial innovation and the development of new products. High product liability premiums may encourage product sellers and manufacturers to go without liability insurance or pass the high cost of insurance on to the consuming public in general.

It is the intent of the legislature to treat the consuming public, the product seller, the product manufacturer, and the product liability insurer in a balanced fashion in order to deal with these problems.

It is the intent of the legislature that the right of the consumer to recover for injuries sustained as a result of an unsafe product not be unduly impaired. It is further the intent of the legislature that retail businesses located primarily in the state of Washington be protected from the substantially increasing product liability insurance costs and unwarranted exposure to product liability litigation." [1981 c 27 § 1.] For codification of 1981 c 27, see Codification Tables, Volume 0.

7.72.020 Scope. (1) The previous existing applicable law of this state on product liability is modified only to the extent set forth in this chapter.

(2) Nothing in this chapter shall prevent the recovery of direct or consequential economic loss under Title 62A RCW. [1981 c 27 § 3.]

7.72.030 Liability of manufacturer. (1) A product manufacturer is subject to liability to a claimant if the claimant's harm was proximately caused by the negligence of the manufacturer in that the product was not reasonably safe as designed or not reasonably safe because adequate warnings or instructions were not provided.

(a) A product is not reasonably safe as designed, if, at the time of manufacture, the likelihood that the product would cause the claimant's harm or similar harms, and the seriousness of those harms, outweighed the burden on the manufacturer to design a product that would have prevented those harms and the adverse effect that an alternative design that was practical and feasible would have on the usefulness of the product: PROVIDED, That a firearm or ammunition shall not be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged.

(b) A product is not reasonably safe because adequate warnings or instructions were not provided with the product, if, at the time of manufacture, the likelihood that the product would cause the claimant's harm or similar harms, and the seriousness of those harms, rendered the warnings or instructions of the manufacturer inadequate and the manufacturer could have provided the warnings or instructions which the claimant alleges would have been adequate.

(c) A product is not reasonably safe because adequate warnings or instructions were not provided after the product was manufactured where a manufacturer learned or where a reasonably prudent manufacturer should have learned about a danger connected with the product after it was manufactured. In such a case, the manufacturer is under a duty to act with regard to issuing warnings or instructions concerning the danger in the manner that a reasonably prudent manufacturer would act in the same or similar circumstances. This duty is satisfied if the manufacturer exercises reasonable care to inform product users.

(2) A product manufacturer is subject to strict liability to a claimant if the claimant's harm was proximately caused by the fact that the product was not reasonably safe in construction or not reasonably safe because it did not conform to the manufacturer's express warranty or to the implied warranties under Title 62A RCW.

(a) A product is not reasonably safe in construction if, when the product left the control of the manufacturer, the product deviated in some material way from the design specifications or performance standards of the manufacturer, or deviated in some material way from otherwise identical units of the same product line.

(b) A product does not conform to the express warranty of the manufacturer if it is made part of the basis of the bargain and relates to a material fact or facts concerning the product and the express warranty proved to be untrue.

(c) Whether or not a product conforms to an implied warranty created under Title 62A RCW shall be determined under that title.

(3) In determining whether a product was not reasonably safe under this section, the trier of fact shall consider whether the product was unsafe to an extent beyond that which would be contemplated by the ordinary consumer. [1988 c 94 § 1; 1981 c 27 § 4.]

7.72.040 Liability of product seller other than manufacturer—Exception. (1) Except as provided in subsection (2) of this section, a product seller other than a manufacturer is liable to the claimant only if the claimant's harm was proximately caused by:

(a) The negligence of such product seller; or

(b) Breach of an express warranty made by such product seller; or

(c) The intentional misrepresentation of facts about the product by such product seller or the intentional concealment of information about the product by such product seller.

(2) A product seller, other than a manufacturer, shall have the liability of a manufacturer to the claimant if:

(a) No solvent manufacturer who would be liable to the claimant is subject to service of process under the laws of the claimant's domicile or the state of Washington; or

(b) The court determines that it is highly probable that the claimant would be unable to enforce a judgment against any manufacturer; or

(c) The product seller is a controlled subsidiary of a manufacturer, or the manufacturer is a controlled subsidiary of the product seller; or

(d) The product seller provided the plans or specifications for the manufacture or preparation of the product and such plans or specifications were a proximate cause of the defect in the product; or

(e) The product was marketed under a trade name or brand name of the product seller.

(3) Subsection (2) of this section does not apply to a pharmacist who dispenses a prescription product in the form manufactured by a commercial manufacturer pursuant to a prescription issued by a licensed practitioner if the pharmacist complies with recordkeeping requirements pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related administrative rules. [1991 c 189 § 2; 1981 c 27 § 5.]

7.72.050 Relevance of industry custom, technological feasibility, and nongovernmental, legislative or administrative regulatory standards. (1) Evidence of custom in the product seller's industry, technological feasibility or that the product was or was not, in compliance with nongovernmental standards or with legislative regulatory standards or administrative regulatory standards, whether relating to design, construction or performance of the product or to warnings or instructions as to its use may be considered by the trier of fact. (2) When the injury-causing aspect of the product was, at the time of manufacture, in compliance with a specific mandatory government contract specification relating to design or warnings, this compliance shall be an absolute defense. When the injury-causing aspect of the product was not, at the time of manufacture, in compliance with a specific mandatory government specification relating to design or warnings, the product shall be deemed not reasonably safe under RCW 7.72.030(1). [1981 c 27 § 6.]

7.72.060 Length of time product sellers are subject to liability. (1) Useful safe life. (a) Except as provided in subsection (1)(b) hereof, a product seller shall not be subject to liability to a claimant for harm under this chapter if the

product seller proves by a preponderance of the evidence that the harm was caused after the product's "useful safe life" had expired.

"Useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored in a safe manner. For the purposes of this chapter, "time of delivery" means the time of delivery of a product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold. In the case of a product which has been remanufactured by a manufacturer, "time of delivery" means the time of delivery of the remanufactured product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold.

(b) A product seller may be subject to liability for harm caused by a product used beyond its useful safe life, if:

(i) The product seller has warranted that the product may be utilized safely for such longer period; or

(ii) The product seller intentionally misrepresents facts about its product, or intentionally conceals information about it, and that conduct was a proximate cause of the claimant's harm; or

(iii) The harm was caused by exposure to a defective product, which exposure first occurred within the useful safe life of the product, even though the harm did not manifest itself until after the useful safe life had expired.

(2) Presumption regarding useful safe life. If the harm was caused more than twelve years after the time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by a preponderance of the evidence.

(3) Statute of limitation. Subject to the applicable provisions of chapter 4.16 RCW pertaining to the tolling and extension of any statute of limitation, no claim under this chapter may be brought more than three years from the time the claimant discovered or in the exercise of due diligence should have discovered the harm and its cause. [1981 c 27 § 7.]

Chapter 7.75

DISPUTE RESOLUTION CENTERS

Sections

7.75.010	Legislative findings and intent.
7.75.020	Dispute resolution center—Creation—Plan—Approval by county or municipality—Annual report on operation of centers.
7.75.030	Services to be provided without charge or for fee based on ability to pay.
7.75.035	Surcharge by county legislative authority.
7.75.040	Dispute resolution agreement required—When admissible as evidence.
7.75.050	Confidentiality of centers' files, etc.—Exception—Privileged communications.
7.75.060	Withdrawal from dispute resolution process.
7.75.070	Center may seek and expend funds.
7.75.080	Statutes of limitations tolled until dispute resolution process concluded.
7.75.090	Application of chapter.
7.75.100	Immunity from civil action.

Mediation testimony competency: RCW 5.60.070 and 5.60.072.

7.75.010 Legislative findings and intent. (1) The legislature finds and declares that:

(a) The resolution of many disputes can be costly and complex in a judicial setting where the parties involved are necessarily in an adversary posture and subject to formalized procedures; and

(b) Alternative dispute resolution centers can meet the needs of Washington's citizens by providing forums in which persons may voluntarily participate in the resolution of disputes in an informal and less adversarial atmosphere.

(2) It is the intent of the legislature that programs established pursuant to this chapter:

(a) Stimulate the establishment and use of dispute resolution centers to help meet the need for alternatives to the courts for the resolution of certain disputes.

(b) Encourage continuing community participation in the development, administration, and oversight of local programs designed to facilitate the informal resolution of disputes between and among members of the community.

(c) Offer structures for dispute resolution which may serve as models for resolution centers in other communities.

(d) Serve a specific community or locale and resolve disputes that arise within that community or locale.

(e) Educate the community on ways of using the services of the neighborhood dispute resolution center directly and in a preventive capacity. [1984 c 258 § 501.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.020 Dispute resolution center—Creation—Plan—Approval by county or municipality—Annual report on operation of centers. (1) A dispute resolution center may be created and operated by a municipality, county, or by a corporation organized exclusively for the resolution of disputes or for charitable or educational purposes. The corporation shall not be organized for profit, and no part of the net earnings may inure to the benefit of any private shareholders or individuals. The majority of the directors of such a corporation shall not consist of members of any single profession.

(2) A dispute resolution center may not begin operation under this chapter until a plan for establishing a center for the mediation and settlement of disputes has been approved by the legislative authority of the municipality or county creating the center or, in the case of a center operated by a nonprofit corporation, by the legislative authority of the municipality or county within which the center will be located. A plan for a dispute resolution center shall not be approved and the center shall not begin operation until the legislative authority finds that the plan adequately prescribes:

(a) Procedures for filing requests for dispute resolution services with the center and for scheduling mediation sessions participated in by the parties to the dispute;

(b) Procedures to ensure that each dispute mediated by the center meets the criteria for appropriateness for mediation set by the legislative authority and for rejecting disputes which do not meet the criteria;

(c) Procedures for giving notice of the time, place, and nature of the mediation session to the parties, and for conducting mediation sessions that comply with the provisions of this chapter;

(d) Procedures which ensure that participation by all parties is voluntary;

(e) Procedures for obtaining referrals from public and private bodies;

(f) Procedures for meeting the particular needs of the participants, including, but not limited to, providing services at times convenient to the participants, in sign language, and in languages other than English;

(g) Procedures for providing trained and certified mediators who, during the dispute resolution process, shall make no decisions or determinations of the issues involved, but who shall facilitate negotiations by the participants themselves to achieve a voluntary resolution of the issues; and

(h) Procedures for informing and educating the community about the dispute resolution center and encouraging the use of the center's services in appropriate cases.

(3) A dispute resolution center established under this chapter annually shall provide to the administrator for the courts such data regarding its operation as the administrator requires. The administrator shall report annually beginning January 1, 1986, to the governor, the supreme court, and the legislature regarding the operation of centers established under this chapter. [1984 c 258 § 502.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.030 Services to be provided without charge or for fee based on ability to pay. A dispute resolution center established under this chapter shall provide dispute resolution services either without charge to the participants or for a fee which is based on the participant's ability to pay. [1984 c 258 § 503.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.035 Surcharge by county legislative authority. (1) A county legislative authority may impose a surcharge of up to ten dollars on each civil filing fee in district court and a surcharge of up to fifteen dollars on each filing fee for small claims actions for the purpose of funding dispute resolution centers established under this chapter.

(2) Any surcharge imposed shall be collected by the clerk of the court and remitted to the county treasurer for deposit in a separate account to be used solely for dispute resolution centers established under this chapter. Money received under this section is not subject to RCW 3.62.020(2) or 3.62.090. The accounts created pursuant to this subsection shall be audited by the state auditor in accordance with RCW 43.09.260. [1990 c 172 § 1.]

Effective date—1990 c 172: "This act shall take effect July 1, 1990." [1990 c 172 § 4.]

7.75.040 Dispute resolution agreement required—When admissible as evidence. (1) In conducting a dispute resolution process, a center established under this chapter shall require:

(a) That the disputing parties enter into a written agreement which expresses the method by which they shall attempt to resolve the issues in dispute; and

(b) That at the conclusion of the dispute resolution process, the parties enter into a written agreement which sets forth the settlement of the issues and the future responsibilities, if any, of each party.

(2) A written agreement entered into with the assistance of a center at the conclusion of the written dispute resolution process is admissible as evidence in any judicial or administrative proceeding. [1984 c 258 § 504.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.050 Confidentiality of centers' files, etc.—Exception—Privileged communications. All memoranda, work notes or products, or case files of centers established under this chapter are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the center for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by any participant, mediator, or any other person is a privileged communication and is not subject to disclosure in any judicial or administrative proceeding unless all parties to the communication waive the privilege. The foregoing privilege and limitation on evidentiary use does not apply to any communication of a threat that injury or damage may be inflicted on any person or on the property of a party to the dispute, to the extent the communication may be relevant evidence in a criminal matter. [1984 c 258 § 505.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.060 Withdrawal from dispute resolution process. Any person who voluntarily enters a dispute resolution process at a center established under this chapter may revoke his or her consent, withdraw from dispute resolution, and seek judicial or administrative redress prior to reaching a written resolution agreement. The withdrawal shall be in writing. No legal penalty, sanction, or restraint may be imposed upon the person. [1984 c 258 § 506.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.070 Center may seek and expend funds. A dispute resolution center established under this chapter may seek and accept contributions from counties and municipalities, agencies of the state and federal governments, private sources, and any other available funds, and may expend the funds to carry out the purposes of this chapter. [1984 c 258 § 507.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.080 Statutes of limitations tolled until dispute resolution process concluded. Any applicable statute of limitations shall be tolled as to participants in dispute resolution at a center established under this chapter during the period which begins with the date of the participants' execution of the written agreement required by RCW

7.75.040(1)(a) and ends on the date that a written agreement at the conclusion of the dispute resolution process is executed under RCW 7.75.040(1)(b) or a participant's written notice of withdrawal from the dispute resolution process is executed under RCW 7.75.060. [1984 c 258 § 508.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.090 Application of chapter. Nothing in this chapter precludes any person or persons not operating under RCW 7.75.020 from providing dispute resolution services. However, the provisions of RCW 7.75.050, relating to confidentiality, and RCW 7.75.080, relating to statutes of limitation, apply only to proceedings conducted by a dispute resolution center established under this chapter. [1984 c 258 § 509.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.100 Immunity from civil action. (1) Members of the board of directors of a dispute resolution center are immune from suit in any civil action based upon any proceedings or other official acts performed in good faith as members of the board.

(2) Employees and volunteers of a dispute resolution center are immune from suit in any civil action based on any proceedings or other official acts performed in their capacity as employees or volunteers, except in cases of wilful or wanton misconduct.

(3) A dispute resolution center is immune from suit in any civil action based on any of its proceedings or other official acts performed by its employees, volunteers, or members or its board of directors, except (a) in cases of wilful or wanton misconduct by its employees or volunteers, and (b) in cases of official acts performed in bad faith by members of its board. [1986 c 95 § 2.]

Chapter 7.80 CIVIL INFRACTIONS

Sections

7.80.005	Legislative finding—1987 c 456.
7.80.010	Jurisdiction of courts.
7.80.020	Issuance of process.
7.80.030	Training of judicial officers.
7.80.040	"Enforcement officer" defined.
7.80.050	Notice of infraction—Issuance, service, filing.
7.80.060	Person receiving notice—Identification and detention.
7.80.070	Notice—Determination final unless contested—Form.
7.80.080	Response to notice—Contesting determination—Mitigating circumstances—Hearing—Failure to respond or appear.
7.80.090	Hearings—Rules of procedure—Counsel.
7.80.100	Hearings—Contesting determination that infraction committed—Appeal.
7.80.110	Hearings—Explanation of mitigating circumstances.
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7.80.900	Decriminalization of certain municipal ordinances.
7.80.901	Effective date—1987 c 456 §§ 9-31.

7.80.005 Legislative finding—1987 c 456. The legislature finds that many minor offenses that are established as misdemeanors are obsolete or can be more appropriately punished by the imposition of civil fines. The legislature finds that some misdemeanors should be decriminalized to allow resources of the legal system, such as judges, prosecutors, juries, and jails, to be used to punish serious criminal behavior, since acts characterized as criminal behavior have a tremendous fiscal impact on the legal system.

The establishment of a system of civil infractions is a more expeditious and less expensive method of disposing of minor offenses and will decrease the cost and workload of the courts of limited jurisdiction. [1987 c 456 § 6.]

7.80.010 Jurisdiction of courts. (1) All violations of state law, local law, ordinance, regulation, or resolution designated as civil infractions may be heard and determined by a district court, except as otherwise provided in this section.

(2) Any municipal court has the authority to hear and determine pursuant to this chapter civil infractions that are established by municipal ordinance and that are committed within the jurisdiction of the municipality.

(3) Any city or town with a municipal court under chapter 3.50 RCW may contract with the county to have civil infractions that are established by city or town ordinance and that are committed within the city or town adjudicated by a district court.

(4) District court commissioners have the authority to hear and determine civil infractions pursuant to this chapter.

(5) Nothing in this chapter prevents any city, town, or county from hearing and determining civil infractions pursuant to its own system established by ordinance. [1987 c 456 § 9.]

7.80.020 Issuance of process. Notwithstanding any other provision of law governing service of process in civil cases, a court of limited jurisdiction having jurisdiction over an alleged civil infraction may issue process anywhere within the state. [1987 c 456 § 10.]

7.80.030 Training of judicial officers. All judges and court commissioners adjudicating civil infractions shall complete such training requirements as are promulgated by the supreme court. [1987 c 456 § 11.]

7.80.040 "Enforcement officer" defined. As used in this chapter, "enforcement officer" means a person authorized to enforce the provisions of the title or ordinance in which the civil infraction is established. [1987 c 456 § 12.]

7.80.050 Notice of infraction—Issuance, service, filing. (1) A civil infraction proceeding is initiated by the issuance, service, and filing of a notice of civil infraction.

(2) A notice of civil infraction may be issued by an enforcement officer when the civil infraction occurs in the officer's presence.

(3) A court may issue a notice of civil infraction if an enforcement officer files with the court a written statement that the civil infraction was committed in the officer's

presence or that the officer has reasonable cause to believe that a civil infraction was committed.

(4) Service of a notice of civil infraction issued under subsection (2) or (3) of this section shall be as provided by court rule. Until such a rule is adopted, service shall be as provided in JTIR 2.2(c)(1) and (3), as applicable.

(5) A notice of infraction shall be filed with a court having jurisdiction within forty-eight hours of issuance, excluding Saturdays, Sundays, and holidays. A notice of infraction not filed within the time limits prescribed in this section may be dismissed without prejudice. [1987 c 456 § 13.]

7.80.060 Person receiving notice—Identification and detention. A person who is to receive a notice of civil infraction under RCW 7.80.050 is required to identify himself or herself to the enforcement officer by giving his or her name, address, and date of birth. Upon the request of the officer, the person shall produce reasonable identification, including a driver's license or identicaid.

A person who is unable or unwilling to reasonably identify himself or herself to an enforcement officer may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction.

Each agency authorized to issue civil infractions shall adopt rules on identification and detention of persons committing civil infractions. [1987 c 456 § 14.]

7.80.070 Notice—Determination final unless contested—Form. (1) A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in this chapter.

(2) The form for the notice of civil infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a civil infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;

(b) A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;

(c) A statement of the specific civil infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the civil infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed and that the person may subpoena witnesses including the enforcement officer who issued the notice of civil infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the civil infraction, the person will be

deemed to have committed the civil infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days;

(i) A statement that failure to respond to the notice or a failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in a default judgment against the person in the amount of the penalty and that this failure may be referred to the prosecuting attorney for criminal prosecution for failure to respond or appear;

(j) A statement, which the person shall sign, that the person promises to respond to the notice of civil infraction in one of the ways provided in this chapter;

(k) A statement that failure to respond to a notice of civil infraction as promised or to appear at a requested hearing is a misdemeanor and may be punished by a fine or imprisonment in jail. [1987 c 456 § 15.]

7.80.080 Response to notice—Contesting determination—Mitigating circumstances—Hearing—Failure to respond or appear. (1) Any person who receives a notice of civil infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the civil infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of civil infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the civil infraction must be submitted with the response. The clerk of a court may accept cash in payment for an infraction. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records.

(3) If the person determined to have committed the civil infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of hearing, except by agreement.

(4) If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of hearing, except by agreement.

(5) The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction and may notify the prosecuting attorney of the failure to respond to the notice of civil infraction or to appear at a requested hearing if any person issued a notice of civil infraction:

(a) Fails to respond to the notice of civil infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section. [1987 c 456 § 16.]

7.80.090 Hearings—Rules of procedure—Counsel.

(1) Procedures for the conduct of all hearings provided in this chapter may be established by rule of the supreme court.

(2) Any person subject to proceedings under this chapter may be represented by counsel.

(3) The attorney representing the state, county, city, or town may appear in any proceedings under this chapter but need not appear, notwithstanding any statute or rule of court to the contrary. [1987 c 456 § 17.]

7.80.100 Hearings—Contesting determination that infraction committed—Appeal. (1) A hearing held for the purpose of contesting the determination that a civil infraction has been committed shall be without a jury and shall be recorded in the manner provided for in courts of limited jurisdiction.

(2) The court may consider the notice of civil infraction and any other written report made under oath submitted by the enforcement officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may request the court for issuance of subpoena of witnesses, including the enforcement officer who issued the notice, and has the right to present evidence and examine witnesses present in court.

(3) The burden of proof is upon the state to establish the commission of the civil infraction by a preponderance of the evidence.

(4) After consideration of the evidence and argument, the court shall determine whether the civil infraction was committed. Where it has not been established that the civil infraction was committed, an order dismissing the notice shall be entered in the court's records. Where it has been established that the civil infraction was committed, an appropriate order shall be entered in the court's records.

(5) An appeal from the court's determination or order shall be to the superior court in the manner provided by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The decision of the superior court is subject only to discretionary review pursuant to the Rules of Appellate Procedure. [1987 c 456 § 18.]

7.80.110 Hearings—Explanation of mitigating circumstances. (1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of a civil infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(2) After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's records.

(3) There is no appeal from the court's determination or order. [1987 c 456 § 19.]

7.80.120 Monetary penalties—Restitution. (1) A person found to have committed a civil infraction shall be assessed a monetary penalty.

(a) The maximum penalty and the default amount for a class 1 civil infraction shall be two hundred fifty dollars, not including statutory assessments;

(b) The maximum penalty and the default amount for a class 2 civil infraction shall be one hundred twenty-five dollars, not including statutory assessments;

(c) The maximum penalty and the default amount for a class 3 civil infraction shall be fifty dollars, not including statutory assessments; and

(d) The maximum penalty and the default amount for a class 4 civil infraction shall be twenty-five dollars, not including statutory assessments.

(2) The supreme court shall prescribe by rule the conditions under which local courts may exercise discretion in assessing fines for civil infractions.

(3) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting authority of the failure to pay.

(4) The court may also order a person found to have committed a civil infraction to make restitution. [1987 c 456 § 20.]

7.80.130 Order of court—Civil nature—Modification of penalty—Community service. (1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the civil infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

(2) The court may waive, reduce, or suspend the monetary penalty prescribed for the civil infraction. If the court determines that a person has insufficient funds to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour. [1987 c 456 § 21.]

7.80.140 Costs and attorney fees. Each party to a civil infraction case is responsible for costs incurred by that party, but the court may assess witness fees against a nonprevailing respondent. Attorney fees may be awarded to either party in a civil infraction case. [1987 c 456 § 22.]

7.80.150 Notices—Record of—Cancellation prohibited, penalty—Audit. Every law enforcement agency in this state or other agency authorized to issue notices of civil infractions shall provide in appropriate form notices of civil infractions which shall be issued in books with notices in quadruplicate and meeting the requirements of this section.

The chief administrative officer of every such agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each notice contained therein issued to individual members or employees

of the agency and shall require and retain a receipt for every book so issued.

Every law enforcement officer or other person upon issuing a notice of civil infraction to an alleged perpetrator of a civil infraction under the laws of this state or of any ordinance of any city or town shall deposit the original or a copy of such notice of civil infraction with a court having competent jurisdiction over the civil infraction, as provided in RCW 7.80.050.

Upon the deposit of the original or a copy of such notice of civil infraction with a court having competent jurisdiction over the civil infraction, the original or copy may be disposed of only as provided in this chapter.

It is official misconduct for any law enforcement officer or other officer or public employee to dispose of a notice of civil infraction or copies thereof or of the record of the issuance of the same in a manner other than as required in this section.

The chief administrative officer of every law enforcement agency or other agency authorized to issue notices of civil infractions shall require the return to him or her of a copy of every notice issued by a person under his or her supervision to an alleged perpetrator of a civil infraction under any law or ordinance and of all copies of every notice which has been spoiled or upon which any entry has been made and not issued to an alleged perpetrator.

Such chief administrative officer shall also maintain or cause to be maintained in connection with every notice issued by a person under his or her supervision a record of the disposition of the charge by the court in which the original or copy of the notice was deposited.

Any person who cancels or solicits the cancellation of any notice of civil infraction, in any manner other than as provided in this section, is guilty of a misdemeanor.

Every record of notices required in this section shall be audited monthly by the appropriate fiscal officer of the government agency to which the law enforcement agency or other agency authorized to issue notices of civil infractions is responsible. [1987 c 456 § 23.]

7.80.160 Notice, failure to sign, nonappearance—Failure to satisfy penalty. (1) A person who fails to sign a notice of civil infraction is guilty of a misdemeanor.

(2) Any person willfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction. A written promise to appear in court or a written promise to respond to a notice of civil infraction may be complied with by an appearance by counsel.

(3) A person who willfully fails to pay a monetary penalty or to perform community service as required by a court under this chapter may be found in contempt of court as provided in chapter 7.21 RCW. [1989 c 373 § 12; 1987 c 456 § 24.]

Severability—1989 c 373: See RCW 7.21.900.

7.80.900 Decriminalization of certain municipal ordinances. Any municipal criminal ordinance in existence on the January 1, 1989, which is the same as or substantially

similar to a statute which is decriminalized by *sections 25 through 30 and 32 of this act is deemed to be civil in nature and shall be punished as provided in this chapter. [1987 c 456 § 31.]

*Reviser's note: For codification of "sections 25 through 30 and 32 of this act" [1987 c 456] see Codification Tables, Volume 0.

7.80.901 Effective date—1987 c 456 §§ 9-31. Sections 9 through 31 of this act shall take effect January 1, 1989. [1987 c 456 § 34.]

Chapter 7.84

NATURAL RESOURCE INFRACTIONS

Sections

7.84.010	Legislative declaration.
7.84.020	"Infraction" defined.
7.84.030	Notice of infraction—Issuance, service, filing—Penalty.
7.84.040	Jurisdiction of court—Venue.
7.84.050	Notice—Determination final unless contested—Form.
7.84.060	Response to notice—Contesting determination—Mitigating circumstances—Hearing—Failure to respond or appear—Penalty.
7.84.070	Hearing—Rules of procedure—Counsel.
7.84.080	Hearing—Contesting determination that infraction committed—Appeal.
7.84.090	Hearing—Explanation of mitigating circumstances.
7.84.100	Monetary penalties.
7.84.110	Order of court—Civil nature—Modification of penalty—Community service.
7.84.120	Issuance of process.
7.84.130	Failure to pay or complete community service—Penalty.
7.84.900	Effective date—1987 c 380.
7.84.901	Severability—1987 c 380.

Tree spiking, action for damages: RCW 9.91.155.

7.84.010 Legislative declaration. The legislature declares that decriminalizing certain offenses contained in Titles 75, 76, 77, and 79 RCW and chapters 43.30 and 43.51 RCW and any rules adopted pursuant to those titles and chapters would promote the more efficient administration of those titles and chapters. The purpose of this chapter is to provide a just, uniform, and efficient procedure for adjudicating those violations which, in any of these titles and chapters or rules adopted under these chapters or titles, are declared not to be criminal offenses. The legislature respectfully requests the supreme court to prescribe any rules of procedure necessary to implement this chapter. [1987 c 380 § 1.]

7.84.020 "Infraction" defined. Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Infraction" means an offense which, by the terms of Title 75, 76, 77, or 79 RCW or chapter 43.30 or 43.51 RCW and rules adopted under these titles and chapters, is declared not to be a criminal offense and is subject to the provisions of this chapter. [1987 c 380 § 2.]

7.84.030 Notice of infraction—Issuance, service, filing—Penalty. (1) An infraction proceeding is initiated by the issuance, service, and filing of a notice of infraction.

(2) A notice of infraction may be issued by a person authorized to enforce the provisions of the title or chapter in

which the infraction is established when the infraction occurs in that person's presence.

(3) A court may issue a notice of infraction if a person authorized to enforce the provisions of the title or chapter in which the infraction is established files with the court a written statement that the infraction was committed in that person's presence or that the officer has reason to believe an infraction was committed.

(4) Service of a notice of infraction issued under subsection (2) or (3) of this section shall be as provided by court rule.

(5) A notice of infraction shall be filed with a court having jurisdiction within five days of issuance, excluding Saturdays, Sundays, and holidays.

(6) Failure to sign an infraction notice shall constitute a misdemeanor under chapter 9A.20 RCW. [1987 c 380 § 3.]

7.84.040 Jurisdiction of court—Venue. (1) Infraction proceedings may be heard and determined by a district court.

(2) Infraction proceedings shall be brought in the district court district in which the infraction occurred. If an infraction takes place in the offshore waters, as defined in RCW 75.08.011, the infraction proceeding may be brought in any county bordering on the Pacific Ocean. [1987 c 380 § 4.]

7.84.050 Notice—Determination final unless contested—Form. (1) A notice of infraction represents a determination that an infraction has been committed. The determination shall be final unless contested as provided in this chapter.

(2) The form for the notice of infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that an infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that an infraction is a noncriminal offense for which imprisonment will not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination, the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person shall be deemed to have committed the infraction and shall not subpoena witnesses;

(h) A statement that failure to respond to a notice of infraction within fifteen days is a misdemeanor and may be punished by fine or imprisonment;

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances is a misdemeanor and may be punished by fine or imprisonment; and

(j) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter. [1987 c 380 § 5.]

7.84.060 Response to notice—Contesting determination—Mitigating circumstances—Hearing—Failure to respond or appear—Penalty. (1) Any person who receives a notice of infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction shall be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records.

(3) If the person determined to have committed the infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5) If any person issued a notice of infraction: (a) Fails to respond to the notice of infraction as provided in subsection (2) of this section, or (b) fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section, the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and any other penalty authorized by this chapter. In addition, failure to respond to a notice of infraction, as required by this chapter, and failure to appear at a hearing requested pursuant to subsection (3) or (4) of this section are each punishable as a misdemeanor under chapter 9A.20 RCW. [1987 c 380 § 6.]

7.84.070 Hearing—Rules of procedure—Counsel. (1) Procedures for the conduct of all hearings provided for

in this chapter may be established by rule of the supreme court.

(2) Any person subject to proceedings under this chapter may be represented by counsel. [1987 c 380 § 7.]

7.84.080 Hearing—Contesting determination that infraction committed—Appeal. (1) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

(2) The court may consider the notice of infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court. The rules of evidence shall apply to contested hearings.

(3) The burden of proof is upon the state to establish the commission of the infraction by a preponderance of the evidence.

(4) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. Where it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. Where it has been established that the infraction was committed, the court may assess a monetary penalty not exceeding that provided for the infraction in the applicable court rule or statute and shall enter an appropriate order.

(5) An appeal from the court's determination or order shall be to the superior court. A defendant may appeal a judgment entered after a contested hearing finding that the defendant has committed the infraction. The plaintiff may appeal a decision which in effect abates, discontinues, or determines the case other than by a judgment that the defendant has not committed an infraction. No other orders or judgments are appealable by either party. The decision of the superior court is subject only to discretionary review pursuant to the rules of appellate procedure. [1987 c 380 § 8.]

7.84.090 Hearing—Explanation of mitigating circumstances. (1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed shall not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(2) After the court has heard the explanation of the circumstances surrounding the commission of the infraction, it may assess a monetary penalty not exceeding that provided for the infraction in rules adopted pursuant to this chapter and shall enter an appropriate order.

(3) There may be no appeal from the court's determination or order. [1987 c 380 § 9.]

7.84.100 Monetary penalties. (1) A person found to have committed an infraction shall be assessed a monetary

penalty. No penalty may exceed five hundred dollars for each offense unless specifically authorized by statute.

(2) The supreme court may prescribe by rule a schedule of monetary penalties for designated infractions. The legislature requests the supreme court to adjust this schedule every two years for inflation. The maximum penalty imposed by the schedule shall be five hundred dollars per infraction and the minimum penalty imposed by the schedule shall be ten dollars per infraction. This schedule may be periodically reviewed by the legislature and is subject to its revision.

(3) Whenever a monetary penalty is imposed by a court under this chapter, it is immediately payable. If the person is unable to pay at that time, the court may, in its discretion, grant an extension of the period in which the penalty may be paid. [1987 c 380 § 10.]

7.84.110 Order of court—Civil nature—Modification of penalty—Community service. (1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances, is civil in nature.

(2) The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction. At the person's request, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour. [1987 c 380 § 11.]

7.84.120 Issuance of process. A court of limited jurisdiction having jurisdiction over an alleged infraction may issue process anywhere within the state. [1987 c 380 § 12.]

7.84.130 Failure to pay or complete community service—Penalty. (1) Failure to pay a monetary penalty assessed by a court under the provisions of this chapter is a misdemeanor under chapter 9A.20 RCW.

(2) Failure to complete community service ordered by a court under the provisions of this chapter is a misdemeanor under chapter 9A.20 RCW. [1987 c 380 § 13.]

7.84.900 Effective date—1987 c 380. This act shall take effect January 1, 1988. [1987 c 380 § 21.]

7.84.901 Severability—1987 c 380. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 380 § 22.]

Title 8

EMINENT DOMAIN

Chapters

- 8.04** Eminent domain by state.
- 8.08** Eminent domain by counties.
- 8.12** Eminent domain by cities.
- 8.16** Eminent domain by school districts.
- 8.20** Eminent domain by corporations.
- 8.24** Private ways of necessity.
- 8.25** Additional provisions applicable to eminent domain proceedings.
- 8.26** Relocation assistance—Real property acquisition policy.
- 8.28** Miscellaneous provisions.

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Diking and drainage districts

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East capitol site: RCW 79.24.520.

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state Constitution Art. 1 § 16 (Amendment 9).

telegraph and telephone companies: State Constitution Art. 12 § 19.

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Public hospital districts: RCW 70.44.060.

Public stadium, convention, performing arts, and visual arts facilities: RCW 67.28.140.

Public utility districts: Chapters 54.16, 54.20 RCW.

Public waterways: RCW 91.08.100 through 91.08.260.

Reclamation districts: RCW 89.30.130, 89.30.184 through 89.30.208.

Recreational facilities: RCW 67.20.010.

Regional transport authorities: RCW 81.112.080.

Road improvement districts: RCW 36.88.310.

Sewer districts: RCW 56.08.010, chapter 56.20 RCW.

State board for community and technical colleges: RCW 28B.50.090.

Tax lien, amount withheld from condemnation award: RCW 84.60.050.

Toll bridges: RCW 47.56.090.

Toll roads: RCW 47.56.090, 47.56.400.

Underground storage of natural gas: RCW 80.40.030.

Urban renewal law: RCW 35.81.080.

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Warehouses and elevators: Chapter 22.16 RCW.

Water districts: RCW 57.08.010, chapter 57.16 RCW.

Chapter 8.04

EMINENT DOMAIN BY STATE

Sections

- 8.04.010 Petition for appropriation—Contents.
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Additional provisions applicable to eminent domain proceedings: Chapter 8.25 RCW.

City streets as state highways—Rights of way: RCW 47.24.030.

Condemnation of blighted property: Chapter 35.80A RCW.

Department of ecology: RCW 43.21A.450, 43.21A.610 through 43.21A.642.

Department of fisheries—Acquisition of lands, water rights, rights of way, personal property: RCW 75.08.040.

Department of transportation—Airports, facilities: RCW 47.68.100, 47.68.120.

Department of wildlife: RCW 77.12.200.

Joint operating agency: RCW 43.52.391.

Mt. St. Helens recover—Department of transportation: RCW 43.01.210.

Parks and recreation commission: RCW 43.51.040(7).

Puget Sound ferry and toll bridge system: RCW 47.60.020.

Quinault Tribal Highway: RCW 47.20.725.

Relocation assistance: Chapter 8.26 RCW.

State agency housing: RCW 43.82.030.

State highways: Chapter 47.12 RCW.

Tidelands, shorelands, oyster reserves—Department of natural resources: RCW 79.91.210.

8.04.010 Petition for appropriation—Contents.

Whenever any officer, board, commission, or other body representing the state is authorized by the legislature to acquire any land, real estate, premises, or other property, deemed necessary for the public uses of the state, or any department or institution thereof, the attorney general shall present to the superior court of the county in which the land, real estate, premises, or other property so sought to be acquired or appropriated is situated, a petition in which the land, real estate, premises, or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer, or other person or party interested therein, or any part thereof, insofar as can be ascertained from the public records, the object for which the property is sought to be appropriated, and praying that a jury be impanelled to ascertain and determine the compensation to be made in money to such owner or owners, respectively, and to all tenants, encumbrancers, and others interested, for taking such land, real estate, premises, or other property, or in case a jury is waived, as in other civil cases in courts of record, in the manner prescribed by law, then that the compensation to be made as aforesaid be ascertained and determined by the court. [1955 c 156 § 6; 1911 c 64 § 1; 1891 c 74 § 1; RRS § 891.]

8.04.020 Notice—Contents—Service—Publication.

A notice stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be acquired and appropriated, and stating the time and place when and where the same will be presented to the court or the judge thereof, shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state; or, in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or, in case of a foreign corporation, at its principal place of business in this state, with some person of more than sixteen years of age. In case of domestic corporations, such service shall be made upon the president, secretary or other director or trustee of such corporation. In case of persons under the age of eighteen years, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such person; in case of idiots, lunatics or distracted persons, on their guardians, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated is school or

county land, the notice shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be acquired and appropriated is situated. In all cases where the owner or person claiming an interest in such real estate or other property is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of the attorney general shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained, service may be made by publication thereof in any newspaper published in the county where such lands are situated once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest the county in which lies the land sought to be acquired and appropriated. And such publication shall be deemed service upon each of such nonresident person or persons whose residence is unknown. Such notice shall be signed by the attorney general of the state of Washington. Such notice may be served by any competent person eighteen years of age or over. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, order and other papers in the proceedings, authorized by RCW 8.04.010 through 8.04.160, may be made as the superior court or judge thereof may direct. [1971 ex.s. c 292 § 10; 1891 c 74 § 2; RRS § 892. Formerly RCW 8.04.020, 8.04.030, 8.04.040, 8.04.050.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Publication of legal notices: Chapter 65.16 RCW.

Publication of notice in eminent domain proceedings: RCW 4.28.120.

Service of process where state land is involved: RCW 8.28.010.

8.04.060 Adjournment of proceedings—Further notice. The court or judge may, upon application of the said attorney general or any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected. [1891 c 74 § 3; RRS § 893.]

8.04.070 Hearing—Order adjudicating public use. At the time and place appointed for hearing the petition, or to which the hearing may have been adjourned, if the court has satisfactory proof that all parties interested in the lands, real estate, premises or other property described in the petition have been duly served with the notice, and is further satisfied by competent proof that the contemplated use for which the lands, real estate, premises, or other property are sought to be appropriated is really necessary for the public use of the state, it shall make and enter an order, to be recorded in the minutes of the court, and which order shall be final unless appellate review thereof is sought within five days after entry thereof, adjudicating that the contemplated

use for which the lands, real estate, premises or other property are sought to be appropriated is really a public use of the state. [1988 c 202 § 6; 1971 c 81 § 33; 1955 c 213 § 2. Prior: 1925 ex.s. c 98 § 1, part; 1891 c 74 § 4, part; RRS § 894, part.]

Rules of court: Writ procedure superseded by RAP 2.1, 2.2(a)(4), 5.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

8.04.080 Order to direct determination of damages and offsetting benefits. The order shall direct that determination be had of the compensation and damages to be paid all parties interested in the land, real estate, premises or other property sought to be appropriated for the taking and appropriation thereof, together with the injury, if any, caused by such taking and appropriation to the remainder of the lands, real estate, premises, or other property from which the same is to be taken and appropriated after offsetting against any and all such compensation and damages the special benefits, if any, accruing to such remainder by reason of the appropriation and the use by the state of the lands, real estate, premises, and other property described in the petition. The determination shall be made within thirty days after the entry of such order, before a jury if trial by jury is demanded at the hearing either by the petitioner or by the respondents, otherwise by the court sitting without a jury. If no regular venire has been called so as to be available to serve within such time on application of the petitioner at the hearing, the court may by its order continue such determination to the next regular jury term if a regular venire will be called within sixty days, otherwise the court shall call a special jury within said sixty days and direct that a jury panel be selected and summoned pursuant to chapter 2.36 RCW, from the citizens of the county in which the lands, real estate, premises, or other property sought to be appropriated are situated, as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the petitioner and respondents both consent to a less number of jurors (such number to be not less than three), and such consent is entered by the clerk in the minutes of such hearing. In any county with a population of less than seventy thousand, the costs of such special jury for the trial of such condemnation cases only shall be borne by the state. [1991 c 363 § 8; 1988 c 188 § 15; 1955 c 213 § 3. Prior: 1925 ex.s. c 98 § 1, part; 1891 c 74 § 4, part; RRS § 894, part.]

Rules of court: CR 47, 48.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

Juries in courts of limited jurisdiction: RCW 2.36.050.

8.04.090 Order for immediate possession—Payment of tender into court. In case the state shall require immediate possession and use of the property sought to be condemned, and an order of necessity shall have been granted, and no review has been taken therefrom, the attorney general may stipulate with respondents in accordance with the provisions of this section and RCW 8.04.092 and 8.04.094 for an order of immediate possession and use, and file with

the clerk of the court wherein the action is pending, a certificate of the state's requirement of immediate possession and use of the land, which shall state the amount of money offered to the respondents and shall further state that such offer constitutes a continuing tender of such amount. The attorney general shall file a copy of the certificate with the office of financial management, which forthwith shall issue and deliver to him a warrant payable to the order of the clerk of the court wherein the action is pending in a sum sufficient to pay the amount offered, which shall forthwith be paid into the registry of the court. The court without further notice to respondent shall enter an order granting to the state the immediate possession and use of the property described in the order of necessity, which order shall bind the petitioner to pay the full amount of any final judgment of compensation and damages which may thereafter be awarded for the taking and appropriation of the lands, real estate, premises, or other property described in the petition and for the injury, if any, to the remainder of the lands, real estate, premises, or other property from which they are to be taken by reason of such taking and appropriation, after offsetting against any and all such compensation and damages the special benefits, if any, accruing to such remainder by reason of the appropriation and use by the state of the lands, real estate, premises, or other property described in the petition. The moneys paid into court may at any time after entry of the order of immediate possession, be withdrawn by respondents, by order of the court, as their interests shall appear. [1979 c 151 § 7; 1973 c 106 § 7; 1955 c 213 § 4. Prior: 1951 c 177 § 1; 1925 ex.s. c 98 § 1, part; RRS § 894, part.]

8.04.092 Determination of adequacy of payment—Jury trial—Costs. The amount paid into court shall constitute just compensation paid for the taking of such property: PROVIDED, That respondents may, in the same action, request a trial for the purpose of assessing the amount of compensation to be made and the amount of damages arising from the taking. At the trial, the date of valuation of the property shall be the date of entry of the order granting to the state immediate possession and use of the property. If, pursuant to such hearing, the verdict of the jury, unless a jury is waived by all parties, or decision of the court, awards respondents an amount in excess of the tender, the court shall order the excess paid to respondents with interest thereon from the time of the entry of the order of immediate possession, and shall charge the costs of the action to the state. If, pursuant to the trial, the verdict of the jury or decision of the court awards respondents an amount equal to the tender, the costs of the action shall be charged to the state, and if the verdict or decision awards an amount less than the amount of the tender, the state shall be taxed for costs and the state, if respondents have accepted the tender and withdrawn the amount paid into court, shall be entitled to a judgment for the difference; otherwise, the excess on deposit shall be returned to the state. [1983 c 140 § 1; 1955 c 155 § 1; 1951 c 177 § 2.]

8.04.094 Demand for trial—Time of trial—Decree of appropriation. If any respondent shall elect to demand a trial for the purpose of assessing just compensation and

damages arising from the taking, he shall so move within sixty days from the date of entry of the order of immediate possession and use, and the issues shall be brought to trial within one year from the date of such order unless good and sufficient proof shall be offered and it shall appear therefrom to the court that the hearing could not have been held within said year. In the event that no such demand be timely made or having been timely made, shall not be brought to trial within the limiting period, the court, upon application of the state, shall enter a decree of appropriation for the amount paid into court under the provisions of RCW 8.04.090, as the total sum to which respondents are entitled, and such decree shall be final and nonappealable. [1951 c 177 § 3.]

8.04.097 Acquisition when several ownerships. Whenever it becomes necessary on behalf of the state to acquire by condemnation more than one tract of land, property, or property rights, existing in any one county, and held in different ownerships or interests, the state may consolidate and file a single petition as one action against the several tracts of land, property, or property rights held by said different ownerships or interests, setting forth separately the descriptions of the tracts of land, property, or property rights needed, and the owners, persons, or parties interested therein. [1955 c 156 § 1. Formerly RCW 8.04.190.]

8.04.098 Acquisition when several ownerships—Public use. At the time and place appointed for hearing the petition, the court may enter an order adjudicating public use as affecting all tracts of land, property, or property rights as described therein, which order shall be final as to those respondents not seeking a review to the supreme court or the court of appeals within five days after the entry thereof. [1971 c 81 § 34; 1955 c 156 § 2. Formerly RCW 8.04.200.]

8.04.099 Acquisition when several ownerships—Selection of single jury. Thereafter, if requested by the state, a single jury shall be selected to hear and determine in separate trials, the amount of compensation and damages, if any, that shall be paid for the different tracts, parcels, property, or property rights, as set forth in the petition. [1955 c 156 § 3. Formerly RCW 8.04.210.]

Juries—Civil actions, selection, impaneling, and swearing of: Chapters 2.36, 4.44 RCW.

8.04.100 Cases may be consolidated for trial. At the time of fixing the date for trial by jury in any case the court may, on application of the petitioner, order that any one or more condemnation cases then pending before the court and requiring determination by a jury of the compensation and damages as aforesaid be consolidated and tried before one and the same jury but with a separate award to be made in each case. If necessary, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from citizens of the county where such lands, real estate, premises or other property sought to be appropriated are situated. [1955 c 213 § 5. Prior: 1925 ex.s. c 98 § 1, part; RRS § 894, part.]

8.04.110 Trial—Damages to be found. A judge of the superior court shall preside at the trial to determine the compensation and damage to be awarded, which trial shall be held at the court house in the county where the land, real estate, premises or other property sought to be appropriated or acquired is situated: and in the case of each such trial by jury the jurors by their verdict shall fix as a lump sum the total amount of damages which shall result to all persons or parties and to any county and to all tenants, encumbrancers and others interested therein, by reason of the appropriation and use of the lands, real estate, premises or other property sought to be appropriated or acquired. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in each proceeding shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action. In case a jury is not demanded as provided for in *section 894 such total amount of damages shall be ascertained and determined by the court or judge thereof and the proceedings shall be the same as in trials of an issue of fact by the court. [1925 ex.s. c 98 § 2; 1891 c 74 § 5; RRS § 895.]

Rules of court: CR 26 through 37.

*Reviser's note: "section 894" refers to RRS § 894 herein codified (as amended) as RCW 8.04.070, 8.04.080, 8.04.090, and 8.04.100.

Witnesses, examination of: Title 5 RCW.

8.04.112 Damages to buildings. If there is a building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken, the damages to the building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, and the state agrees thereto, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of the building by reason of such readjustment or moving. [1955 c 156 § 4.]

8.04.114 Damages to buildings—Where based on readjustment or moving. If damages are based upon readjustment or moving of building or buildings, the court shall order and fix the time in the judgment and decree of appropriation within which any such building must be moved or readjusted. Upon failure to comply with said order, the state may move said building upon respondent's remaining land and recover its costs and expenses incidental thereto. The state shall have a lien upon the building and the remaining land from the date of the judgment and decree of appropriation for the necessary costs and expenses of removal until the order of the court has been complied with. The amount of the lien and satisfaction thereof shall be by application and entry of a supplemental judgment in said proceedings and execution thereon. [1955 c 156 § 5.]

8.04.120 Judgment—Decree of appropriation—Recording. At the time of rendering judgment for damages, whether upon default or trial, the court or judge thereof shall

also enter a judgment or decree of appropriation of the land, real estate or premises sought to be appropriated, thereby vesting the legal title to the same in the state of Washington. Whenever said judgment or decree of appropriation is made, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the county where the said land, real estate or other premises are situated, and shall be recorded by said auditor like a deed of real estate, and with like effect. [1891 c 74 § 6; RRS § 896.]

Recording of deeds of real estate: Title 65 RCW.

8.04.130 Payment of damages—Effect—Costs—Appellate review. Upon the entry of judgment upon the verdict of the jury or the decision of the court awarding damages, the state may make payment of the damages and the costs of the proceedings by depositing them with the clerk of the court, to be paid out under the direction of the court or judge thereof; and upon making such payment into court of the damages assessed and allowed for any land, real estate, premises, or other property mentioned in the petition, and of the costs, the state shall be released and discharged from any and all further liability therefor, unless upon appeal the owner or party interested recovers a greater amount of damages; and in that case the state shall be liable only for the amount in excess of the sum paid into court and the costs of appeal.

In the event appellate review is sought by any party to the proceedings, the moneys paid into the superior court by the state pursuant to this section shall remain in the custody of the court until the final determination of the proceedings by the supreme court or the court of appeals. [1988 c 202 § 7; 1971 c 81 § 35; 1951 c 177 § 4; 1925 ex.s. c 98 § 3; 1891 c 74 § 7; RRS § 897.]

Severability—1988 c 202: See note following RCW 2.24.050.

8.04.140 Claimants, payment of—Conflicting claims. Any person, corporation or county claiming to be entitled to any money paid into court, as provided in RCW 8.04.010 through 8.04.160, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application, the court or judge thereof should decide that the title to the land, real estate or premises specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [1891 c 74 § 8; RRS § 898.]

8.04.150 Appellate review. Either party may seek appellate review of the judgment for damages entered in the superior court within thirty days after the entry of judgment as aforesaid, and such review shall bring before the supreme court or the court of appeals the propriety and justness of the amount of damages in respect to the parties to the review: PROVIDED HOWEVER, That upon such review no bond

shall be required: AND PROVIDED FURTHER, That if the owner of land, the real estate or premises accepts the sum awarded by the jury, the court or the judge thereof, he shall be deemed thereby to have waived conclusively appellate review, and final judgment by default may be rendered in the superior court as in other cases: PROVIDED FURTHER, That no review shall operate so as to prevent the said state of Washington from taking possession of such property pending review after the amount of said award shall have been paid into court. [1988 c 202 § 8; 1971 c 81 § 36; 1891 c 74 § 9; RRS § 899.]

Rules of court: Cf. RAP 5.2, 8.1, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

8.04.160 Award, how paid into court. Whenever the attorney general shall file with the director of financial management a certificate setting forth the amount of any award found against the state of Washington under the provisions of RCW 8.04.010 through 8.04.160, together with the costs of said proceeding, and a description of the lands and premises sought to be appropriated and acquired, and the title of the action or proceeding in which said award is rendered, it shall be the duty of the office of financial management to forthwith issue a warrant upon the state treasury to the order of the attorney general in a sum sufficient to make payment in money of said award and the costs of said proceeding, and thereupon it shall be the duty of said attorney general to forthwith pay to the clerk of said court in money the amount of said award and costs. [1979 c 151 § 8; 1973 c 106 § 8; 1891 c 74 § 10; RRS § 900.]

8.04.170 Condemnation for military purposes. Whenever the governor, as commander-in-chief of the military of this state, shall deem it necessary to acquire any lands, real estate, premises or other property for any military purpose or purposes of this state, either to add to, enlarge, increase or otherwise improve state military facilities now or hereafter existing or to establish new facilities, the acquisition of which shall have been provided for by the state, by a county or by a city, or by either, all or any thereof, upon certificate by the governor of such necessity, proceedings for the condemnation, appropriation and taking of the lands, real estate, premises or other property so certified to be necessary shall be taken as follows:

Where the state is to pay the purchase price it shall be the duty of the attorney general, upon receipt by him of said certificate of the governor, to file a petition in the superior court for the county in which such lands, real estate, premises or other property may be situate praying such condemnation, appropriating and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of the state;

Where a county is to pay the purchase price it shall be the duty of the prosecuting attorney of said county upon receipt by him of said certificate of the governor, to file a petition in the superior court for said county praying such condemnation, appropriation and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of a county;

Where a city is to pay the purchase price it shall be the duty of the corporation counsel, city attorney or other head of the legal department of said city, upon receipt by him of said certificate of the governor, to file a petition in the superior court for the county in which said city is situate, praying such condemnation, appropriation and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of such city;

Where the purchase price is to be paid by the state, a county and a city or by the state and a county, or by the state and a city, or by a county and a city, the condemnation shall be prosecuted to a final determination in the manner by law provided for either or any thereof, as the governor may determine, which determination shall be final and conclusive. [1917 c 153 § 1; RRS § 900-1.]

Notice where military land is involved: RCW 8.28.030.

8.04.180 Condemnation for military purposes—Construction. Nothing contained in RCW 8.04.170 shall be construed as in any manner applying to condemnation by any county for the purpose of acquiring title to any site for a mobilization, training and supply station, to be donated by any county to the United States. [1917 c 153 § 2; RRS § 900-2.]

8.04.191 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.08

EMINENT DOMAIN BY COUNTIES

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Transportation benefit districts: RCW 36.73.130.

Utility local improvement districts: RCW 36.94.240.

Wharves and landings: RCW 88.24.070.

8.08.010 Condemnation authorized for general county purposes—Petition. Every county is hereby authorized and empowered to condemn land and property within the county for public use; whenever the board of county commissioners deems it necessary for county purposes to acquire such land, real estate, premises or other property, and is unable to agree with the owner or owners thereof for its purchase, it shall be the duty of the prosecuting attorney to present to the superior court of the county in which said land, real estate, premises, or other property so sought to be acquired or appropriated shall be situated, a petition in which the land, real estate, premises, or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer, or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money to such owner or owners respectively, and to all tenants, encumbrancers, or others interested, for taking such lands, real estate, premises, or other property, or in case a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law, then that the compensation to be made as aforesaid be ascertained or determined by the court or the judge thereof. [1949 c 79 § 1; Rem. Supp. 1949 § 3991-6.]

8.08.020 Public use declared. Any condemnation, appropriation or disposition intended in RCW 8.08.010 through 8.08.080 shall be deemed and held to be for a county purpose and public use within the meaning of RCW 8.08.010 through 8.08.080 when it is directly or indirectly, approximately or remotely for the general benefit or welfare of the county or of the inhabitants thereof. [1949 c 79 § 2; Rem. Supp. 1949 § 3991-7.]

8.08.030 Notice of presentation of petition. A notice, stating the time and place when and where such petition shall be presented to the court or the judge thereof, together with a copy of such petition, shall be served on each and every person named therein as owner or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such notice shall be signed by the prosecuting attorney of the county wherein the real estate or property sought to be taken is situated, and may be served in the same manner as a summons in a civil action in such superior court is authorized by law to be served. [1949 c 79 § 3; Rem. Supp. 1949 § 3991-8.]

Publication of notice in eminent domain proceedings: RCW 4.28.120.

8.08.040 Hearing—Order adjudicating public use.

At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises or other property described in said petition have been duly served with said notice as prescribed herein, and shall be further satisfied by competent proof that the contemplated use for which the lands, real estate, premises, or other property sought to be appropriated is a public use of the county, the court or judge thereof may make and enter an order adjudicating that the contemplated use is really a public use of the county, and which order shall be final unless review thereof to the supreme court or the court of appeals be taken within five days after entry of such order, adjudicating that the contemplated use for which the lands, real estate, premises or other property sought to be appropriated is really a public use of the county, and directing that determination be had of the compensation and damages to be paid all parties interested in the land, real estate, premises, or other property sought to be appropriated for the taking and appropriation thereof, together with the injury, if any, caused by such taking or appropriation to the remainder of the lands, real estate, premises, or other property from which the same is to be taken and appropriated, after offsetting against any and all such compensation and damages, special benefits, if any, accruing to such remainder by reason of such appropriation and use by the county of such lands, real estate, premises, and other property described in the petition; such determination to be made by a jury, unless waived, in which event the compensation or damages shall be determined by the court without a jury. [1971 c 81 § 37; 1949 c 79 § 4; Rem. Supp. 1949 § 3991-9.]

8.08.050 Trial—Damages to be found. The jury selected to hear the evidence and determine the compensation to be paid to the owner or owners of such real estate or property to be appropriated for public use, shall be selected, impaneled and sworn in the same manner that juries in other civil actions are selected, impaneled and sworn, and in case a jury is waived, such compensation or damages shall be ascertained and determined by the court or judge thereof and the proceedings shall be the same as in trial of an issue of fact by the court. Upon the close of the evidence, the court shall instruct the jury as to the matters submitted to them and the law pertaining thereto. Whereupon the jury shall retire and deliberate and determine upon the amount of the compensation of damages and money that shall be paid to the owner or owners of the real estate or property sought to be appropriated, which shall be the amount found by the jury to be the fair and full value of such premises, and when the jury shall have determined upon their verdict, they shall return the same to the court as in other civil actions. [1949 c 79 § 5; Rem. Supp. 1949 § 3991-10.]

Rules of court: CR 47, 48.

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

Verdicts, civil actions: Chapter 4.44 RCW.

8.08.060 Judgment—Decree of appropriation. Upon the verdict of the jury or upon the determination of the court

of the compensation or damages to be paid for the real estate or property appropriated, judgment shall be entered against such county in favor of the owner or owners of the real estate or property so appropriated for the amount found as just compensation therefor, and upon the payment of such amount by such county to the clerk of such court for the use of the owner or owners or the persons interested in the premises sought to be taken, the court shall enter a decree of appropriation of the real estate or property sought to be taken, thereby vesting the title to the same in such county; and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated and shall be recorded by such auditor like a deed of real estate and with like effect. The money so paid to the clerk of the court shall be by him paid to the person or persons entitled thereto upon the order of the court. [1949 c 79 § 6; Rem. Supp. 1949 § 3991-11.]

8.08.070 Costs. All the costs of such proceedings in the superior court shall be paid by the county initiating such proceedings. [1949 c 79 § 7; Rem. Supp. 1949 § 3991-12.]

8.08.080 Appellate review. Either party may seek appellate review of the judgment for compensation of the damages awarded in the superior court within thirty days after the entry of judgment as aforesaid, and such review shall bring before the supreme court or the court of appeals the propriety and justice of the amount of damage in respect to the parties to the review: PROVIDED, That upon such review no bonds shall be required: AND PROVIDED FURTHER, That if the owner of land, real estate, or premises accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively appellate review, and final judgment by default may be rendered in the superior court as in other cases. [1988 c 202 § 9; 1971 c 81 § 38; 1949 c 79 § 8; Rem. Supp. 1949 § 3991-13.]

Severability—1988 c 202: See note following RCW 2.24.050.

8.08.090 Appropriation authorized in aid of federal or state improvement. Every county in this state is hereby, for the purposes of RCW 8.08.090 through 8.08.130, declared to be a body corporate and is authorized and empowered by and through its board of county commissioners whenever said board shall judge it to be clearly for the general welfare and benefit of the people of the county, and so far as shall be in harmony with the Constitution of this state and the provisions of RCW 8.08.090 through 8.08.130, to condemn and appropriate as hereinafter in RCW 8.08.090 through 8.08.130 provided and to dispose of for public use such lands, properties, rights and interests as are hereinafter in RCW 8.08.090 through 8.08.130 mentioned, whenever the government of the United States or of this state is intending or proposing the construction, operation or maintenance of any public work situated or to be situated wholly or partly within such county, or the expenditure of money or labor for the construction, operation or maintenance of any such work, and such condemnation or appropriation will enable the county to aid, promote, facilitate or prepare for any such construction, operation, maintenance or expenditure by either

or both such governments, or to fulfill or dispose of any condition upon which such construction, operation, maintenance or expenditure is by law or from any cause contingent, and no property shall be exempt from such condemnation, appropriation or disposition by reason of the same having been or being dedicated, appropriated or otherwise reduced or held to public use. [1895 c 2 § 1; RRS § 901.]

8.08.100 Mode of appropriation. The right of eminent domain for the purposes intended in RCW 8.08.090 through 8.08.130 is hereby extended to all counties in this state and every such county for any purpose of condemnation, appropriation or disposition such as is mentioned in RCW 8.08.090 is hereby authorized and empowered to condemn and appropriate all necessary lands and all rights, properties and interests in or appurtenant to land under the same procedure as is or shall be provided by the laws of this state for the case of any similar condemnation or appropriation by other corporations. [1895 c 2 § 3; RRS § 903.]

8.08.110 Tax levy to pay costs. The board of county commissioners is hereby authorized and empowered in aid of the powers granted or prescribed in RCW 8.08.090 to levy, annually, a tax as large as may be necessary, but not exceeding the rate of one mill on the dollar, upon all the taxable property in the county, such tax to be assessed, levied and collected at the same time and in the same manner as taxes for general county purposes, but the proceeds of said taxes, when collected, shall constitute and be a special fund, applicable solely to the cost of such condemnation, appropriation or disposition, as is mentioned in RCW 8.08.090, and the expenses incident thereto. [1895 c 2 § 2; RRS § 902.]

8.08.120 Indebtedness is for general county purposes. Any county purpose mentioned in RCW 8.08.090 through 8.08.130 shall be deemed and held to be a general county purpose and any indebtedness contracted or to be contracted therefor shall be deemed and held to be an indebtedness for general county purposes, and all the provisions of law of this state relative to indebtedness for general county purposes or the contracting of such indebtedness or the bonds for funding the same shall be deemed applicable to any indebtedness contracted or to be contracted or any bonds issued by any county under RCW 8.08.090 through 8.08.130, but the accounts of the county with respect to the receipts and disbursements of all moneys received or disbursed by the county under the provisions of RCW 8.08.090 through 8.08.130 shall, for each condemnation, appropriation and disposition, be so kept as to clearly and fully exhibit such accounts separate and apart from the other accounts of the county. [1895 c 2 § 4; RRS § 904.]

Public contracts and indebtedness: Title 39 RCW.

8.08.130 Limitation. Any condemnation, appropriation or disposition intended in RCW 8.08.090 through 8.08.130 shall be deemed and held to be for a county purpose and public use within the meaning of RCW 8.08.090 through 8.08.130 when it is directly or indirectly, approximately or remotely for the general benefit or welfare of the

county or of the inhabitants thereof, or when it is otherwise within the meaning of the phrase "for a county purpose" as occurring in the Constitution of this state. [1895 c 2 § 5; RRS § 905.]

8.08.140 Condemnation for military purposes. See RCW 8.04.170.

8.08.141 Condemnation for military purposes—Construction. See RCW 8.04.180.

8.08.150 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.12

EMINENT DOMAIN BY CITIES

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CONDEMNATION

8.12.010 "City" defined. The term "city," when used in this chapter, means and includes every city and town and each unclassified city and town in the state of Washington. [1915 c 154 § 20; RRS § 9272.]

Severability—1915 c 154: "An adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof." [1915 c 154 § 19; RRS § 9271.] This applies to RCW 8.12.010 through 8.12.560.

8.12.020 Other terms defined. Whenever the word "person" is used in this chapter, the same shall be construed to include any company, corporation or association, the state or any county therein, and the words "city" or "town" wherever used, shall be construed to be either. Whenever the words "installment" or "installments" are used in this chapter, they shall be construed to include installment or installments of interest, as provided in RCW 8.12.420. Whenever the words "public markets" are used in this chapter and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing. [1990 c 189 § 2; 1925 ex.s. c 115 § 4; 1907 c 153 § 52; RRS § 9277. Prior: 1905 c 55 § 51; 1893 c 84 § 51.]

8.12.030 Condemnation authorized—Purposes enumerated. Every city and town and each unclassified city and town within the state of Washington, is hereby authorized and empowered to condemn land and property, including state, county and school lands and property for streets, avenues, alleys, highways, bridges, approaches, culverts, drains, ditches, public squares, public markets, city and town halls, jails and other public buildings, and for the opening and widening, widening and extending, altering and straightening of any street, avenue, alley or highway, and to damage any land or other property for any such purpose or for the purpose of making changes in the grade of any street, avenue, alley or highway, or for the construction of slopes or retaining walls for cuts and fills upon real property abutting on any street, avenue, alley or highway now ordered to be, or such as shall hereafter be ordered to be opened, extended, altered, straightened or graded, or for the purpose of draining swamps, marshes, tidelands, tide flats or ponds, or filling the same, within the limits of such city, and to condemn land or property, or to damage the same, either within or without the limits of such city for public parks, drives and boulevards, hospitals, pesthouses, drains and sewers, garbage crematories and destructors and dumping

grounds for the destruction, deposit or burial of dead animals, manure, dung, rubbish, and other offal, and for aqueducts, reservoirs, pumping stations and other structures for conveying into and through such city a supply of fresh water, and for the purpose of protecting such supply of fresh water from pollution, and to condemn land and other property and damage the same for such and for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed by this chapter. [1915 c 154 § 1; 1907 c 153 § 1; RRS § 9215. Prior: 1905 c 55 § 1; 1893 c 84 § 1.]

8.12.040 Ordinance to specify method of payment—Limitations. When the corporate authorities of any such city shall desire to condemn land or other property, or damage the same, for any purpose authorized by this chapter, such city shall provide therefor by ordinance, and unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, compensation therefor shall be made from any general funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, the proceedings for the making of such special assessment shall be as hereinafter prescribed, in this chapter: PROVIDED, That no special assessment shall be levied under authority of this chapter except when made for the purpose of streets, avenues, alleys, or highways or alterations thereof or changes of the grade therein or other improvements in or adjoining the same, or for bridges, approaches, culverts, sewers, drains, ditches, public squares, public playgrounds, public parks, drives or boulevards or for the purpose of draining swamps, marshes, tide flats, tide-lands or ponds or for filling the same: AND IT IS FURTHER PROVIDED, That when a street, avenue, highway or boulevard is established or widened to a width greater than one hundred and fifty feet the excess over and above the one hundred and fifty feet shall be paid out of the general fund of such city without any deduction for benefits of such excess. [1925 ex.s. c 128 § 2; 1907 c 153 § 2; RRS § 9216. Prior: 1905 c 55 § 2; 1893 c 84 § 2.]

8.12.050 Petition for condemnation. Whenever any such ordinance shall be passed by the legislative authority of any such city for the making of any improvement authorized by this chapter or any other improvement that such city is authorized to make, the making of which will require that property be taken or damaged for public use, such city shall file a petition in the superior court of the county in which such land is situated, in the name of the city, praying that just compensation, to be made for the property to be taken or damaged for the improvement or purpose specified in such ordinance, be ascertained by a jury or by the court in case a jury be waived. [1913 c 11 § 1; 1907 c 153 § 3; RRS § 9217. Prior: 1905 c 55 § 3; 1893 c 84 § 3.]

8.12.060 Contents of petition. Such petition shall contain a copy of said ordinance, certified by the clerk under the corporate seal, a reasonably accurate description of the lots, parcels of land and property which will be taken or damaged, and the names of the owners and occupants

thereof and of persons having any interest therein, so far as known, to the officer filing the petition or appearing from the records in the office of the county auditor. [1907 c 153 § 4; RRS § 9218. Prior: 1905 c 55 § 4; 1893 c 84 § 4.]

8.12.070 Summons—Service. Upon the filing of the petition aforesaid a summons, returnable as summons in other civil actions, shall be issued and served upon the persons made parties defendant, together with a copy of the petition, as in other civil actions. And in case any of them are unknown or reside out of the state, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the state for service upon absent defendants in other civil actions. Notice so given by publication shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served. [1907 c 153 § 5; RRS § 9219. Prior: 1905 c 55 § 5; 1893 c 84 § 5.]

Commencement of actions: Chapter 4.28 RCW.

Publication of

legal notices: Chapter 65.16 RCW.

notice in eminent domain proceedings: RCW 4.28.120.

8.12.080 Service when state or county lands are involved. In case the land, real estate, premises or other property sought to be appropriated or damaged is state, school or county land, the summons and copy of petition shall be served on the auditor of the county in which such land, real estate, premises or other property is situated. Service upon other parties defendant shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions. [1907 c 153 § 6; RRS § 9220. Prior: 1905 c 55 § 6; 1893 c 84 § 6.]

Service of process where state land is involved: RCW 8.28.010.

8.12.090 Waiver of jury—Adjudication of public use—Procedure. In any proceedings under this chapter wherein a trial by jury is provided for, the jury may be waived as in other civil cases in courts of record in the manner prescribed by law, and the matter may be heard and determined without the intervention of a jury. Whenever an attempt is made to take private property, for a use alleged to be public under authority of this chapter, the question whether the contemplated use be really public shall be a judicial question and shall be determined as such by the court before inquiry is had into the question of compensation to be made. When a jury is required for the determination of any matter under this chapter, such jury may be the same jury summoned for the trial of ordinary civil actions before the court, or the court may, in its discretion, issue a venire to the sheriff to summon as jurors such number of qualified persons as the court shall deem sufficient. Except as herein otherwise provided, the practice and procedure under this chapter in the superior court and in relation to the taking of appeals and prosecution thereof, shall be the same as in other civil actions, but all appeals must be taken within thirty days from the date of rendition of the judgment appealed from. Proceedings under this chapter shall have precedence of all cases in court except criminal cases. [1907 c 153 §

51; RRS § 9276. Prior: 1905 c 55 § 50; 1893 c 84 § 50. Formerly RCW 8.12.090, 8.12.110 and 8.12.200, part.]

Juries, civil actions: Chapters 2.36, 4.44 RCW.

8.12.100 Trial—Jury—Right to separate juries.

Upon the return of said summons, or as soon thereafter as the business of court will permit, the said court shall proceed to the hearing of such petition and shall impanel a jury to ascertain the just compensation to be paid for the property taken or damaged, but if any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be impaneled as to the compensation or damages to be paid to any one or more of such defendants or parties in interest. [1907 c 153 § 7; RRS § 9221. Prior: 1905 c 55 § 7; 1893 c 84 § 7.]

8.12.120 Interested party may be brought in. Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land or other property is mentioned or described in such petition: PROVIDED, Such person shall first be admitted as a party defendant to said suit by such court and shall file a statement of his interest in and description of the lot, parcel of land or other property in respect to which he claims compensation. [1907 c 153 § 8; RRS § 9222. Prior: 1905 c 55 § 8; 1893 c 84 § 8.]

Rules of court: CR 17 through 25.

8.12.130 Jury may view premises. The court may upon the motion of such city or of any defendant direct that said jury (under the charge of any officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged) shall view the lands and property affected by said improvement. [1907 c 153 § 9; RRS § 9223. Prior: 1905 c 55 § 9; 1893 c 84 § 9.]

View of premises by jury: RCW 4.44.270.

8.12.140 Damages to building—Measure. If there be any building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken the damages to said building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [1907 c 153 § 10; RRS § 9224. Prior: 1905 c 55 § 10; 1893 c 84 § 10.]

8.12.150 Separate findings where there are several interests—Interpleader of adverse claimants. If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damages done to each of such interests may

be separately found by the jury on the request of any party. In making such findings, the jury shall first find and set forth in their verdict the total amount of the damage to said land and buildings and all premises therein, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same, in proportion to their several interests and claims and the damages sustained by them respectively, and set forth such apportionment in their verdict. No delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property, or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case, the jury shall ascertain the entire compensation or damage that should be paid for the property and the entire interests of all the parties therein, and the court may thereafter require adverse claimants to interplead, so as to fully determine their rights and interests in the compensation so ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation. [1907 c 153 § 11; RRS § 9225.]

Rules of court: CR 54.

8.12.160 Verdict—New trial—Continuance—New summons. Upon the return of the verdict the proceedings of the court regarding new trial and the entry of judgment thereon shall be the same as in other civil actions, and the judgment shall be such as the nature of the case shall require. The court shall continue or adjourn the case from time to time as to all occupants and owners named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication may be made at any time; and upon such occupants or owners being brought in, the court may impanel a jury to ascertain the compensation so to be made to such defendant or defendants for private property taken or damaged, and like proceedings shall be had for such purpose as herein provided. [1907 c 153 § 12; RRS § 9226. Prior: 1905 c 55 § 11; 1893 c 84 § 11.]

Rules of court: CR 17 through 25, 54, 59.

Entry of judgment, civil actions: Chapter 4.64 RCW.

New trials, civil actions: Chapter 4.76 RCW.

8.12.170 Change of ownership—Powers of court. The court shall have power at any time, upon proof that any such owner or owners named in such petition who has not been served with process has ceased to be such owner or owners since the filing of such petition, to impanel a jury and ascertain the just compensation to be made for the property (or the damage thereto) which has been owned by the person or persons so ceasing to own the same, and the court may upon any finding or findings of any jury or juries, or at any time during the course of such proceedings enter such order, rule, judgment or decree as the nature of the case may require. [1907 c 153 § 13; RRS § 9227. Prior: 1905 c 55 § 12; 1893 c 84 § 12.]

8.12.190 Findings by jury. When the ordinance providing for any such improvement provides that compensation therefor shall be paid in whole or in part by special assessment upon property benefited, the jury or court, as the case may be, shall find separately:

- (1) The value of land taken at date of trial;
- (2) The damages which will accrue to the part remaining because of its severance from the part taken, over and above any local or special benefits arising from the proposed improvement. No lot, block, tract or parcel of land found by the court or jury to be so damaged shall be assessed for any benefits arising from such taking only;
- (3) The gross damages to any land or property not taken (other than damages to a remainder, by reason of its severance from the part taken), and in computing such gross damages shall not deduct any benefits from the proposed improvement. Such finding by the court or jury shall leave any lot, block, parcel or tract of land, or other property subject to assessment for its proportion of any and all local and special benefits accruing thereto by reason of said improvement.

When such ordinance does not provide for any assessment in whole or in part on property specially benefited, the compensation found for land or property taken or damaged shall be ascertained over and above any local or special benefits from the proposed improvement.

Such city or town may offset against any award of the jury or court for the taking or damaging of any lot, block, tract or parcel of land or other property, any general taxes or local assessments unpaid at the time such award is made. Such offset shall be made by deducting the amount of such unpaid taxes and assessments at the time of payment of the judgment or issuance of a warrant in payment of such judgment. [1909 c 210 § 1; 1907 c 153 § 15; RRS § 9229. Prior: 1905 c 55 § 15; 1893 c 84 § 15.]

8.12.200 Judgment—Appellate review—Payment of award into court. Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases, provided that in case any defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive as to the damages caused by such improvement unless appellate review is sought, and review of the same shall delay proceedings under said ordinance, if such city shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such city, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation which may at any time be finally awarded to such parties seeking review of said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor, and abide any rule or order of the court in relation to the matter in controversy. In case of review by the supreme court or the court of appeals of the state by any party to the proceedings the money so paid into

the superior court by such city, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively appellate review and final judgment may be rendered in the superior court as in other cases. [1988 c 202 § 10; 1971 c 81 § 39; 1907 c 153 § 16; 1905 c 55 § 16; 1893 c 84 § 16; RRS § 9230. FORMER PART OF SECTION: 1907 c 153 § 51, part; RRS § 9276, part, now codified in RCW 8.12.090. Prior: 1905 c 55 § 50; 1893 c 84 § 50, part.]

Severability—1988 c 202: See note following RCW 2.24.050.

8.12.210 Title vests upon payment. The court, upon proof that just compensation so found by the jury, or by the court in case the jury is waived, together with costs, has been paid to the person entitled thereto, or has been paid into court as directed by the court, shall enter an order that the city or town shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so paid or paid into court as aforesaid, and thereupon, the title to any property so taken shall be vested in fee simple in such city or town. [1907 c 153 § 17; RRS § 9231. Prior: 1905 c 55 § 17; 1893 c 84 § 17.]

Rules of court: CR 58.

PAYMENT FOR IMPROVEMENT

8.12.220 Payment from general fund. When the ordinance under which said improvement is ordered to be made shall not provide that such improvement shall be made wholly by special assessment upon property benefited, the whole amount of such damage and costs, or such part thereof as shall not be assessed upon property benefited shall be paid from the general fund of such city or town, and if sufficient funds therefor are not already provided, such city or town shall levy and collect a sufficient sum therefor as part of the general taxes of such city or town, or may contract indebtedness by the issuance of bonds or warrants therefor as in other cases of internal improvements. [1907 c 153 § 18; RRS § 9232. Prior: 1905 c 55 § 18; 1893 c 84 § 18.]

8.12.230 Payment by special assessment. When such ordinance under which said improvement shall be ordered, shall provide that such improvement shall be paid for, in whole or in part, by special assessment of property benefited thereby, the damages and costs awarded, or such part thereof as is to be paid by special assessment, shall be levied, assessed and collected in the manner hereinafter provided. [1907 c 153 § 19; RRS § 9233. Prior: 1905 c 55 § 19; 1893 c 84 § 19.]

8.12.240 Petition for assessment—Appointment of commissioners. Such city may file in the same proceeding a supplementary petition, praying the court that an assessment be made for the purpose of raising an amount necessary to pay the compensation and damages which may [be]

or shall have been awarded for the property taken or damaged, with costs of the proceedings, or for such part thereof as the ordinance shall provide. The said court shall thereupon appoint three competent persons as commissioners to make such assessment, or if there be a board of eminent domain commissioners of such city, appointed under the provisions of this chapter, said proceeding for assessment shall be referred to said board. Said commissioners shall include in such assessment the compensation and damages which may [be] or shall have been awarded for the property taken or damaged, with all costs and expenses of the proceedings incurred to the time of their appointment, or to the time when said proceeding was referred to them, together with the probable further costs and expenses of the proceedings, including therein the estimated costs of making and collecting such assessment. [1907 c 153 § 20; RRS § 9234. Prior: 1905 c 55 § 20; 1893 c 84 § 20.]

8.12.250 Advancement from general funds against assessments. If any city or town shall desire to take possession of any property or do any damage or proceed with any improvement, the compensation for which is to be paid for in whole or in part by the proceeds of special assessment under this chapter, it may advance from its general funds, or any moneys available for the purpose, the amount of the assessments aforesaid, and pay the same to the owner or into court, as herein provided, reimbursing itself for moneys so advanced from the special assessments aforesaid. If there be no funds available for the purpose, such city may contract indebtedness for the purpose of raising funds therefor, which indebtedness shall be contracted and such proceedings taken therefor as is provided by law for indebtedness contracted for other internal improvements. [1907 c 153 § 50; RRS § 9275. Prior: 1905 c 55 § 49; 1893 c 84 § 49.]

Contracting indebtedness by city: Titles 35, 39 RCW.

ASSESSMENTS—IMMEDIATE PAYMENT

8.12.260 Appointment of board of eminent domain commissioners—Terms of office. At any time after June 11, 1907, any such city may petition the superior court of the county in which said city is situated, that a board of eminent domain commissioners be appointed to make assessments in all condemnation proceedings instituted by such city. Said superior court shall thereupon, by order duly entered in its records, appoint three competent persons as commissioners who shall be known as and who shall constitute the "board of eminent domain commissioners of the city of . . . ," and who shall thereafter make assessments in all condemnation proceedings instituted by such city. The order of the court shall provide that one of the members of such board shall serve for one year, one for two years and one for three years, from the date of their appointment and until their successors are appointed and qualified. Annually thereafter, said superior court shall appoint one such person as such commissioner, whose term shall begin on the same day of the month on which the first order of appointment was made and continue for three years thereafter and until his successor is appointed and qualified. If any commissioner shall be disqualified in any proceeding by reason of

interest, or for any other reason, said superior court shall appoint some other competent person to act in his place in such proceeding. [1907 c 153 § 21; RRS § 9235. Prior: 1905 c 55 § 21; 1893 c 84 § 21.]

8.12.270 Oath of commissioners—Compensation. All commissioners, before entering upon their duties shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to law. Every commissioner shall receive compensation at the rate of ten dollars per day for each day actually spent in making the assessment herein provided for: PROVIDED, That in any city of the first class the superior court of the county in which said city is situated may, by order duly entered in its record, fix the compensation of each commissioner in an amount in no case to exceed twenty-five dollars per day for each day actually spent in making the assessment herein provided for. Each commissioner shall file in the proceeding in which he has made such assessment his account, stating the number of days he has actually spent in said proceeding, and upon the approval of said account by the judge before whom the proceeding is pending, the comptroller or city clerk of such city shall issue a warrant in the amount approved by the judge upon the special fund created to pay the awards and costs of said proceeding, and the fees of such commissioner so paid shall be included in the cost and expense of such proceedings. In case such commissioners are, during the same period, or parts thereof, engaged in making assessments in different proceedings, in rendering their accounts they shall apportion them to the different proceedings in proportion to the amount of time, actually spent by them on the assessment in each proceeding. [1947 c 139 § 1; 1929 c 87 § 1; 1915 c 154 § 2; 1907 c 153 § 22; Rem. Supp. 1947 § 9236. Prior: 1905 c 55 § 22, part; 1893 c 84 § 22, part.]

8.12.280 Duties of commissioners—Assessment of benefits—Apportionment. It shall be the duty of such commissioners to examine the locality where the improvement is proposed to be made and the property which will be especially benefited thereby, and to estimate what proportion, if any, of the total cost of such improvement will be a benefit to the public, and what proportion thereof will be a benefit to the property to be benefited, and apportion the same between the city and such property so that each shall bear its relative equitable proportion, and having found said amounts, to apportion and assess the amount so found to be a benefit to the property upon the several lots, blocks, tracts and parcels of land, or other property in the proportion in which they will be severally benefited by such improvement: PROVIDED, That the legislative body of the city may in the ordinance initiating any such improvement establish an assessment district and said district when so established shall be deemed to include all the lands or other property especially benefited by the proposed improvement, and the limits of said district when so fixed shall be binding and conclusive on the said commissioners: AND PROVIDED FURTHER, That no property shall be assessed a greater amount than it will be actually benefited. That all leasehold rights and interests of private persons, firms or corporations in or to

harbor areas located within the corporate limits of any incorporated city or town are for the purpose of assessment for the payment of the awards, interest and costs of any improvement authorized by this chapter, declared to be real property, and all such leasehold rights and interests may be assessed and reassessed in accordance with the special benefits received for the purpose of paying the cost of any such improvement heretofore made or which may hereafter be made in accordance with law. [1915 c 154 § 3; 1909 c 211 § 1; 1907 c 153 § 23; RRS § 9237. Prior: 1905 c 55 § 22, part; 1893 c 84 § 22, part.]

8.12.290 Assessment roll. Such commissioners in each proceeding shall also make or cause to be made an assessment roll in which shall appear the names of the owners, so far as known, the description of each lot, block, tract or parcel of land or other property and the amounts assessed as special benefits thereto, and in which they shall set down as against the city the amount they shall have found as public benefit, if any, and certify such assessment roll to the court before which said proceeding is pending, within sixty days after their appointment or after the date of the order referring said proceeding to them, or within such extension of said period as shall be allowed by the court. [1907 c 153 § 24; RRS § 9238. Prior: 1905 c 55 § 23; 1893 c 84 § 23.]

8.12.300 Hearing on assessment roll—Notice. After the return of such assessment roll, the court shall make an order setting a time for the hearing thereof before the court, which day shall be at least twenty days after return of the roll. It shall be the duty of the commissioners to give notice of the assessment and of the day fixed by the court for the hearing thereof in the following manner:

(1) They shall at least twenty days prior to the date fixed for the hearing on the roll, mail to each owner of the property assessed, whose name and address is known to them, a notice substantially in the following form:

"Title of Cause. To . . . : Pursuant to an order of the superior court of the State of Washington, in and for the county of, there will be a hearing in the above entitled cause on at upon the assessment roll prepared by the commissioners heretofore appointed by said court to assess the property specially benefited by the (here describe nature of improvement); and you are hereby required if you desire to make any objections to the assessment roll, to file your objections to the same before the date herein fixed for the hearing upon the roll, a description of your property and the amount assessed against it for the aforesaid improvement is as follows: (Description of property and amount assessed against it.)

.....
.....
.....
Commissioners."

(2) They shall cause at least twenty days' notice to be given by posting notice of the hearing on the assessment roll in at least three public places in the city, one of which shall be in the neighborhood of the proposed improvement, and by publishing the same at least for two successive weeks in the

official newspaper of the city. The notice so required to be posted and published, may be substantially as follows:

"Title of Cause. Special assessment notice. Notice is hereby given to all persons interested, that an assessment roll has been filed in the above entitled cause providing for the assessment upon the property benefited of the cost of (here insert brief description of improvement) and that the roll has been set down for hearing on the day of at The boundaries of the assessment district are substantially as follows: (here insert an approximate description of the assessment district). All persons desiring to object to the assessment roll are required to file their objections before the date fixed for the hearing upon the roll, and appear on the day fixed for hearing before said court.

.....
.....
.....
Commissioners."

[1985 c 469 § 3; 1907 c 153 § 25; RRS § 9239. Prior: 1905 c 55 § 24; 1893 c 84 § 24.]

8.12.310 Proof of service. On or before the final hearing, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent, or caused to be sent, by mail, to the owners whose property has been assessed and whose names and addresses are known to them, the notice hereinbefore required to be sent by mail to the owners of the property assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notice required by this chapter to be posted, setting forth when and in what manner the same was posted. Such affidavits shall be received as prima facie evidence of a compliance with this chapter in regard to giving such notices. They shall also file an affidavit of publication of such notice in like manner as is required in other cases of affidavits of publication of notice of [or] summons. [1907 c 153 § 26; RRS § 9240. Prior: 1905 c 55 § 25; 1893 c 84 § 25.]

8.12.320 Continuance of hearing. If twenty days shall not have elapsed between the first publication or the posting of such notices and the day set for hearing, the hearing shall be continued until such time as the court shall order. The court shall retain full jurisdiction of the matter, until final judgment on the assessments; and if the notice given shall prove invalid or insufficient the court shall order new notice to be given. [1907 c 153 § 27; RRS § 9241. Prior: 1905 c 55 § 26; 1893 c 84 § 26.]

8.12.330 Objections to assessment roll. Any person interested in any property assessed may without payment of any fee to the clerk of court file objections to such report at any time before the day set for hearing said roll. As to all property to the assessment of which objections are not filed as herein provided, default may be entered and the assessment confirmed by the court. On the hearing, the report of such commissioners shall be competent evidence and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, tried by the court without

a jury, and if it shall appear that the property of the objector is assessed more or less than it will be benefited or more or less than its proportionate share of the costs of the improvement, the court shall so find and also find the amount in which said property ought to be assessed, and the judgment shall be entered accordingly. [1947 c 139 § 2; 1907 c 153 § 28; Rem. Supp. 1947 § 9242. Prior: 1905 c 55 §§ 27, 28; 1893 c 84 § 27, 28.]

8.12.340 Modification of assessment. The court before which any such proceedings may be pending shall have authority at any time before final judgment to modify, alter, change, annul or confirm any assessment returned as aforesaid, or cause any such assessment to be recast by the same commissioners, whenever it shall be necessary for the obtainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the principles of this chapter, and may from time to time, as may be necessary, continue the application for that purpose as to the whole or any part of the premises. [1907 c 153 § 29; RRS § 9243. Prior: 1905 c 55 § 29; 1893 c 84 § 29.]

8.12.350 Judgment, effect—Lien. The judgment of the court shall have the effect of a separate judgment as to each tract or parcel of land or other property assessed, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. Such judgment shall be a lien upon the property assessed from the date thereof until payment shall be made, and said lien shall be paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for assessments for general taxes. [1915 c 154 § 4; 1907 c 153 § 30; RRS § 9244. Prior: 1905 c 55 § 30; 1893 c 84 § 30.]

8.12.360 Certification of roll to treasurer. The clerk of the court in which such judgment is rendered shall certify a copy of the assessment roll and judgment to the treasurer of the city, or if there has been an appeal taken from any part of such judgment, then he shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is rendered: PROVIDED, That if upon such appeal, the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within the time hereafter provided shall bear. Such copy of the assessment roll shall describe the lots, blocks, tracts, parcels of land or other property assessed, and the respective amounts assessed on each, and shall be sufficient warrant to the city treasurer to collect the assessment therein specified. In no case, however, shall a copy of such assessment roll and judgment be certified to the city treasurer unless and until the awards of the jury shall have first been accepted by the city council or other legislative body as provided by law, or the time for rejecting the same shall

have expired. [1915 c 154 § 5; 1907 c 153 § 31; RRS § 9245. Prior: 1905 c 55 § 31; 1893 c 84 § 31.]

8.12.370 Treasurer's notice to pay when assessments immediately payable. Whenever the assessment for any such improvement shall be immediately payable, the owner of any such lot, tract or parcel of land or other property so assessed may pay such entire assessment, or any part thereof, without interest, within thirty days after the notice of such assessment.

The city treasurer shall, as soon as the certified copy of the assessment roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for two consecutive daily, or two consecutive weekly issues, and then by posting four notices thereof in public places along the line of the proposed improvement, that the said roll is in his hands for collection, and that any assessment thereon, or any part thereof, may be paid within thirty days from the date of the first publication or posting of said notice, without penalty, interest or costs, and if not so paid, the same shall thereupon become delinquent. [1915 c 154 § 6; 1907 c 153 § 32; RRS § 9246. Prior: 1905 c 55 § 32; 1893 c 84 § 32.]

8.12.380 Notice by mail—Penalty for default. It shall be the duty of the city treasurer into whose hands such judgment and assessment roll shall come, to mail notices of such assessment to the persons whose names appear on the assessment roll, so far as the addresses of such persons are known to him. Any such treasurer omitting so to do, shall be liable to a penalty of five dollars for every such omission; but the validity of the special assessment shall not be affected by such omission. When any assessment or assessments are paid, it shall be the duty of the treasurer to write the word "paid" opposite the same together with the name and post office address of the person making the payment and the date of payment. The owner may annually notify the treasurer of his address and it shall be the duty of the treasurer to mail the notice above provided for to such address. [1907 c 153 § 33; RRS § 9247. Prior: 1905 c 55 § 33; 1893 c 84 § 33.]

BONDS—INSTALLMENT PAYMENT

8.12.390 Bonds authorized. The city council or other legislative body of any city may, in their discretion, provide by ordinance for the payment of the whole or any portion of the cost and expense of any local improvement authorized by law, by bonds of the improvement district, which bonds shall be issued and sold as herein provided. [1915 c 154 § 10; 1907 c 153 § 47; RRS § 9262.]

Cities and towns: Title 35 RCW.

Public contracts and indebtedness: Title 39 RCW.

8.12.400 Maturity—Interest—Payment. (1) Such bonds shall be issued only in pursuance of ordinances of the city directing the issuance of the same, and by their terms shall be made payable on or before a date not to exceed twelve years from and after their date, which latter date may be fixed by resolution or ordinance by council or other legislative body of said city and shall bear interest at such

rate or rates as may be authorized by the council or other legislative body of said city, which interest shall be payable annually, or semiannually, as may be provided by resolution or ordinance: PROVIDED, That the legislative body of any city of the first class having a population of three hundred thousand inhabitants, or more, issuing any bonds hereunder may by ordinance, passed by unanimous vote, authorize the issuance of such bonds payable on or before a date not to exceed twenty-two years from and after the date of the issue of such bonds, and shall in such ordinance provide that said bonds shall be sold at not less than par and shall bear interest at such rate or rates as may be authorized by the legislative body.

Such bonds shall be in such denominations as shall be provided in the resolution or ordinance authorizing their issuance and shall be numbered from one upwards, consecutively, and each bond and any coupon shall be signed by the mayor and attested by the clerk or comptroller of such city: PROVIDED, HOWEVER, That any coupons may in lieu of being so signed have printed thereon a facsimile of the signature of said officers and each bond shall have the seal of such city affixed thereto and shall refer to the improvement to pay for which the same shall be issued and to the ordinance authorizing the same. Each bond shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created for the payment of the cost and expense of such improvement, and not otherwise. Such bonds shall not be issued in any amount in excess of the cost and expense of the improvement. The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 12; 1970 ex.s. c 56 § 2; 1969 ex.s. c 232 § 64; 1925 ex.s. c 115 § 1; 1915 c 154 § 11; RRS § 9263.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

8.12.410 Sale—Application of proceeds. (1) The bonds issued under the provisions of this chapter or any portion thereof may be sold by any authorized officer or officers of the city at not less than their par value and accrued interest, and the proceeds thereof shall be applied in payment of the awards, interest and costs of the improvement.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 13; 1915 c 154 § 12; RRS § 9264.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

8.12.420 Installment payment of assessments. In all cases where any city shall issue bonds as provided for in this chapter, the whole or any portion of the separate assessments for any such improvement may be paid during the thirty day period provided for in RCW 8.12.430, and thereafter the sum

remaining unpaid may be paid in equal annual installments; the number of which installments shall be less by two than the number of years which the bonds issued to pay for the improvements may run, with interest upon the whole unpaid sum at the bond rate, and each year thereafter one of such installments, together with the interest due thereon and on all installments thereafter to become due, shall be collected in the same manner as shall be provided by law and the resolutions and ordinances of such city for the collection of assessments for such improvements in cases where no bonds are issued: PROVIDED, HOWEVER, That whenever the legislative body of any city of the first class having a population of three hundred thousand inhabitants, or more, shall have, as provided in RCW 8.12.400, by unanimous vote determined that any bonds issued hereunder shall be payable in twenty-two years, such legislative body may by ordinance provide that the principal sum remaining unpaid after the thirty day period specified in RCW 8.12.430 may be paid in ten equal annual installments, beginning with the eleventh year and ending with the twentieth year after said thirty day period, together with interest upon the unpaid installments at the bond rate, and that in each year after the said thirty day period, to and including the tenth year thereafter, one installment of interest on the principal sum of said assessment shall be paid and collected, and that, beginning with the eleventh year after said thirty day period, one installment of the principal, together with the interest due thereon and on all installments thereafter to become due, shall be paid and collected in the same manner as shall be provided by law and the resolutions and ordinances of such city for the collection of assessments for such improvements in cases where no bonds are issued.

In all cases of improvements authorized in this chapter, where, at the time this chapter shall become effective, the notice by the city treasurer of the assessment for such improvement shall not have been published, the city council or other legislative body of such city may by ordinance or resolution provide for the issuance and sale of bonds for such improvement and for the payment of such assessments in installments. [1925 ex.s. c 115 § 2; 1915 c 154 § 13; RRS § 9265.]

8.12.430 Notice to pay—Due date of installments—Penalty—Interest. Whenever the assessment for any such improvement shall be payable in installments, the owner of any lot, tract, or parcel of land or other property charged with any such assessment may pay the assessment or any portion thereof, without interest, within thirty days after such notice of the assessment.

The city treasurer shall, as soon as the certified copy of the assessment roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for two consecutive daily or two consecutive weekly issues, that the roll is in his hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time within thirty days from the date of the first publication of the notice without penalty, interest or costs, and the unpaid balance, if any, may be paid in equal annual installments, or any such assessment may be paid at any time after the first thirty days following the date of the first publication of the notice by paying the entire unpaid portion

thereof with all penalties and costs attached, together with all interest thereon to the date of delinquency of the first installment thereof next falling due.

The notice shall further state that the first installment of the assessment shall become due and payable during the thirty day period succeeding a date one year after the date of first publication of the notice, and annually thereafter each succeeding installment shall become due and payable in like manner.

If the whole or any portion of any assessment remains unpaid after the first thirty day period herein provided for, interest upon the whole unpaid sum shall be charged at the bond rate, and each year thereafter one of the installments, together with interest due upon the whole of the unpaid balance, shall be collected, except that where the assessment is payable in twenty years, installments of interest only shall be collected for the first ten years, as provided in RCW 8.12.420.

Any installment not paid prior to the expiration of the thirty day period during which the installment is due and payable, shall thereupon become delinquent. All delinquent installments shall be subject to a charge of five percent penalty levied upon both principal and interest due on the installments, and all delinquent installments, except installments of interest when the assessment is payable in twenty years, as provided in RCW 8.12.420, shall, until paid, be subject to a charge for interest at the bond rate.

The bonds herein provided for shall not be issued prior to twenty days after the expiration of the thirty days first above mentioned, but may be issued at any time thereafter. In all cases where any sum is paid as herein provided, the same shall be paid to the city treasurer, or to the officer whose duty it is to collect the assessments, and all sums so paid shall be applied solely to the payment of the awards, interest and costs of the improvements or the redemption of the bonds issued therefor. [1985 c 469 § 4; 1925 ex.s. c 115 § 3; 1915 c 154 § 14; RRS § 9266.]

8.12.440 Bond owner may enforce collection. If the city shall fail, neglect or refuse to pay said bonds or to promptly collect any such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall in addition to the principal of such bonds and interest thereon, recover five percent of such sum, together with the costs of such suit. Any number of owners of such bonds for any single improvement may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. [1983 c 167 § 14; 1915 c 154 § 15; RRS § 9267.]

Rules of court: CR 17 through 25.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

8.12.450 Bondholder's remedy limited to assessments. Neither the holder nor owner of any bond issued under the authority of this chapter shall have any claim therefor against the city by which the same is issued, except from the special assessment made for the improvement for which such bond was issued, but his remedy in case of

nonpayment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each bond so issued. [1915 c 154 § 16; RRS § 9268.]

8.12.460 Payment of bonds—Call—Notice. The city treasurer shall pay the interest on the bonds authorized to be issued by this chapter out of the respective local improvement funds from which they are payable. Whenever there shall be sufficient money in any local improvement fund against which bonds have been issued under the provisions of this chapter, over and above sufficient for the payment of interest on all unpaid bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay such bonds. The bonds shall be called in and paid in their numerical order, commencing with number one. The call shall be made by publication in the city official newspaper in its first publication following the delinquency of the installment of the assessment or as soon thereafter as is practicable, and shall state that bonds No. (giving the serial numbers of the bonds called) will be paid on the day the next interest payments on the bonds shall become due, and interest on the bonds shall cease upon such date. [1985 c 469 § 5; 1983 c 167 § 15; 1915 c 154 § 18; RRS § 9270.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

DELINQUENCY—REDEMPTION

8.12.470 Enforcement of collection—Interest on delinquency. Wherever any assessment or installment thereof shall become delinquent, the city treasurer shall enforce the collection thereof in the same manner as provided in chapter 9, Laws of 1933 [as codified in chapter 35.50 RCW], or such other laws as may be hereafter enacted for the foreclosure of delinquent local (physical) improvement assessments. All assessments or installments unpaid at the expiration of the time fixed herein for the payment of the same, shall bear interest at the rate of ten percent per annum, from said date until paid. [1947 c 152 § 1; 1915 c 154 § 7; 1907 c 153 § 34; Rem. Supp. 1947 § 9248. Prior: 1905 c 55 § 34; 1893 c 84 § 34.]

8.12.480 Assessment fund to be kept separate. All moneys collected by the treasurer upon assessments under this chapter shall be kept as a separate fund and shall be used for no other purpose than the redemption of warrants or bonds drawn or issued against the fund. [1907 c 153 § 42; RRS § 9257. Prior: 1905 c 55 § 42; 1893 c 84 § 42.]

8.12.490 Record of payment and redemption. Whenever before the sale of any property the amount of any assessment thereon, with interest and costs accrued thereon, shall be paid to the treasurer, he shall thereupon mark the same paid, with the date of payment thereof on the assessment roll, and whenever after sale of any property for any assessments, the same shall be redeemed, he shall thereupon enter the same redeemed with the date of such redemption on such record. Such entry shall be made on the margin of the record opposite the description of such property. [1907

c 153 § 43; RRS § 9258. Prior: 1905 c 55 § 43; 1893 c 84 § 43.]

8.12.500 Liability of treasurer. If the treasurer shall receive any moneys for assessments, giving a receipt therefor, for any property and afterwards return the same as unpaid, or shall receive the same after making such return, and the same be sold for assessment which has been so paid and receipted for by himself or his clerk or assistant, he and his bond shall be liable to the holder of the certificate given to the purchaser at the sale for the amount of the face of the certificate, and a penalty of fifteen percent additional thereto besides legal interest, to be demanded within two years from the date of the sale and recovered in any court having jurisdiction of the amount, and the city shall in no case be liable to the holder of such certificate. [1907 c 153 § 44; RRS § 9259. Prior: 1905 c 55 § 44; 1893 c 84 § 44.]

MISCELLANEOUS PROVISIONS

8.12.510 Reassessment. If any assessment be annulled or set aside by any court, or be invalid for any cause, a new assessment may be made, and return and like notice given and proceedings had as herein required in relation to the first; and all parties in interest shall have the like rights, and the city council or other legislative body, and the superior court, shall perform the like duties and have like power in relation to any subsequent assessment as are hereby given in relation to the first assessment. [1907 c 153 § 45; RRS § 9260. Prior: 1905 c 55 § 45; 1893 c 84 § 45.]

8.12.520 Lien of assessment—Enforcement by civil action. All the assessments levied by any city under this chapter shall, from the date of the judgment confirming the assessment be a lien upon the real estate upon which the same may be imposed, and such lien shall continue until such assessments are paid; if any proceedings taken for the enforcement thereof, shall be held void or invalid, such city shall provide by ordinance for new proceedings and a new sale for the enforcement thereof in like manner as hereinbefore provided; and in addition to the remedy hereinbefore provided, any city may enforce such lien by civil action in any court of competent jurisdiction in like manner and with like effect as actions for the foreclosure of mortgage. [1907 c 153 § 46; RRS § 9261. Prior: 1905 c 55 § 46; 1893 c 84 § 46.]

Foreclosure actions, real estate mortgages: Chapter 61.12 RCW.

8.12.530 Discontinuance of proceedings. At any time within six months from the date of rendition of the last judgment awarding compensation for any such improvement in the superior court, or if appellate review is sought, then within two months after the final determination of the proceeding in the supreme court or the court of appeals, any such city may discontinue the proceedings by ordinance passed for that purpose before making payment or proceeding with the improvement by paying or depositing in court all taxable costs incurred by any parties to the proceedings up to the time of such discontinuance. If any such improvement be discontinued, no new proceedings shall be undertaken

therefor until the expiration of one year from the date of such discontinuance. [1988 c 202 § 11; 1971 c 81 § 40; 1915 c 154 § 21; 1907 c 153 § 49; RRS § 9274. Prior: 1905 c 55 § 48; 1893 c 84 § 48.]

Severability—1988 c 202: See note following RCW 2.24.050.

8.12.540 Subsequent compensation for property taken or damaged. If any city has heretofore taken or shall hereafter take possession of any land or other property, or has damaged or shall hereafter damage the same for any of the public purposes mentioned in this chapter, or for any other purpose within the authority of such city or town, without having made just compensation therefor, such city or town may cause such compensation to be ascertained and paid to the persons entitled thereto by proceedings taken in accordance with the provisions of this chapter, and the payment of such compensation and costs as shall be adjudged in favor of the persons entitled thereto in such proceedings shall be a defense to any other action for the taking or damaging of such property. [1907 c 153 § 53; RRS § 9278. Prior: 1905 c 55 § 52; 1893 c 84 § 52.]

8.12.550 Regrade assessments. If any street, avenue or alley, or the right to use and control the same for purposes of public travel, shall belong to any city and such city shall establish a grade therefor, which grade requires any cut or fill, damaging abutting property, the damages to arise from the making of such grade may be ascertained in the manner provided in this chapter, but such city may provide that the compensation to be made for such damage, together with the accruing costs, shall be added to the cost of the labor and material necessary for the grading thereof, and shall be paid by assessment upon the property within the local assessment district defined by law or the charter or ordinances of such city in the same manner and to the same extent as other expenses of such improvement are assessed and collected. In such cases it shall not be necessary to procure the appointment of commissioners to take the other proceedings herein provided for making such assessments, but all the proceedings for the assessment and collection of such damages and costs, shall, if so ordained by such city, be governed by the charter provisions, law or ordinances in force in such city for the assessment and collection of the costs of such improvements upon property locally benefited thereby: PROVIDED, HOWEVER, That this section shall not apply to the original grading of such street, avenue or alley. [1909 c 80 § 1; 1907 c 153 § 48; RRS § 9273. Prior: 1905 c 55 § 47; 1893 c 84 § 47.]

8.12.560 Construction as to second class cities. In so far as this chapter relates to cities of the second class, this chapter shall not be deemed to be exclusive or as repealing or superseding any existing law relative to such cities, covering any subject covered by this chapter, but as to such cities, this chapter shall be construed as conferring additional powers and additional remedies, to those now provided by law. [1907 c 153 § 56; RRS § 9279.]

Second class cities

additional powers: RCW 35.23.450.

specific powers enumerated: RCW 35.23.440(46).

8.12.570 Condemnation for military purposes. See RCW 8.04.170.

8.12.580 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.16

EMINENT DOMAIN BY SCHOOL DISTRICTS

Sections

8.16.010	Condemnation authorized for schoolhouse sites.
8.16.020	Petition—Contents.
8.16.030	Notice of petition—Service.
8.16.040	Adjournment of proceedings—Further notice.
8.16.050	Hearing—Finding of necessity—Setting for trial.
8.16.060	Impanelling of jury.
8.16.070	Trial—View by jury.
8.16.080	Verdict.
8.16.090	Ten jurors may render verdict.
8.16.100	Waiver of jury.
8.16.110	Judgment—Payment of award—Decree of appropriation.
8.16.120	Costs.
8.16.130	Appellate review.
8.16.140	Appeal does not delay possession if award paid.
8.16.150	Designation of parties—Fees.
8.16.160	Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests.

Acreeage limitation with respect to district's power of eminent domain: RCW 28A.335.220.

Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

8.16.010 Condemnation authorized for schoolhouse sites. Whenever any school district shall select any real estate as a site for a schoolhouse, or as additional grounds to an existing schoolhouse site, within the district, and the board of school directors of such district and the owner or owners of the site or any part thereof, or addition thereto selected, shall be unable to agree upon the compensation to be paid by such school district to the owner or owners thereof, such school district shall have the right to take and acquire title to such real estate for use as a schoolhouse site or additional site, upon first paying to the owner or owners thereof therefor the value thereof, to be ascertained in the manner hereinafter provided. [1909 p 372 § 1; 1903 c 111 § 1; RRS § 906.]

8.16.020 Petition—Contents. The board of directors of the school district shall present to the superior court of the state of Washington in and for the county wherein is situated the real estate desired to be acquired for schoolhouse site purposes, a petition, reciting that the board of directors of such school district have selected certain real estate, describing it, as a schoolhouse site, or as additional grounds to an existing site, for such school district; that the site so selected, or some part thereof, describing it, belongs to a person or persons, naming him or them, that such school district has offered to give the owner or owners thereof therefor dollars, and that the owner of such real estate has refused to accept the same therefor; that the board of school directors of such school district and the said owner or owners of such real estate are unable to agree upon the compensation to be

paid by such school district to the owner or owners of such real estate therefor, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money by such school district to such owner or owners for the taking of such real estate for the use as a schoolhouse site for such school district; or in case a jury be waived in the manner provided by law in other civil actions in courts of record, then that the compensation to be made as aforesaid, be ascertained and determined by the court, or judge thereof. [1909 p 372 § 2; 1903 c 111 § 2; RRS § 907.]

8.16.030 Notice of petition—Service. A notice, stating the time and place when and where such petition shall be presented to the court, or the judge thereof, together with a copy of such petition, shall be served on each and every person named therein as owner, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such notice shall be signed by the prosecuting attorney of the county wherein the real estate sought to be taken is situated, and may be served in the same manner as summons in a civil action in such superior court is authorized by law to be served. [1909 p 373 § 3; 1903 c 111 § 3; RRS § 908.]

Publication of notice in eminent domain proceedings: RCW 4.28.120.

8.16.040 Adjournment of proceedings—Further notice. The court may, upon application of the petitioner or of any owner of said real estate, or any person interested therein, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interests may be affected by such proceedings. [1909 p 373 § 4; 1903 c 111 § 4; RRS § 909.]

8.16.050 Hearing—Finding of necessity—Setting for trial. At the time and place appointed for the hearing of such petition, or to which the same may have been adjourned, if the court shall find that all parties interested in such real estate sought to be taken have been duly served with notice and a copy of the petition as above prescribed, and shall further find that such real estate sought to be taken is required and necessary for the purposes of a schoolhouse site, or as an addition to a schoolhouse site, for such school district, the court shall make an order reciting such findings, and shall thereupon set the hearing of such petition down for trial by a jury, as other civil actions are tried, unless a jury is waived in the manner provided by law in other civil actions. [1909 p 373 § 5; RRS § 910. Prior: 1903 c 111 § 5.]

8.16.060 Impanelling of jury. The jury impaneled to hear the evidence and determine the compensation to be paid to the owner or owners of such real estate desired for such schoolhouse site purpose shall consist of twelve persons unless a less number be agreed upon, and shall be selected, impaneled and sworn in the same manner that juries in other civil actions are selected, impaneled and sworn, provided a juror may be challenged for cause on the ground that he is a taxpayer of the district seeking the condemnation of any real estate. [1909 p 373 § 6; 1903 c 111 § 6; RRS § 911.]

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

Juries in courts of limited jurisdiction: RCW 2.36.050.

8.16.070 Trial—View by jury. A judge of the superior court shall preside at the trial and witnesses may be examined in behalf of either party to the proceedings, as in other civil actions, and upon the request of all the parties interested in such proceedings the court shall cause the jury impaneled to hear the same, to view the premises sought to be taken, and upon the request of any less number of the persons interested in the proceedings, the court may cause the jury to view the premises, pending the hearing of the case. [1909 p 374 § 7; 1903 c 111 § 7; RRS § 912.]

Trial, civil actions, view by jury: RCW 4.44.270.

8.16.080 Verdict. Upon the close of the evidence, and the argument of counsel, the court shall instruct the jury as to the matters submitted to them, and the law pertaining thereto, whereupon the jury shall retire and deliberate and determine upon the amount of compensation in money that shall be paid to the owner or owners of the real estate sought to be taken for such schoolhouse site purposes therefor, which shall be the amount found by the jury to be the fair and full value of such premises; and when the jury shall have determined upon their verdict, they shall return the same to the court as in other civil actions. [1909 p 374 § 8; 1903 c 111 § 8; RRS § 913.]

Trial, civil actions, rendering of verdict: Chapter 4.44 RCW.

8.16.090 Ten jurors may render verdict. When ten of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the foreman, and the verdict so agreed upon shall be and stand as the verdict of the jury. [1909 p 374 § 9; 1903 c 111 § 9; RRS § 914.]

Verdict, civil actions, ten jurors may render: RCW 4.44.380.

8.16.100 Waiver of jury. In case a jury is waived, the compensation that shall be paid for the premises taken shall be determined by the court and the proceedings shall be the same as in the trial of issues of fact by the court in other civil actions. [1909 p 374 § 10; 1903 c 111 § 10; RRS § 915.]

8.16.110 Judgment—Payment of award—Decree of appropriation. Upon the verdict of the jury, or upon the determination by the court of the compensation to be paid for the property sought to be taken as herein provided, judgment shall be entered against such school district in favor of the owner or owners of the real estate sought to be taken, for the amount found as compensation therefor, and upon the payment of such amount by such school district to the clerk of such court for the use of the owner or owners of, and the persons interested in the premises sought to be taken, the court shall enter a decree of appropriation of the real estate sought to be taken, thereby vesting the title to the same in such school district; and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated, and shall be recorded by such auditor like a deed of

real estate, and with like effect. The money so paid to the clerk of the court shall be by him paid to the person or persons entitled thereto, upon the order of the court. [1909 p 374 § 11; 1903 c 111 § 11; RRS § 916.]

Recording of deeds of real estate: Title 65 RCW.

8.16.120 Costs. All the costs of such proceedings in the superior court shall be paid by the school district initiating such proceedings. [1909 p 375 § 12; 1903 c 111 § 12; RRS § 917.]

8.16.130 Appellate review. Either party may seek appellate review of the judgment for compensation awarded for the property taken, entered in the superior court, to the supreme court or the court of appeals of the state within sixty days after the entry of the judgment, and such review shall bring before the supreme court or the court of appeals the justness of the compensation awarded for the property taken, and any error occurring on the hearing of such matter, prejudicial to the party appealing: PROVIDED, HOWEVER, That if the owner or owners of the land taken accepts the sum awarded by the jury or court, he or they shall be deemed thereby to have waived appellate review. [1988 c 202 § 12; 1971 c 81 § 41; 1909 p 375 § 13; RRS § 918. Prior: 1903 c 111 § 13.]

Severability—1988 c 202: See note following RCW 2.24.050.

8.16.140 Appeal does not delay possession if award paid. An appeal from such judgment by the owner or owners of the land sought to be taken, shall not have the effect to preclude the school district from taking possession of the premises sought, pending the appeal, provided the amount of the judgment against the school district shall have been paid in to the clerk of the court, as hereinbefore provided. [1909 p 375 § 14; 1903 c 111 § 14; RRS § 919.]

8.16.150 Designation of parties—Fees. In all proceedings under this chapter the school district seeking to acquire title to real estate for a schoolhouse site, shall be denominated plaintiff, and all other persons interested therein shall be denominated defendants; and in all such proceedings the clerk of the superior court wherein any such proceeding is brought shall charge nothing for his services, except in taking an appeal from the judgment entered in the superior court. [1909 p 375 § 15; 1903 c 111 § 15; RRS § 920.]

8.16.160 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.20

EMINENT DOMAIN BY CORPORATIONS

Sections

8.20.010	Petition for appropriation—Contents.
8.20.020	Notice—Contents—Service—Publication.
8.20.060	Adjournment of proceedings—Further notice.
8.20.070	Adjudication of public use or private way of necessity.
8.20.080	Trial, how conducted.
8.20.090	Judgment—Decree of appropriation—Recording.

- 8.20.100 Payment of damages—Effect—Appellate review.
- 8.20.110 Claimants, payment of—Conflicting claims.
- 8.20.120 Appellate review.
- 8.20.130 Prosecution of work pending appeal—Bond.
- 8.20.140 Appropriation of railway right-of-way through canyon, pass, or defile.
- 8.20.150 Prior entry with consent—Condemnation avoids ouster.
- 8.20.160 Three-year occupancy—Condemnation avoids ouster.
- 8.20.170 Suit for compensation by owner equivalent to condemnation.
- 8.20.180 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests.

Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

Corporations, certain types: RCW 81.36.010.

Corporations conveying water: RCW 90.16.100.

Easements over public lands: Chapter 79.36 RCW.

Electric light and power companies: RCW 80.32.060 through 80.32.080.

Eminent domain affecting corporations other than municipal: State Constitution Art. 12 § 10.

Gas and oil pipelines: RCW 81.88.020.

Grade crossing eliminations, appropriation for: RCW 81.53.180.

Mining companies: RCW 78.04.010.

Railroad companies, appropriation by: RCW 81.36.010.

Railroads, rights of way: RCW 81.52.040, 81.53.180.

State university—Rights-of-way to railroads: RCW 28B.20.330.

Street and electric railroads: RCW 81.64.040.

Telecommunications companies: RCW 80.36.010, State Constitution Art. 12 § 19.

Underground natural gas storage: RCW 80.40.030, 80.40.040.

Water power companies: RCW 90.16.030.

8.20.010 Petition for appropriation—Contents. Any corporation authorized by law to appropriate land, real estate, premises or other property for right-of-way or any other corporate purposes, may present to the superior court of the county in which any land, real estate, premises or other property sought to be appropriated shall be situated, or to the judge of such superior court in any county where he has jurisdiction or is holding court, a petition in which the land, real estate, premises or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by such corporation, to such owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such lands, real estate, premises or other property, or in case a jury be waived as in other civil cases in courts of record in the manner prescribed by law, then that the compensation to be made, as aforesaid, be ascertained and determined by the court, or judge thereof. [1890 p 294 § 1. Prior: 1888 p 58 § 1; RRS § 921.]

8.20.020 Notice—Contents—Service—Publication. A notice, stating briefly the objects of the petition, and containing a description of the land, real estate, premises or property sought to be appropriated, and stating the time and place, when and where the same will be presented to the

court, or the judge thereof, shall be served on each and every person named therein as owner, encumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state; or, in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or, in case of a foreign corporation, at its principal place of business in this state, with some person of more than sixteen years of age. In case of domestic corporations, such service shall be made upon the president, secretary or other director or trustee of such corporation. In case of persons under the age of eighteen years, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such person; in case of idiots, lunatics or distracted persons, on their guardian, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated is state, school or county land, the notice shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated is situated. In all cases where the owner or person claiming an interest in such real or other property, is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of the agent or attorney of the corporation shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown, or cannot be ascertained by such deponent, service may be made by publication thereof in any newspaper published in the county where such lands are situated once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated. And such publication shall be deemed service upon each of such nonresident person or persons whose residence is unknown. Such notice shall be signed by the president, manager, secretary or attorney of the corporation; and in case the proceedings provided for in RCW 8.20.010 through 8.20.140 are instituted by the owner or any other person or party interested in the land, real estate, or other property sought to be appropriated, then such notice shall be signed by such owner, person or party interested, or his, her or its attorney. Such notice may be served by any competent person eighteen years of age or over. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, orders and other papers in the proceedings authorized by RCW 8.20.010 through 8.20.140 may be made as the superior court or the judge thereof may direct. [1971 ex.s. c 292 § 9; 1890 p 295 § 2; RRS § 922. Prior: 1888

p 58 § 2. Formerly RCW 8.20.020, 8.20.030, 8.20.040, 8.20.050.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Publication of

legal notices: Chapter 65.16 RCW.

notice in eminent domain proceedings: RCW 4.28.120.

Service of process where state land is involved: RCW 8.28.010.

8.20.060 Adjournment of proceedings—Further notice. The court or judge may, upon application of the petitioner or of any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected. [1890 p 297 § 3; RRS § 924. Prior: 1888 p 60 § 3.]

8.20.070 Adjudication of public use or private way of necessity. At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises, or other property described in said petition, have been duly served with said notice as above prescribed, and shall be further satisfied by competent proof that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, or is for a private use for a private way of necessity, and that the public interest requires the prosecution of such enterprise, or the private use is for a private way of necessity, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the purposes of such enterprise, the court or judge thereof may make an order, to be recorded in the minutes of said court, directing that a jury be summoned, or called, in the manner provided by law, to ascertain the compensation which shall be made for the land, real estate, premises or other property sought to be appropriated, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. [1927 c 88 § 1; 1897 c 46 § 1; 1890 p 297 § 4; RRS § 925. Prior: 1888 p 60 § 4.]

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

Private ways of necessity: Chapter 8.24 RCW.

8.20.080 Trial, how conducted. A judge of the superior court shall preside at the trial which shall be held at such time as the court or the judge thereof may direct, at the courthouse in the county where the land, real estate, premises or other property sought to be appropriated is situated, and the jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, or to any county, by reason of the appropriation and use of such land, real estate, premises or other property by such corporation as aforesaid for any and all corporate purposes, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the purpose of such enterprise, irrespective of any benefit from any improvement proposed by such

corporation. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in such proceedings shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action. Upon the verdict of the jury, judgment shall be entered for the amount of the damages awarded to such owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property. In case a jury is waived as in civil cases in courts of record in the manner prescribed by law, the compensation to be paid for the property sought to be appropriated shall be ascertained and determined by the court or the judge thereof, and the proceedings shall be the same as in trials of an issue of fact by the court. [1890 p 297 § 5; RRS § 926.]

Witnesses in civil actions

compelling attendance: Chapter 5.56 RCW.

examination: Title 5 RCW.

8.20.090 Judgment—Decree of appropriation—Recording. At the time of rendering judgment for damages, whether upon default or trial, if the damages awarded be then paid, or upon their payment, if not paid at the time of rendering such judgment, the court or judge thereof shall also enter a judgment or decree of appropriation of the land, real estate, premises, right-of-way or other property sought to be appropriated, thereby vesting the legal title to the same in the corporation seeking to appropriate such land, real estate, premises, right-of-way or other property for corporate purposes. Whenever said judgment or decree of appropriation shall affect lands, real estate or other premises, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the county where the said land, real estate or other premises are situated, and shall be recorded by said auditor like a deed of real estate and with like effect. If the title to said land, real estate, premises or other property attempted to be acquired is found to be defective from any cause, the corporation may again institute proceedings to acquire the same, as in RCW 8.20.010 through 8.20.140 provided. [1891 c 46 § 1; 1890 p 298 § 6; RRS § 927.]

Rules of court: CR 54, 58.

Recording of deeds of real estate: Title 65 RCW.

8.20.100 Payment of damages—Effect—Appellate review. Upon the entry of judgment upon the verdict of the jury or the decision of the court or judge thereof, awarding damages as hereinbefore prescribed, the petitioner, or any officer of, or other person duly appointed by said corporation, may make payment of the damages assessed to the parties entitled to the same, and of the costs of the proceedings, by depositing the same with the clerk of said superior court, to be paid out under the direction of the court or judge thereof; and upon making such payment into the court of the damages assessed and allowed, and of the costs, to any land, real estate, premises or other property mentioned in said petition, such corporation shall be released and discharged from any and all further liability therefor, unless upon appellate review the owner or other person or party interested shall recover a greater amount of damages; and in that

case only for the amount in excess of the sum paid into said court, and the costs of appellate review: PROVIDED, That in case of review by the supreme court or the court of appeals of the state by any party to the proceedings, the money so paid into the superior court by such corporation as aforesaid, shall remain in the custody of said court until the final determination of the proceedings by the said supreme court or the court of appeals. [1988 c 202 § 13; 1971 c 81 § 42; 1890 p 299 § 7; RRS § 929.]

Severability—1988 c 202: See note following RCW 2.24.050.

8.20.110 Claimants, payment of—Conflicting claims. Any person, corporation, state or county, claiming to be entitled to any money paid into court, as provided in RCW 8.20.010 through 8.20.140 may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate, premises or other property specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced and the conflicting claims to such land, real estate, premises or other property be determined according to law. [1890 p 299 § 8; RRS § 930. Prior: 1888 p 61 § 8.]

8.20.120 Appellate review. Either party may seek appellate review of the judgment for damages entered in the superior court within thirty days after the entry of judgment as aforesaid and such review shall bring before the supreme court or the court of appeals the propriety and justness of the amount of damages in respect to the parties to the review: PROVIDED, HOWEVER, That no bond shall be required of any person interested in the property sought to be appropriated by such corporation, but in case the corporation appropriating such land, real estate, premises or other property is appellant, it shall give a bond like that prescribed in RCW 8.20.130, to be executed, filed and approved in the same manner: AND PROVIDED FURTHER, That if the owner of the land, real estate, premises or other property accepts the sum awarded by the jury, the court or the judge thereof, he shall be deemed thereby to have waived conclusively appellate review, and final judgment by default may be rendered in the superior court as in other cases. [1988 c 202 § 14; 1971 c 81 § 43; 1890 p 300 § 9; RRS § 931. Prior: 1888 p 61 § 9.]

Severability—1988 c 202: See note following RCW 2.24.050.

8.20.130 Prosecution of work pending appeal—Bond. The construction of any railway surface tramway, elevated cable tramway, or canal, or the prosecution of any works or improvements by any corporation as aforesaid shall not be hindered, delayed or prevented by the prosecution of the appeal of any party to the proceedings: PROVIDED, The corporation aforesaid shall execute and file with the clerk of the court in which the appeal is pending a bond to be approved by said clerk, with sufficient sureties, condi-

tioned that the persons executing the same shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy. [1897 c 46 § 2; 1890 p 300 § 10; RRS § 932. Prior: 1888 p 62 § 10.]

8.20.140 Appropriation of railway right-of-way through canyon, pass, or defile. Any railroad company whose right-of-way passes through any canyon, pass or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass or defile for the purpose of its road in common with the road first located or the crossing of other railroads at grade, and any railroad company authorized by law to appropriate land, real estate, premises or other property for right-of-way or any other corporate purpose may present a petition, in the manner and form hereinbefore provided, for the appropriation of a right-of-way through any canyon, pass or defile for the purpose of its road where right-of-way has already been located, condemned or occupied by some other railroad company through such canyon, pass or defile for the purpose of its road, and thereupon, like proceedings shall be had upon such petition as herein provided in other cases; and at the time of rendering judgment for damages, whether upon default or trial, the court or judge thereof shall enter a judgment or decree authorizing said railroad company to occupy and use said right-of-way, roadbed and track, if necessary, in common with the railroad company or companies already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common. [1890 p 301 § 12; RRS § 933.]

8.20.150 Prior entry with consent—Condemnation avoids ouster. No corporation authorized by law to condemn property for public use, which has heretofore entered or shall hereafter enter upon property for a public use with the consent of the record owner or the person or corporation in possession, shall be ousted from such possession or prevented from continuing the putting of such property to public use if before entry of judgment of ouster it shall institute proceedings in condemnation to acquire such property for public use, and shall thereafter prosecute the same in good faith and pay any compensation which may be awarded therein. [1927 c 219 § 1; RRS § 921-1.]

Severability—1927 c 219: "If any section, provision or clause in this act be adjudged invalid the remainder of the act shall nevertheless remain valid." [1927 c 219 § 4.] This applies to RCW 8.20.150 through 8.20.170.

8.20.160 Three-year occupancy—Condemnation avoids ouster. No corporation which shall have been or shall be in possession of property put to public use for three or more years, and while continuing to put such property to public use shall be ousted therefrom or prevented from continuing such use if prior to the entry of any judgment of ouster it shall institute condemnation proceedings to acquire such property for public use, and shall thereafter prosecute the same in good faith and pay any compensation awarded therein. [1927 c 219 § 2; RRS § 921-2.]

8.20.170 Suit for compensation by owner equivalent to condemnation. Nothing in RCW 8.20.150 through

8.20.170 shall prevent the owner of any such property suing for and recovering compensation for such property without instituting suit or proceedings to oust such corporation therefrom, and upon payment of the amount awarded such owner title to the property shall vest in such corporation as effectually as if acquired by proceedings in condemnation. [1927 c 219 § 3; RRS § 921-3.]

8.20.180 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.24

PRIVATE WAYS OF NECESSITY

Sections

8.24.010	Condemnation authorized—Private way of necessity defined.
8.24.015	Joinder of surrounding property owners authorized.
8.24.025	Selection of route—Criteria.
8.24.030	Procedure for condemnation—Fees and costs.
8.24.040	Logging road must carry products of condemnees.
8.24.050	Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests.

Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

Adjudication of public use or private way of necessity: RCW 8.20.070.

8.24.010 Condemnation authorized—Private way of necessity defined. An owner, or one entitled to the beneficial use, of land which is so situate with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity or to construct and maintain any drain, flume or ditch, on, across, over or through the land of such other, for agricultural, domestic or sanitary purposes, may condemn and take lands of such other sufficient in area for the construction and maintenance of such private way of necessity, or for the construction and maintenance of such drain, flume or ditch, as the case may be. The term "private way of necessity," as used in this chapter, shall mean and include a right of way on, across, over or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, logging roads, flumes, canals, ditches, tunnels, tramways and other structures upon, over and through which timber, stone, minerals or other valuable materials and products may be transported and carried. [1913 c 133 § 1; RRS § 936-1. Prior: 1895 c 92 § 1. Formerly RCW 8.24.020, part.]

8.24.015 Joinder of surrounding property owners authorized. In any proceeding for the condemnation of land for a private way of necessity, the owner of any land surrounding and contiguous to the property which land might contain a site for the private way of necessity may be joined as a party. [1988 c 129 § 1.]

8.24.025 Selection of route—Criteria. If it is determined that an owner, or one entitled to the beneficial use of land, is entitled to a private way of necessity and it is determined that there is more than one possible route for the

private way of necessity, the selection of the route shall be guided by the following priorities in the following order:

(1) Nonagricultural and nonsilvicultural land shall be used if possible.

(2) The least-productive land shall be used if it is necessary to cross agricultural land.

(3) The relative benefits and burdens of the various possible routes shall be weighed to establish an equitable balance between the benefits to the land for which the private way of necessity is sought and the burdens to the land over which the private way of necessity is to run. [1988 c 129 § 2.]

8.24.030 Procedure for condemnation—Fees and costs. The procedure for the condemnation of land for a private way of necessity or for drains, flumes or ditches under the provisions of this chapter shall be the same as that provided for the condemnation of private property by railroad companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation by railroad companies.

In any action brought under the provisions of this chapter for the condemnation of land for a private way of necessity, reasonable attorneys' fees and expert witness costs may be allowed by the court to reimburse the condemnee. [1988 c 129 § 3; 1913 c 133 § 2; RRS § 936-2. Prior: 1895 c 92 § 2.]

Condemnation by corporations: Chapter 8.20 RCW.

Railroads—Corporate powers and duties: RCW 81.36.010.

Special railroad eminent domain proceedings:

appropriation of railway right-of-way through canyon, pass or defile: RCW 8.20.140.

extensions, branch lines: RCW 81.36.060.

railroad crossings: RCW 81.53.180.

spur tracks—Limit as to eminent domain: RCW 81.52.040.

state university—Rights-of-way to railroads: RCW 28B.20.330.

8.24.040 Logging road must carry products of condemnees. That any person or corporation availing themselves of the provisions of this chapter for the purpose of acquiring a right-of-way for a logging road, as a condition precedent, contract and agree to carry and convey over such roads to either termini thereof any of the timber or other produce of the lands through which such right is acquired at any and all times, so long as said road is maintained and operated, and at reasonable prices; and a failure so to do shall terminate such right-of-way. The reasonableness of the rate shall be subject to determination by the utilities and transportation commission. [1913 c 133 § 3; RRS § 936-3. Prior: 1895 c 92 § 3.]

8.24.050 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.25

ADDITIONAL PROVISIONS APPLICABLE TO
EMINENT DOMAIN PROCEEDINGS

Sections	
8.25.010	Pretrial statement of compensation to be paid in event of settlement.
8.25.020	Payment to defray costs of evaluating offer—Amount.
8.25.070	Award of attorney's fees and witness fees to condemnee—Conditions to award.
8.25.073	Award of costs in air space corridor acquisitions—Conditions.
8.25.075	Costs—Award to condemnee or plaintiff—Conditions.
8.25.120	Conclusions of appraisers—Order for production and exchange between parties.
8.25.200	Acquisition of property subject to unpaid or delinquent local improvement assessments—Payment.
8.25.210	Special benefits to remaining property—Purpose.
8.25.220	Special benefits to remaining property—Options—Election by owner—Consent to creation of lien.
8.25.230	Special benefits to remaining property—Satisfaction or release of lien—Trial—Expiration of lien by operation of law.
8.25.240	Special benefits to remaining property—Judgment—Maximum amounts—Offsets—Interest.
8.25.250	Special benefits to remaining property—Attorney fees—Witness fees.
8.25.260	Special benefits to remaining property—Lien foreclosure proceedings—Stay.
8.25.270	Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests.
8.25.280	Valuation of public water systems.

Publication of notice: RCW 4.28.120.

8.25.010 Pretrial statement of compensation to be paid in event of settlement. In all actions for the condemnation of property, or any interest therein, at least thirty days prior to the date set for trial of such action the condemnor shall serve a written statement showing the amount of total just compensation to be paid in the event of settlement on each condemnee who has made an appearance in the action. [1965 ex.s. c 125 § 1.]

8.25.020 Payment to defray costs of evaluating offer—Amount. There shall be paid by the condemnor in respect of each parcel of real property acquired by eminent domain or by consent under threat thereof, in addition to the fair market value of the property, a sum equal to the various expenditures actually and reasonably incurred by those with an interest or interests in said parcel in the process of evaluating the condemnor's offer to buy the same, but not to exceed a total of two hundred dollars. In the case of multiple interests in a parcel, the division of such sum shall be determined by the court or by agreement of the parties. [1967 ex.s. c 137 § 1; 1965 ex.s. c 125 § 2.]

8.25.070 Award of attorney's fees and witness fees to condemnee—Conditions to award. (1) Except as otherwise provided in subsection (3) of this section, if a trial is held for the fixing of the amount of compensation to be awarded to the owner or party having an interest in the property being condemned, the court shall award the condemnee reasonable attorney's fees and reasonable expert witness fees in the event of any of the following:

(a) If condemnor fails to make any written offer in settlement to condemnee at least thirty days prior to commencement of said trial; or

(b) If the judgment awarded as a result of the trial exceeds by ten percent or more the highest written offer in settlement submitted to those condemnees appearing in the action by condemnor in effect thirty days before the trial.

(2) The attorney general or other attorney representing a condemnor in effecting a settlement of an eminent domain proceeding may allow to the condemnee reasonable attorney fees.

(3) Reasonable attorney fees and reasonable expert witness fees authorized by this section shall be awarded only if the condemnee stipulates, if requested to do so in writing by the condemnor, to an order of immediate possession and use of the property being condemned within thirty days after receipt of the written request, or within fifteen days after the entry of an order adjudicating public use whichever is later and thereafter delivers possession of the property to the condemnor upon the deposit in court of a warrant sufficient to pay the amount offered as provided by law. In the event, however, the condemnor does not request the condemnee to stipulate to an order of immediate possession and use prior to trial, the condemnee shall be entitled to an award of reasonable attorney fees and reasonable expert witness fees as authorized by subsections (1) and (2) of this section.

(4) Reasonable attorney fees as authorized in this section shall not exceed the general trial rate, per day customarily charged for general trial work by the condemnee's attorney for actual trial time and his or her hourly rate for preparation. Reasonable expert witness fees as authorized in this section shall not exceed the customary rates obtaining in the county by the hour for investigation and research and by the day or half day for trial attendance.

(5) In no event may any offer in settlement be referred to or used during the trial for any purpose in determining the amount of compensation to be paid for the property. [1984 c 129 § 1; 1971 ex.s. c 39 § 3; 1967 ex.s. c 137 § 3.]

Court appointed experts: Rules of court: ER 706.

8.25.073 Award of costs in air space corridor acquisitions—Conditions. A superior court having jurisdiction of a proceeding instituted by a condemnor to acquire an air space corridor together with other property rights shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees, subject to the provisions of subsection (4) of RCW 8.25.070, if—

(1) there is a final adjudication that the condemnor cannot acquire the air space corridor or other property rights by condemnation; or

(2) the proceeding is abandoned by the condemnor. [1971 ex.s. c 39 § 2.]

8.25.075 Costs—Award to condemnee or plaintiff—Conditions. (1) A superior court having jurisdiction of a proceeding instituted by a condemnor to acquire real property shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees if:

(a) There is a final adjudication that the condemnor cannot acquire the real property by condemnation; or

(b) The proceeding is abandoned by the condemnor.

(2) In effecting a settlement of any claim or proceeding in which a claimant seeks an award from an acquiring agency for the payment of compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner, the attorney general or other attorney representing the acquiring agency may include in the settlement amount, when appropriate, costs incurred by the claimant, including reasonable attorneys' fees and reasonable expert witness fees.

(3) A superior court rendering a judgment for the plaintiff awarding compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner shall award or allow to such plaintiff costs including reasonable attorney fees and reasonable expert witness fees, but only if the judgment awarded to the plaintiff as a result of trial exceeds by ten percent or more the highest written offer of settlement submitted by the acquiring agency to the plaintiff at least thirty days prior to trial.

(4) Reasonable attorney fees and expert witness fees as authorized in this section shall be subject to the provisions of subsection (4) of RCW 8.25.070 as now or hereafter amended. [1977 ex.s. c 72 § 1; 1971 ex.s. c 240 § 21.]

Severability—1971 ex.s. c 240: See RCW 8.26.900.

8.25.120 Conclusions of appraisers—Order for production and exchange between parties. After the commencement of a condemnation action, upon motion of either the condemnor or condemnee, the court may order, upon such terms and conditions as are fair and equitable the production and exchange of the written conclusions of all the appraisers of the parties as to just compensation owed to the condemnee, as prepared for the purpose of the condemnation action, and the comparable sales, if any, used by such appraisers. The court shall enter such order only after assurance that there will be mutual, reciprocal and contemporaneous disclosures of similar information between the parties. [1969 ex.s. c 236 § 8.]

8.25.200 Acquisition of property subject to unpaid or delinquent local improvement assessments—Payment. See RCW 79.44.190.

8.25.210 Special benefits to remaining property—Purpose. It is the purpose of *this 1974 act to provide procedures whereby more just and equitable results are accomplished when real property has been condemned for a highway, road, or street and an award made which is subject to a setoff for benefits inuring to the condemnee's remaining land. [1974 ex.s. c 79 § 1.]

*Reviser's note: "this 1974 act" consists of RCW 8.25.210, 8.25.220, 8.25.230, 8.25.240, 8.25.250, and 8.25.260.

8.25.220 Special benefits to remaining property—Options—Election by owner—Consent to creation of lien. Whenever land, real estate, premises or other property is to be taken or damaged for a highway, road, or street and the amount offered as just compensation includes a setoff in recognition of special benefits accruing to a remainder

portion of the property the property owner shall elect one of the following options:

(1) Trial on the question of just compensation which shall finally determine the amount of just compensation; or

(2) Acceptance of the offered amount as a final determination of just compensation; or

(3) Demand the full amount of the fair market value of any property taken plus the amount of damages if any caused by such acquisition to a remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property as those several amounts are agreed to by the parties; or

(4) Demand a trial before a jury unless jury be waived to establish the fair market value of any property taken and the amount of damages if any caused by such acquisition to a remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property.

The selection of the option set forth in subsections (3) or (4) of this section is subject to the consent by the property owner to the creation and recording of a lien against the remainder in the amount of the fair market value of any property taken plus the amount of damages caused by such acquisition to the remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property, plus interest as it accrues. [1974 ex.s. c 79 § 2.]

8.25.230 Special benefits to remaining property—Satisfaction or release of lien—Trial—Expiration of lien by operation of law. A lien established as provided in RCW 8.25.220 shall be satisfied or released by:

(1) Agreement between the parties to that effect; or

(2) Payment of the lien amount plus interest at the rate of five percent per annum; or

(3) Payment of the amount of offsetting special benefits as established pursuant to RCW 8.25.220(3) plus interest at the rate of five percent per annum within four years of the date of acquisition; or

(4) Satisfaction of a judgment lien entered as a result of a trial before a jury unless jury be waived to establish the change in value of the remainder of the original parcel because of the construction of the project involved: PROVIDED, That if the result of the trial is to find no special benefits then the lien is extinguished by operation of law. Trial may be had on the petition of any party to the superior court of the county wherein the subject remainder lies after notice of intent to try the matter of special benefits has been served on all persons having an interest in the subject remainder. Such notice shall be filed with the clerk of the superior court and personally served upon all persons having an interest in the subject remainder. Filing a notice of intent to try the matter of special benefits shall be accompanied by a fee in the amount paid when filing a petition in condemnation.

(5) Upon expiration of six years time from the date of acquisition without commencement of proceedings to foreclose the lien or try the matter of special benefits to the remainder of the property, the lien shall terminate by operation of law. [1974 ex.s. c 79 § 3.]

8.25.240 Special benefits to remaining property—Judgment—Maximum amounts—Offsets—Interest. A judgment entered as a result of a trial on the matter of special benefits shall not exceed the previously established sum of (1) the fair market value of any property taken; (2) the amount of damages if any to a remainder of the property, without offsetting against either of them the amount of any special benefits accruing to a remainder of the property; (3) the interest at five percent per annum accrued thereon to the date of entry of the judgment. [1974 ex.s. c 79 § 4.]

8.25.250 Special benefits to remaining property—Attorney fees—Witness fees. Attorney fees and expert witness fees of the condemnee may be allowed by the attorney general or other attorney representing a condemnor to the extent provided in RCW 8.25.070 and shall be awarded by the court as authorized by this section to the extent provided in RCW 8.25.070 for trial and trial preparation: (1) In the event a trial is held as authorized by RCW 8.25.220 except the judgment awarded to the condemnor must exceed by ten percent or more the highest written offer in settlement of the issue to be determined by trial submitted by the condemnor to those condemnees appearing in the action at least thirty days prior to commencement of the trial; (2) in the event of a trial on the matter of special benefits as authorized by RCW 8.25.230(4) except the judgment awarded to the condemnor must be no more than ninety percent of the lowest written offer in settlement submitted by the condemnor to the condemnees appearing in the action at least thirty days prior to commencement of the trial on the matter of special benefits. [1974 ex.s. c 79 § 5.]

8.25.260 Special benefits to remaining property—Lien foreclosure proceedings—Stay. A condemnor may foreclose the lien authorized by RCW 8.25.220 by bringing an action and applying for summary judgment pursuant to civil rule 56 and may execute first upon the remainder property but such proceedings shall not be commenced before five years time has passed from the date of acquisition by the condemnor. A property owner may stay proceedings to enforce the lien authorized by RCW 8.25.220 by commencement of an action to try the matter of special benefits. [1974 ex.s. c 79 § 6.]

8.25.270 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. When it shall appear in any petition or otherwise at any time during the proceedings for condemnation brought pursuant to chapters 8.04, 8.08, 8.12, 8.16, 8.20, and 8.24 RCW, each as now or hereafter amended, that any infant, or allegedly incompetent or disabled person is interested in any property that is to be taken or damaged, the court shall appoint a guardian ad litem for such infant or allegedly incompetent or disabled person to appear and assist in his, her or their defense unless a guardian or limited guardian has previously been appointed, in which case the duty to appear and assist shall be delegated to the properly qualified guardian or limited guardian. The court shall make such orders or decrees as it shall deem necessary to protect and secure the interest of the infant or allegedly incompetent or disabled person in the property sought to be condemned or

the compensation which shall be awarded therefore. [1977 ex.s. c 80 § 12.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

8.25.280 Valuation of public water systems. Consistent with standard appraisal practices, the valuation of a public water system as defined in RCW 70.119A.020 shall reflect the cost of system improvements necessary to comply with health and safety rules of the state board of health and applicable regulations developed under chapter 43.20, 43.20A, or 70.116 RCW. [1990 c 133 § 9.]

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Chapter 8.26

RELOCATION ASSISTANCE—REAL PROPERTY ACQUISITION POLICY

Sections

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8.26.035	Payment for moving and related expenses.
8.26.045	Payment for replacement housing for homeowners.
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8.26.065	Relocation assistance advisory services.
8.26.075	Assurance of availability of housing—Exceptions.
8.26.085	Lead agency's rule-making authority—Compliance date.
8.26.095	Contracts for services—Use of services of other agencies.
8.26.105	Use of funds.
8.26.115	Relocation assistance payments not income or resources.
8.26.180	Acquisition procedures.
8.26.190	Acquisition of buildings, structures, and improvements.
8.26.200	Expenses incidental to transfer of right, title, or interest to the acquiring agency.
8.26.205	Effect on certain property acquisitions.
8.26.210	Award of costs, attorney's fees, witness fees—Conditions.
8.26.900	Severability—1971 ex.s. c 240.
8.26.901	Severability—Conflict with federal requirements—1988 c 90.
8.26.910	Effective date—1971 ex.s. c 240.

8.26.010 Purposes and scope. (1) The purposes of this chapter are:

(a) To establish a uniform policy for the fair and equitable treatment of persons displaced as a direct result of public works programs of the state and local governments in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons;

(b) To encourage and expedite the acquisition of real property for public works programs by agreements with owners, to reduce litigation and relieve congestion in the courts, to assure consistent treatment for owners affected by state and local programs, and to promote public confidence in state and local land acquisition practices.

(2) Notwithstanding the provisions and limitations of this chapter requiring a local public agency to comply with the provisions of this chapter, the governing body of any local public agency may elect not to comply with the provisions of RCW 8.26.035 through 8.26.115 in connection with a program or project not receiving federal financial assistance. Any person who has the authority to acquire

property by eminent domain under state law may elect not to comply with RCW 8.26.180 through 8.26.200 in connection with a program or project not receiving federal financial assistance.

(3) Any determination by the head of a state agency or local public agency administering a program or project as to payments under this chapter is subject to review pursuant to chapter 34.05 RCW; otherwise, no provision of this chapter may be construed to give any person a cause of action in any court.

(4) Nothing in this chapter may be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately before March 16, 1988. [1988 c 90 § 1; 1971 ex.s. c 240 § 1.]

Section captions—1988 c 90: "Section captions and part divisions in this act do not constitute any part of the law." [1988 c 90 § 19.]

8.26.020 Definitions. As used in this chapter:

(1) The term "state" means any department, commission, agency, or instrumentality of the state of Washington.

(2) The term "local public agency" applies to any county, city or town, or other municipal corporation or political subdivision of the state and any person who has the authority to acquire property by eminent domain under state law, or any instrumentality of any of the foregoing.

(3) The term "person" means any individual, partnership, corporation, or association.

(4)(a) The term "displaced person" means, except as provided in (b) of this subsection, any person who moves from real property, or moves his personal property from real property

(i) as a direct result of a written notice of intent to acquire, or the acquisition of, such real property in whole or in part for a program or project undertaken by a displacing agency; or

(ii) on which the person is a residential tenant or conducts a small business, a farm operation, or a business defined in this section, as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a displacing agency in any case in which the displacing agency determines that the displacement is permanent.

Solely for the purposes of RCW 8.26.035 (1) and (2) and 8.26.065, the term "displaced person" includes any person who moves from real property, or moves his personal property from real property

(i) as a direct result of a written notice of intent to acquire, or the acquisition of, other real property in whole or in part on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(ii) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by a displacing agency where the displacing agency determines that the displacement is permanent.

(b) The term "displaced person" does not include:

(i) A person who has been determined, according to criteria established by the lead agency, to be either unlawfully

occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this chapter; or

(ii) In any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of the property at the time it was acquired) who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(5) The term "business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) Solely for the purposes of RCW 8.26.035, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(6) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or for home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) The term "comparable replacement dwelling" means any dwelling that is (a) decent, safe, and sanitary; (b) adequate in size to accommodate the occupants; (c) within the financial means of the displaced person; (d) functionally equivalent; (e) in an area not subject to unreasonably adverse environmental conditions; and (f) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(8) For purposes of RCW 8.26.180 through 8.26.200, the term "acquiring agency" means:

(a) A state agency or local public agency that has the authority to acquire property by eminent domain under state law; or

(b) Any state agency, local public agency, or person that (i) does not have the authority to acquire property by eminent domain under state law and (ii) has been designated an "acquiring agency" under rules adopted by the lead agency. However, the lead agency may only designate a state agency, local public agency, or a person as an "acquiring agency" to the extent that it is necessary in order to qualify for federal financial assistance.

(9) The term "displacing agency" means the state agency, local public agency, or any person carrying out a program or project, with federal or state financial assistance, that causes a person to be a displaced person.

(10) The term "federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(11) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this state, together with the credit instruments, if any, secured thereby.

(12) The term "lead agency" means the Washington state department of transportation.

(13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. [1988 c 90 § 2; 1972 ex.s. c 34 § 1; 1971 ex.s. c 240 § 2.]

Section captions—1988 c 90: See note following RCW 8.26.010.

Application—1972 ex.s. c 34: "Sec. 2. The amendatory language contained in section 1 of this 1972 amendatory act shall apply only to persons displaced after the effective date of this 1972 amendatory act [February 20, 1972]." [1972 ex.s. c 34 § 2.]

8.26.035 Payment for moving and related expenses.

(1) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the displacing agency shall provide for the payment to the displaced person of:

(a) Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, in accordance with criteria established by the lead agency;

(c) Actual reasonable expenses in searching for a replacement business or farm; and

(d) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, in accordance with criteria established by the lead agency, but not to exceed ten thousand dollars.

(2) A displaced person eligible for payments under subsection (1) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (1) of this section may receive an expense and dislocation allowance determined according to a schedule established by the lead agency.

(3) A displaced person eligible for payments under subsection (1) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (1) of this section. The payment shall consist of a fixed payment in an amount to be determined according to criteria established by the lead agency, except that the payment shall be not less than one thousand dollars nor more than twenty thousand dollars. A person whose sole business at the displacement dwelling is the rental of that property to others does not qualify for a payment under this subsection. [1988 c 90 § 3.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.045 Payment for replacement housing for homeowners. (1) In addition to payments otherwise authorized by this chapter, the displacing agency shall make an additional payment, not in excess of twenty-two thousand five hundred dollars, to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than one hundred and eighty days immediately before the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(a) The amount, if any, that when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable and necessary cost of a comparable replacement dwelling;

(b) The amount, if any, that will compensate the displaced person for any increased mortgage interest costs and other debt service costs that the person is required to pay for financing the acquisition of any such comparable replacement dwelling. This amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage that was a valid lien on the dwelling for not less than one hundred and eighty days immediately before the initiation of negotiations for the acquisition of the dwelling;

(c) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which the person receives final payment from the displacing agency for the acquired dwelling or the date on which the obligation of the displacing agency under RCW 8.26.075 is met, whichever date is later, except that the displacing agency may extend the period for good cause. If the period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of that date. [1988 c 90 § 4.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.055 Payment for replacement housing for tenants and others. (1) In addition to amounts otherwise authorized by this chapter, a displacing agency shall make a payment to or for a displaced person displaced from a dwelling not eligible to receive a payment under RCW 8.26.045 if the dwelling was actually and lawfully occupied by the displaced person for not less than ninety days immediately before (a) the initiation of negotiations for acquisition of the dwelling, or (b) in any case in which displacement is not a direct result of acquisition, such other event as the lead agency prescribes. The payment shall consist of the amount necessary to enable the person to lease or rent for a period not to exceed forty-two months, a comparable replacement dwelling, but not to exceed five thousand two hundred fifty dollars. At the discretion of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for

a comparable replacement dwelling shall take into account the person's income.

(2) A person eligible for a payment under subsection (1) of this section may elect to apply the payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. The person may, at the discretion of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (1) of this section, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least ninety days but not more than one hundred eighty days immediately before the initiation of negotiations for the acquisition of the dwelling, the payment shall not exceed the payment the person would otherwise have received under RCW 8.26.045(1) had the person owned and occupied the displacement dwelling one hundred eighty days immediately before the initiation of the negotiations. [1988 c 90 § 5.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.065 Relocation assistance advisory services. (1) Programs or projects undertaken by a displacing agency shall be planned in a manner that (a) recognizes, at an early stage in the planning of the programs or projects and before the commencement of any actions that will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (b) provides for the resolution of the problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(2) Displacing agencies shall ensure that the relocation assistance advisory services described in subsection (3) of this section are made available to all persons displaced by the agency. If the agency determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency may make available to the person the advisory services.

(3) Each relocation assistance advisory program required by subsection (2) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) Determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(b) Provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(c) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(d) Supply (i) information concerning federal, state, and local programs that may be of assistance to displaced persons, and (ii) technical assistance to the persons in applying for assistance under those programs;

(e) Provide other advisory services to displaced persons in order to minimize hardships to them in adjusting to relocation; and

(f) Coordinate relocation activities performed by the agency with other federal, state, or local governmental

actions in the community that could affect the efficient and effective delivery of relocation assistance and related services.

(4) Notwithstanding RCW 8.26.020(4)(b), in any case in which a displacing agency acquires property for a program or project, a person who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project is eligible for advisory services to the extent determined by the displacing agency. [1988 c 90 § 6.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.075 Assurance of availability of housing—Exceptions. (1) If a program or project undertaken by a displacing agency cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that the dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide the dwellings by use of funds authorized for the project. The displacing agency may use this section to exceed the maximum amounts that may be paid under RCW 8.26.045 and 8.26.055 on a case-by-case basis for good cause as determined in accordance with rules adopted by the lead agency.

(2) No person may be required to move from a dwelling on account of any program or project undertaken by a displacing agency unless the displacing agency is satisfied that comparable replacement housing is available to the person.

(3) The displacing agency shall assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of the following:

(a) A major disaster as defined in section 102(2) of the Federal Disaster Relief Act of 1974;

(b) A national emergency declared by the president; or

(c) Any other emergency that requires the person to move immediately from the dwelling because continued occupancy of the dwelling by the person constitutes a substantial danger to the health or safety of the person. [1988 c 90 § 7.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.085 Lead agency's rule-making authority—Compliance date. (1) The lead agency, after full consultation with the department of general administration, shall adopt rules and establish such procedures as the lead agency may determine to be necessary to assure:

(a) That the payments and assistance authorized by this chapter are administered in a manner that is fair and reasonable and as uniform as practicable;

(b) That a displaced person who makes proper application for a payment authorized for that person by this chapter is paid promptly after a move or, in hardship cases, is paid in advance; and

(c) That a displaced person who is aggrieved by a program or project that is under the authority of a state agency or local public agency may have his application reviewed by the state agency or local public agency.

(2) The lead agency, after full consultation with the department of general administration, may adopt such other rules and procedures, consistent with the provisions of this chapter, as the lead agency deems necessary or appropriate to carry out this chapter.

(3) State agencies and local public agencies shall comply with the rules adopted pursuant to this section by April 2, 1989. [1988 c 90 § 8.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.095 Contracts for services—Use of services of other agencies. In order to prevent unnecessary expenses and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, a state agency or local public agency may enter into contracts with any individual, firm, association, or corporation for services in connection with this chapter or may carry out its functions under this chapter through any federal or state agency or local public agency having an established organization for conducting relocation assistance programs. The state agency or local public agency shall, in carrying out relocation activities described in RCW 8.26.075, whenever practicable, use the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities. [1988 c 90 § 9.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.105 Use of funds. (1) Funds appropriated or otherwise available to a state agency or local public agency for the acquisition of real property or an interest therein for a particular program or project shall also be available to carry out the provisions of this chapter as applied to that program or project.

(2) No payment or assistance under this chapter may be required to be made to any person or included as a program or project cost under this section, if the person receives a payment required by federal, state, or local law that is determined by the head of the displacing agency to have substantially the same purpose and effect as that payment under this chapter. [1988 c 90 § 10.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.115 Relocation assistance payments not income or resources. No payment received by a displaced person under RCW 8.26.035 through 8.26.105 may be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of any income tax or any tax imposed under Title 82 RCW, and the payments shall not be deducted from any amount to which any recipient would otherwise be entitled under Title 74 RCW. [1988 c 90 § 11.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.180 Acquisition procedures. Every acquiring agency shall, to the greatest extent practicable, be guided by the following policies:

(1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during his inspection of the property, except that the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation therefor, and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The acquiring agency shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. Where appropriate the just compensation for the real property acquired, for damages to remaining real property, and for benefits to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or deposited with a court having jurisdiction of condemnation of such property, in accordance with applicable law, for the benefit of the owner an amount not less than the acquiring agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move his business or farm operation without at least ninety days written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an uneconomic

remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and that the head of the agency concerned has determined has little or no value or utility.

(10) A person whose real property is being acquired in accordance with this chapter may, after the person has been fully informed of his right to receive just compensation for the property, donate the property, any part thereof, any interest therein, or any compensation paid for it to any agency as the person may determine. [1988 c 90 § 12; 1971 ex.s. c 240 § 18.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.190 Acquisition of buildings, structures, and improvements. (1) Where any interest in real property is acquired, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which is required to be removed from such real property or which is determined to be adversely affected by the use to which such real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant of the lands, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the owner of such building, structure, or improvement.

(3) Payment for such building, structure, or improvement under subsection (1) of this section shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all his right, title, and interest in and to such improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures, or other improvements shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of this state. [1988 c 90 § 13; 1971 ex.s. c 240 § 19.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.200 Expenses incidental to transfer of right, title, or interest to the acquiring agency. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, the acquiring agency shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;

(2) Penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier. [1988 c 90 § 14; 1971 ex.s. c 240 § 20.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.205 Effect on certain property acquisitions. The provisions of RCW 8.26.180, 8.26.190, and 8.26.200 create no rights or liabilities and do not affect the validity of any property acquisitions by purchase or condemnation. [1988 c 90 § 15.]

Section captions—1988 c 90: See note following RCW 8.26.010.

8.26.210 Award of costs, attorney's fees, witness fees—Conditions. See RCW 8.25.070, 8.25.075.

8.26.900 Severability—1971 ex.s. c 240. If any provision of this 1971 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 240 § 23.]

8.26.901 Severability—Conflict with federal requirements—1988 c 90. (1) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

(2) If any part of this chapter is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and that finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [1988 c 90 § 16.]

8.26.910 Effective date—1971 ex.s. c 240. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1971. [1971 ex.s. c 240 § 24.]

Chapter 8.28

MISCELLANEOUS PROVISIONS

Sections

- 8.28.010 Where state land is involved—Service of process—Filing of decree—Duty of land commissioner.
- 8.28.030 Notice where military land is involved.
- 8.28.040 Interest on verdict fixed—Suspension during pendency of appeal.
- 8.28.050 City in adjoining state may condemn watershed property.
- 8.28.070 Acquisition of property subject to unpaid or delinquent local improvement assessments—Payment.

Opening of roads, railroads through cemetery—Consent required: RCW 68.24.180.

Petroleum leases—Rights-of-way over public lands: RCW 79.14.140.

Public lands: Chapter 79.01 RCW.

Water rights

artesian wells, rights-of-way to: RCW 90.36.010.

generally: RCW 90.03.040.

of the United States: RCW 90.40.010.

8.28.010 Where state land is involved—Service of process—Filing of decree—Duty of land commissioner. In all condemnation proceedings brought for the purpose of appropriating any public land owned by the state or in which the state has an interest, service of process shall be made upon the commissioner of public lands.

When in any condemnation proceeding a decree is entered appropriating public lands owned by the state or in which the state has an interest, or any interest in or rights over such lands, it shall be the duty of the plaintiff to cause to be filed in the office of the commissioner of public lands a certified copy of such decree, together with a plat of the lands appropriated and the lands contiguous thereto, in form and substance as prescribed and required by the commissioner of public lands, showing in detail the lands appropriated, and to pay to the commissioner of public lands, or into the registry of the court, the amount of compensation and damages fixed and awarded in the decree. Upon receipt of such decree, plat, compensation and damages, the commissioner of public lands shall examine the same, and if he shall find that the final decree and proceedings comply with the original petition and notice and any amendment duly authorized, and that no additional interest of the state has been taken or appropriated through error or mistake, he shall cause notations thereof to be made upon the abstracts, records and tract books in his office, and shall issue to the plaintiff his certificate, reciting compliance, in substance, with the above requirements, particularly describing the lands appropriated, and shall forthwith transmit the amount received as compensation and damages to the state treasurer, as in the case of sale of land, and the subdivision of land through which any right of way is appropriated shall thereafter be sold or leased subject to the right of way. [1927 c 255 § 104; RRS § 7797-104. Formerly RCW 8.28.010 and 8.28.020.]

8.28.030 Notice where military land is involved. Whenever any land, real estate, premises or other property owned by the state of Washington and used for military purposes shall be involved in or affected by any eminent domain, condemnation, local improvement or other special assessment proceeding whatsoever, in addition to the notices

elsewhere provided by law, the officer or board required by law to give notice of such proceedings shall cause to be served upon the adjutant general at least twenty days in advance of any hearing therein, a written notice, setting forth the nature of the proceedings, the description of such state property sought to be involved therein or affected thereby and the amount of the proposed assessment therein. [1917 c 107 § 125; RRS § 8600.]

Condemnation for military purposes: RCW 8.04.170, 8.04.180.

8.28.040 Interest on verdict fixed—Suspension during pendency of appeal. Whenever in any eminent domain proceeding, heretofore or hereafter instituted for the taking or damaging of private property, a verdict shall have been returned by the jury, or by the court if the case be tried without a jury, fixing the amount to be paid as compensation for the property so to be taken or damaged, such verdict shall bear interest at the maximum rate of interest permitted at that time under RCW 19.52.020 from the date of its entry to the date of payment thereof: PROVIDED, That the running of such interest shall be suspended, and such interest shall not accrue, for any period of time during which the entry of final judgment in such proceeding shall have been delayed solely by the pendency of an appeal taken in such proceeding. [1984 c 129 § 2; 1943 c 28 § 1; Rem. Supp. 1943 § 936-4.]

8.28.050 City in adjoining state may condemn watershed property. That any municipal corporation of any state adjoining the state of Washington may acquire title to any land or water right within the state of Washington, by purchase or condemnation, which lies within any watershed from which said municipal corporation obtains or desires to obtain its water supply. [1909 c 16 § 1; RRS § 9280.]

8.28.070 Acquisition of property subject to unpaid or delinquent local improvement assessments—Payment. See RCW 79.44.190.

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Title 9

CRIMES AND PUNISHMENTS

(See also Washington Criminal Code, Title 9A RCW)

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- 9.02 Abortion.
- 9.03 Abandoned refrigeration equipment.
- 9.04 Advertising, crimes relating to.
- 9.05 Anarchy and sabotage.
- 9.08 Animals, crimes relating to.
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- 9.18 Bidding offenses—Bribery or corruption—
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*Civil disorder, proclamation of state of emergency, governor's powers,
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*Criminal justice training commission—Education and training boards:
Chapter 43.101 RCW.*

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For list of miscellaneous crimes see list following chapter 9.91 RCW digest.

Health care false claim act: Chapter 48.80 RCW.

Threats against governor or family: RCW 9A.36.090.

Victims of crimes, compensation: Chapter 7.68 RCW.

Washington Criminal Code: Title 9A RCW.

Chapter 9.01 GENERAL PROVISIONS

Sections

- 9.01.055 Citizen immunity if aiding officer, scope—When.
- 9.01.110 Omission, when not punishable.
- 9.01.120 Civil remedies preserved.
- 9.01.130 Sending letter, when complete.
- 9.01.160 Application to existing civil rights.

Conviction of lesser crime: RCW 10.61.010.

Employment of prisoners by county sheriff: RCW 36.28.100.

Forfeiture or impeachment rights preserved: RCW 42.04.040.

Former acquittal or conviction: Chapter 10.43 RCW.

Indians, jurisdiction in criminal and civil causes: Chapter 37.12 RCW.

Intent to defraud, proof: RCW 10.58.040.

Juvenile offenders, commitment: Chapters 13.04, 13.34 RCW.

Neglect of duty by public officer: RCW 42.20.100.

Presumption of innocence: RCW 10.58.020.

Prosecuting attorneys, duties in general: Chapter 36.27 RCW.

Self-incrimination: RCW 10.52.090.

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

Persons rendering emergency care or transportation—Immunity from liability: RCW 4.24.300.

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

9.01.120 Civil remedies preserved. The omission to specify or affirm in this act any liability to any damages,

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

Effect—1909 c 249: "The repeal or abrogation by this act of any existing law shall not revive any former law heretofore repealed, nor affect any right already existing or accrued or any action or proceeding already taken, except as in this act provided; nor does it repeal any private statute or statute affecting civil rights or liabilities not expressly repealed." [1909 c 249 § 50.] "this act" (chapter 249, Laws of 1909) has been codified as follows: RCW 9.01.010-9.01.050, 9.01.060, 9.01.070, 9.01.090-9.01.114, 9.01.120, 9.01.130, 9.01.150-9.01.190, 9.02.010-9.02.050, 9.04.020, 9.04.030, 9.05.010-9.05.050, 9.05.150, 9.05.160, 9.08.010-9.08.040, 9.09.010-9.09.060, 9.11.010-9.11.050, 9.12.010-9.12.020, 9.15.010, 9.15.020, 9.16.010-9.16.070, 9.16.100-9.16.150, 9.18.010-9.18.110, 9.19.010-9.19.050, 9.22.010-9.22.030, 9.23.010, 9.24.010-9.24.050, 9.26.010, 9.26.020, 9.27.010-9.27.100, 9.30.010-9.30.050, 9.31.010-9.31.090, 9.33.010-9.33.060, 9.34.010, 9.34.020, 9.37.010-9.37.040, 9.38.010-9.38.030, 9.38.050, 9.40.010-9.40.040, 9.41.180, 9.41.230-9.41.260, 9.44.010-9.44.080, 9.45.010-9.45.060, 9.45.070-9.45.120, 9.45.150-9.45.170, 9.47.080-9.47.100, 9.47.120, 9.47.130, 9.48.010-9.48.170, 9.51.010-9.51.060, 9.52.030, 9.52.040, 9.54.010, 9.54.060-9.54.110, 9.54.120, 9.54.130, 9.55.010, 9.55.020, 9.58.010-9.58.090, 9.58.110, 9.58.120, 9.59.010-9.59.050, 9.61.010-9.61.070, 9.62.010, 9.62.020, 9.65.010-9.65.030, 9.66.010-9.66.050, 9.68.010, 9.68.020, 9.68.030, 9.69.010-9.69.090, 9.72.010-9.72.110, 9.73.010, 9.73.020, 9.75.010, 9.75.020, 9.76.020-9.76.050, 9.79.010-9.79.120, 9.80.010-9.80.050, 9.82.010-9.82.030, 9.83.010, 9.83.060, 9.86.020, 9.86.030, 9.87.010, 9.91.010, 9.91.070-9.91.090, 9.92.010-9.92.060, 9.92.080-9.92.120, 10.01.060, 10.01.110, 10.19.010, 10.37.020, 10.43.010, 10.43.060-10.43.050, 10.46.010, 10.46.050, 10.46.090, 10.52.030, 10.52.060, 10.52.090, 10.58.020, 10.58.040, 10.61.010, 19.60.010-19.60.060, 22.32.010-22.32.050, 26.04.240, 26.28.060, 26.28.070, 36.28.100, 40.16.010-40.16.030, 42.04.040, 42.20.010-42.20.100, 49.44.020-49.44.080, 59.12.230, 66.44.230-66.44.250, 68.08.100, 68.08.110, 68.08.140, 68.24.190, 69.40.030-69.40.050, 70.54.010, 70.54.020, 70.54.050, 70.54.070, 70.54.080, 70.74.270-70.74.300, 71.08.010, 71.08.020, 76.04.220, 81.40.100, 81.48.010, 81.48.020, 81.48.060, 81.56.150, 81.56.160, 81.60.070, 88.08.020, 88.08.030, 88.08.050, 88.08.060.

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

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

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

Chapter 9.02 ABORTION

Sections

9.02.005	Transfer of duties to the department of health.
9.02.050	Concealing birth.
9.02.100	Reproductive privacy—Public policy.
9.02.110	Right to have and provide.
9.02.120	Unauthorized abortions—Penalty.
9.02.130	Defenses to prosecution.

9.02.140	State regulation.
9.02.150	Refusing to perform.
9.02.160	State-provided benefits.
9.02.170	Definitions.
9.02.900	Construction—1992 c 1 (Initiative Measure No. 120).
9.02.901	Severability—1992 c 1 (Initiative Measure No. 120).
9.02.902	Short title—1992 c 1 (Initiative Measure No. 120).

Advertising or selling means of abortion: RCW 9.68.030.

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

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

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

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

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

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

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

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

(3) Except as specifically permitted by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902, the state shall not deny or interfere with a woman's fundamental right to choose or refuse to have an abortion; and

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

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

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

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

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

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

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

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

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

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

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

9.02.170 Definitions. For purposes of this chapter:

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

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

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

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

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

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

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

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

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

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

Chapter 9.03

ABANDONED REFRIGERATION EQUIPMENT

Sections

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

9.03.010 Abandoning, discarding refrigeration equipment. Any person who discards or abandons or leaves in any place accessible to children any refrigerator, icebox, or deep freeze locker having a capacity of one and one-half cubic feet or more, which is no longer in use, and which has not had the door removed or a portion of the latch mechanism removed to prevent latching or locking of the door, is guilty of a misdemeanor. [1955 c 298 § 1.]

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

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

9.03.040 Keeping or storing equipment for sale.

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

Chapter 9.04**ADVERTISING, CRIMES RELATING TO**

Sections

- 9.04.010 False advertising.
 9.04.040 Advertising cures of lost sexual potency—Evidence.
 9.04.050 False, misleading, deceptive advertising.
 9.04.060 False, misleading, deceptive advertising—Action to restrain and prevent.
 9.04.070 False, misleading, deceptive advertising—Penalty—Other remedies and penalties not applicable.
 9.04.080 False, misleading, deceptive advertising—Assurance of discontinuance of unlawful practice.
 9.04.090 Advertising fuel prices by service stations.

Apple advertising: Chapter 15.24 RCW.

Attaching advertisements to utility poles: RCW 70.54.090, 70.54.100.

Attorneys at law, advertising: Rules of court: Code of Professional Responsibility (CPR)—Canon 2.

Banks and trust companies:

advertising legal services: RCW 30.04.260.

using words indicating: RCW 30.04.020.

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

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

Contraceptives or means of abortion, advertising: RCW 9.68.030.

Dentistry, advertising restrictions: RCW 18.32.665, 18.32.755.

Egg law, advertising violations: Chapter 69.25 RCW.

Elections, advertising violations:

initiative or referendum petition signers: RCW 29.79.490.

recall petition signers: RCW 29.82.220.

Employment agencies, false advertising: Chapter 19.31 RCW.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

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

Indecent articles: RCW 9.68.030.

Insurance, unlawful advertising practices: Chapter 48.30 RCW.

Oleomargarine advertising: RCW 15.40.030, 15.40.050.

Optometry advertising: RCW 18.53.140, 18.53.150.

State parks, advertising prohibited: RCW 43.51.180.

9.04.010 False advertising. Any person, firm, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, hand-bill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or

anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor: PROVIDED, That the provisions of this section shall not apply to any owner, publisher, agent, or employee of a newspaper for the publication of such advertisement published in good faith and without knowledge of the falsity thereof. [1913 c 34 § 1; RRS § 2622-1.]

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

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

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

Severability—1961 c 189: "If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby." [1961 c 189 § 5.] This applies to RCW 9.04.050 through 9.04.080.

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

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

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

9.04.070 False, misleading, deceptive advertising—Penalty—Other remedies and penalties not applicable. Any person who violates any order or injunction issued

pursuant to RCW 9.04.050 through 9.04.080 shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both.

*RCW 9.01.090 shall not be applicable to the terms of RCW 9.04.050 through 9.04.080 and no penalty or remedy shall result from a violation of RCW 9.04.050 through 9.04.080 except as expressly provided herein. [1961 c 189 § 3.]

*Reviser's note: RCW 9.01.090 was repealed by 1975 1st ex.s. c 260 § 9A.92.010.

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

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

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

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

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

Chapter 9.05

ANARCHY AND SABOTAGE

Sections

9.05.010	Criminal anarchy defined.
9.05.020	Advocating criminal anarchy—Penalty.
9.05.030	Assemblages of anarchists.
9.05.040	Permitting premises to be used for assemblages of anarchists.
9.05.050	Evidence—Self-incrimination.
9.05.060	Sabotage defined—Penalty.
9.05.070	Interference with owner's control.
9.05.080	Penalty for advocating sabotage.
9.05.090	Provisions cumulative.
9.05.100	Displaying emblems of seditious and anarchistic groups.
9.05.110	Possession of emblems unlawful.

9.05.120	Penalty.
9.05.130	Searches and seizures.
9.05.140	Exceptions.
9.05.150	Publishing matter inciting breach of peace.
9.05.160	Liability of editors and others.

Subversive activities act: Chapter 9.81 RCW.

Treason: Chapter 9.82 RCW.

9.05.010 Criminal anarchy defined. Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocating of such doctrine either by word of mouth, by writing, by radio, or by printing is a felony. [1941 c 215 § 1; 1909 c 249 § 310; 1903 c 45 § 1; Rem. Supp. 1941 § 2562.]

Defamation, radio broadcasting: Chapter 19.64 RCW.

9.05.020 Advocating criminal anarchy—Penalty. Every person who

(1) By word of mouth, by writing, by radio, or by printing shall advocate, advise or teach the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or,

(2) Shall print, publish, edit, issue or knowingly circulate, sell, distribute or publicly display any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or,

(3) Shall openly, willfully and deliberately justify by word of mouth, by writing, by radio or by printing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or of any civilized nation having an organized government because of his or her official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or,

(4) Shall organize or help to organize or become a member of or voluntarily assemble with any society, group or assembly of persons formed to teach or advocate such doctrine,

Shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both.

No person convicted of violating any of the provisions of RCW 9.05.010 or 9.05.020 shall be an employee of the state, or any department, agency, or subdivision thereof during the five years next following his or her conviction. [1992 c 7 § 1; 1941 c 215 § 2; 1909 c 249 § 311; 1903 c 45 § 2; Rem. Supp. 1941 § 2563.]

9.05.030 Assemblages of anarchists. Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal anarchy, as defined in RCW 9.05.010, such an assembly is unlawful, and every person voluntarily participating therein by his or her presence, aid or instigation, shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both.

[1992 c 7 § 2; 1909 c 249 § 314; 1903 c 45 § 4; RRS § 2566.]

9.05.040 Permitting premises to be used for assemblages of anarchists. Every owner, agent, superintendent, janitor, caretaker or occupant of any place, building or room, who shall wilfully and knowingly permit therein any assemblage of persons prohibited by RCW 9.05.030, or who, after notification that the premises are so used, shall permit such use to be continued, shall be guilty of a gross misdemeanor. [1909 c 249 § 315; RRS § 2567.]

9.05.050 Evidence—Self-incrimination. No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in RCW 9.05.020 or 9.05.030, upon the ground that the evidence might tend to criminate himself. [1909 c 249 § 316; RRS § 2568.]

Reviser's note: Caption for 1909 c 249 § 316 reads as follows: "SEC. 316. WITNESS' PRIVILEGE."

Incriminating testimony not to be used: RCW 10.52.090.

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

9.05.060 Sabotage defined—Penalty. Whoever, with intent that his act shall, or with reason to believe that it may, injure, interfere with, or obstruct any agricultural, stockraising, lumbering, mining, quarrying, fishing, manufacturing, transportation, mercantile or building enterprise wherein persons are employed for wage, shall wilfully injure or destroy, or attempt or threaten to injure or destroy, any property whatsoever, or shall wilfully derange, or attempt or threaten to derange, any mechanism or appliance, shall be guilty of a felony. [1919 c 173 § 1; RRS § 2563-3.]

Endangering life by breach of labor contract: RCW 49.44.080.

Excessive steam in boilers: RCW 70.54.080.

Malicious injury to railroad property: RCW 81.60.070.

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

Sabotaging rolling stock: RCW 81.60.080.

9.05.070 Interference with owner's control. Whoever, with intent to supplant, nullify or impair the owner's management or control of any enterprise described in RCW 9.05.060, shall unlawfully take or retain, or attempt or threaten unlawfully to take or retain, possession or control of any property or instrumentality used in such enterprise, shall be guilty of a felony. [1919 c 173 § 2; RRS § 2563-4.]

9.05.080 Penalty for advocating sabotage. Whoever shall

(1) Advocate, advise or teach the necessity, duty, propriety or expediency of doing or practicing any of the acts made unlawful by RCW 9.05.060 or 9.05.070, or

(2) Print, publish, edit, issue or knowingly sell, circulate, distribute or display any book, pamphlet, paper, hand-bill, document or written or printed matter of any form, advocating, advising or teaching such necessity, duty, propriety or expediency, or

(3) By word of mouth or writing justify any act or conduct with intent to advocate, advise or teach such necessity, duty, propriety or expediency, or

(4) Organize or help to organize, give aid to, be a member of or voluntarily assemble with, any group of persons formed to advocate, advise or teach such necessity, duty, propriety or expediency,

Shall be guilty of a felony. [1919 c 173 § 3; RRS § 2563-5.]

9.05.090 Provisions cumulative. RCW 9.05.060 through 9.05.080 shall not be construed to repeal or amend any existing penal statute. [1919 c 173 § 4; RRS § 2563-6.]

9.05.100 Displaying emblems of seditious and anarchistic groups. No flag, banner, standard, insignia, badge, emblem, sign or other device of, or suggestive of, any organized or unorganized group of persons who, by their laws, rules, declarations, doctrines, creeds, purposes, practices or efforts, espouse, propose or advocate any theory, principle or form of government antagonistic to, or subversive of, the Constitution, its mandates, or laws of the United States or of this state, shall be displayed in this state. [1919 c 181 § 1; RRS § 2563-7.]

9.05.110 Possession of emblems unlawful. The ownership or possession of any article or thing, the display of which is forbidden by RCW 9.05.100 through 9.05.140, shall be unlawful. [1919 c 181 § 2; RRS § 2563-8.]

9.05.120 Penalty. Any person who violates RCW 9.05.100 through 9.05.140 shall be guilty of a felony. An officer, trustee, director, agent or employee of a corporation or association who participates in the doing, or assists or acts for the corporation or association in the doing, of anything prohibited by RCW 9.05.100 through 9.05.140, shall be guilty of a felony. [1919 c 181 § 3; RRS § 2563-9.]

9.05.130 Searches and seizures. Every article or thing owned or kept in violation of RCW 9.05.100 through 9.05.140 is hereby declared to be pernicious and dangerous to the public welfare and subject to be searched for, seized, forfeited and destroyed. [1919 c 181 § 4; RRS § 2563-10.]

9.05.140 Exceptions. Nothing in RCW 9.05.100 through 9.05.140 shall apply to the ownership, possession or display of flags, banners, standards, insignia, badges or emblems of any nation having accredited representatives in the United States or in its territories or possessions; nor shall RCW 9.05.100 through 9.05.140 apply to historical museums of recognized standing. [1919 c 181 § 5; RRS § 2563-11.]

9.05.150 Publishing matter inciting breach of peace. Every person who shall wilfully print, publish, edit, issue, or knowingly circulate, sell, distribute or display any book, paper, document or written or printed matter, in any form, advocating, encouraging or inciting, or having a tendency to encourage or incite the commission of any crime, breach of the peace or act of violence, or which shall tend to encourage or advocate disrespect for law or for any court or courts of justice, shall be guilty of a gross misdemeanor. [1909 c 249 § 312; RRS § 2564.]

Defamation, radio broadcasting: Chapter 19.64 RCW.

9.05.160 Liability of editors and others. Every editor or proprietor of a book, newspaper or serial and every manager of a partnership or incorporated association by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution therefor, the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes by another who had no authority from him to make the publication, and was retracted by him as soon as known. [1909 c 249 § 313; 1905 c 45 § 3; RRS § 2565.]

Chapter 9.08

ANIMALS, CRIMES RELATING TO

Sections

- 9.08.020 Diseased animals.
 9.08.030 False certificate of registration of animals—False representation as to breed.
 9.08.065 Definitions.
 9.08.070 Pet animals—Taking, concealing, injuring, killing, etc.—Penalty.
 9.08.080 Acts against animal facilities—Intent.
 9.08.090 Acts against animal facilities.

Animals, strays, brands, and fences: Title 16 RCW.

Bees: Chapter 15.60 RCW.

Brands and marks, generally: Chapter 9.16 RCW.

Bulls running at large: RCW 16.24.180 through 16.24.210.

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

County dog license tax: Chapter 36.49 RCW, RCW 36.49.070.

"Coyote getters," use permitted: RCW 9.41.185.

Cruelty to

animals, generally: Chapter 16.52 RCW.

stock in transit: RCW 81.56.120.

Destroying animals in state parks: RCW 43.51.180.

Disposal of dead animals: Chapter 16.68 RCW.

Dogs: Chapter 16.08 RCW.

Game code: Title 77 RCW.

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

Ladybugs, beneficial insects: Chapter 15.61 RCW.

Police dog, harming: RCW 9A.76.200.

Quarantine of diseased domestic animals: Chapter 16.36 RCW.

Race horses: Chapter 67.16 RCW.

Sheep, disease control: Chapter 16.44 RCW, RCW 16.44.180.

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

Sufficiency of indictment or information in crimes involving animals: RCW 10.37.070.

Transporting in unsafe manner: RCW 16.52.080.

9.08.020 Diseased animals. Every owner or person having charge thereof, who shall import or drive into this state, or who shall turn out or suffer to run at large upon any highway or unenclosed lands, or upon any lands adjoining the enclosed lands kept by any person for pasture; or who shall keep or allow to be kept in any barn with other animals, or water or allow to be watered at any public drinking fountain or watering place, any animal having any contagious or infectious disease; or who shall sell, let or dispose of any such animal knowing it to be so diseased, without first apprising the purchaser or person taking it of the existence of such disease, shall be guilty of a misde-

meanor. [1909 c 249 § 288; Code 1881 § 923; RRS § 2540.]

Exposure to contagious diseases, penalty: RCW 70.54.050.

Nuisance: Chapters 7.48, 9.66 RCW.

Pollution of drinking water or watershed: Chapter 35.88 RCW, RCW 70.54.010, 70.54.030.

Quarantine of diseased domestic animals: Chapter 16.36 RCW.

Sheep disease control: Chapter 16.44 RCW, RCW 16.44.180.

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

9.08.065 Definitions. As used in RCW 9.08.070:

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

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

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

9.08.070 Pet animals—Taking, concealing, injuring, killing, etc.—Penalty. (1) Any person who, with intent to deprive or defraud the owner thereof, does any of the following shall be guilty of a gross misdemeanor and shall be punished as prescribed under RCW 9A.20.021(2) and by a mandatory fine of not less than five hundred dollars per pet animal except as provided by (d) of this subsection:

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

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

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

(d) Nothing in this subsection or subsection (2) of this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property.

(2)(a) It is unlawful for any person to receive with intent to sell to a research institution in the state of Washington, or sell or otherwise directly transfer to a research

institution in the state of Washington, a pet animal that the person knows or has reason to know has been stolen or fraudulently obtained. This subsection does not apply to U.S.D.A. licensed dealers.

(b) The first conviction under (a) of this subsection is a gross misdemeanor and is punishable as prescribed under RCW 9A.20.021(2) and by a mandatory fine of not less than five hundred dollars per pet animal. A second or subsequent conviction under (a) of this subsection is a class C felony and is punishable as prescribed under RCW 9A.20.021(1)(c) and by a mandatory fine of not less than one thousand dollars per pet animal.

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

(b) A conviction under (a) of this subsection is a class C felony and shall be punishable as prescribed under RCW 9A.20.021(1)(c) and by a mandatory fine of not less than one thousand dollars per pet animal.

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

(b) A conviction under (a) of this subsection is a class C felony and shall be punishable as prescribed under RCW 9A.20.021(1)(c) and by a mandatory fine of not less than one thousand dollars per pet animal.

(5) The sale, receipt, or transfer of each individual pet animal in violation of subsections (1), (2), (3), and (4) of this section constitutes a separate offense.

(6) The provisions of subsections (1), (2), (3), and (4) of this section shall not apply to the lawful acts of any employee, agent, or director of any humane society, animal control agency, or animal shelter operated by or on behalf of any government agency, operating under law. [1989 c 359 § 2; 1982 c 114 § 1.]

Application of consumer protection act: RCW 19.86.145.

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

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

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

Severability—1991 c 325: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 325 § 6.]

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

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

Severability—1991 c 325: See note following RCW 9.08.080.

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

**Chapter 9.12
BARRATRY**

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

9.12.010 Barratry. Every person who shall bring on his own behalf, or instigate, incite or encourage another to bring, any false suit at law or in equity in any court of this state, with intent thereby to distress or harass a defendant therein; and every person, being an attorney or counselor at law, who shall personally, or through the agency of another, solicit employment as such attorney, in any suit pending or prospective, or, with intent to obtain such employment shall, directly or indirectly, loan any money or give or promise to give any money, property or other consideration to the person from whom such employment is sought; and every person who shall serve or send any paper or document purporting to be or resembling a judicial process, not in fact a judicial process shall be guilty of a misdemeanor; and in case the person offending is an attorney, he may, in addition thereto be disbarred from practicing law within this state. [1915 c 165 § 1; 1909 c 249 § 118; Code 1881 § 901; 1873 p 204 § 100; 1854 p 92 § 91; RRS § 2370.]

Attorneys at law: Chapter 2.44 RCW.

State bar act: Chapter 2.48 RCW.

9.12.020 Buying, demanding, or promising reward by district judge or deputy. Every district judge or deputy

who shall, directly or indirectly, buy or be interested in buying anything in action for the purpose of commencing a suit thereon before a district judge, or who shall give or promise any valuable consideration to any person as an inducement to bring, or as a consideration for having brought, a suit before a district judge, shall be guilty of a misdemeanor. [1987 c 202 § 138; 1909 c 249 § 119; RRS § 2371.]

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

Chapter 9.16

BRANDS AND MARKS, CRIMES RELATING TO

Sections

9.16.010	Removing lawful brands.
9.16.020	Imitating lawful brand.
9.16.030	Counterfeiting trademark, brand, etc.
9.16.040	Displaying goods with false trademark.
9.16.050	When deemed affixed.
9.16.060	Fraudulent registration of trademark.
9.16.070	Form and similitude defined.
9.16.080	Sales of petroleum products improperly labeled or by wrong grade.
9.16.090	Sales of petroleum products improperly labeled or by wrong grade—Penalty for violations.
9.16.100	Use of the words "sterling silver," etc.
9.16.110	Use of words "coin silver," etc.
9.16.120	Use of the word "sterling," on mounting.
9.16.130	Use of the words "coin silver," on mounting.
9.16.140	Unlawfully marking article made of gold.
9.16.150	"Marked, stamped or branded," defined.

Animals, estrays, brands, and fences: Title 16 RCW.

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

Egg law: Chapter 69.25 RCW.

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

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Forest products, marks and brands: Chapter 76.36 RCW.

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

Log patrols: Chapter 76.40 RCW.

Poisons, misbranding: Chapters 69.36, 69.40 RCW.

Trademark registration: Chapters 19.76, 19.77 RCW.

Watches, removal of serial number: Chapter 19.60 RCW.

Weights and measures: Chapter 19.92 RCW.

9.16.010 Removing lawful brands. Every person who shall willfully deface, obliterate, remove, or alter any mark or brand placed by or with the authority of the owner thereof on any shingle bolt, log or stick of timber, or on any horse, mare, gelding, mule, cow, steer, bull, sheep, goat or hog, shall be punished by imprisonment in a state correctional facility for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [1992 c 7 § 3; 1909 c 249 § 342; Code 1881 § 839; 1873 p 191 § 54; RRS § 2594.]

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

9.16.020 Imitating lawful brand. Every person who, in any county, places upon any property, any brand or mark in the likeness or similitude of another brand or mark filed with the county auditor of such county by the owner thereof

as a brand or mark for the designation or identification of a like kind of property, is:

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

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

9.16.030 Counterfeiting trademark, brand, etc.

Every person who shall use or display or have in his possession with intent to use or display, the genuine label, trademark, term, design, device, or form of advertisement of any person, corporation, association or union, lawfully filed for record in the office of the secretary of state, or the exclusive right to use which is guaranteed to any person, corporation, association or union, by the laws of the United States, without the written authority of such person, corporation, association or union, or who shall wilfully forge or counterfeit or use or display or have in his possession with intent to use or display any representation, likeness, similitude, copy or imitation of any genuine label, trademark, term, design, device, or form of advertisement, so filed or protected, or any die, plate, stamp or other device for manufacturing the same, shall be guilty of a gross misdemeanor. [1909 c 249 § 344; Code 1881 § 854; 1873 p 194 § 63; 1854 p 85 § 87; RRS § 2596.]

9.16.040 Displaying goods with false trademark.

Every person who shall knowingly sell, display or advertise, or have in his possession with intent to sell, any goods, wares, merchandise, mixture, preparation or compound having affixed thereto any label, trademark, term, design, device, or form of advertisement lawfully filed for record in the office of the secretary of state by any person, corporation, association or union, or the exclusive right to the use of which is guaranteed to such person, corporation, association or union under the laws of the United States, which label, trademark, term, design, device or form of advertisement shall have been used or affixed thereto without the written authority of such person, corporation, association or union, or having affixed thereto any forged or counterfeit representation, likeness, similitude, copy or imitation thereof, shall be guilty of a misdemeanor. [1909 c 249 § 345; RRS § 2597.]

Trademark registration: Chapter 19.77 RCW.

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

9.16.060 Fraudulent registration of trademark.

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

Trademark registration: Chapter 19.77 RCW.

9.16.070 Form and similitude defined.

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

9.16.080 Sales of petroleum products improperly labeled or by wrong grade. It shall be unlawful for any person, firm or corporation:

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

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

(3) To sell, or offer for sale, or have in his or its possession with intent to sell any gasoline or lubricating oil for internal combustion engines and to represent to the purchaser, or prospective purchaser, that such gasoline or lubricating oil so sold or offered for sale, is of a quality, grade or standard, or the product of a particular gasoline or lubricating oil manufacturing, refining or distributing company or association, other than the true quality, grade, standard, or the product of a particular gasoline or oil manufacturing, refining or distributing company or association, of the gasoline or oil so offered for sale or sold. [1927 c 222 § 1; RRS § 2637-1.]

9.16.090 Sales of petroleum products improperly labeled or by wrong grade—Penalty for violations.

Any person, firm or corporation, violating any of the provisions of RCW 9.16.080 shall be guilty of a misdemeanor, and for a second, and each subsequent, violation of any provision of RCW 9.16.080 shall be guilty of a gross misdemeanor. [1927 c 222 § 2; RRS § 2637-2.]

9.16.100 Use of the words "sterling silver," etc.

Every person who shall make, sell or offer to sell or dispose of, or have in his possession with intent to sell or dispose of any metal article marked, stamped or branded with the words "sterling," "sterling silver," or "solid silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such article and all parts thereof is

manufactured is pure silver, shall be guilty of a gross misdemeanor. [1909 c 249 § 428; RRS § 2680.]

9.16.110 Use of words "coin silver," etc.

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

9.16.120 Use of the word "sterling," on mounting.

Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling," or "sterling silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [1909 c 249 § 430; RRS § 2682.]

9.16.130 Use of the words "coin silver," on mounting.

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

9.16.140 Unlawfully marking article made of gold.

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

9.16.150 "Marked, stamped or branded," defined.

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

Chapter 9.18

BIDDING OFFENSES—BRIBERY OR CORRUPTION—OFFENDER AS WITNESS

(Formerly: Bribery and grafting)

Sections

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

Banks and trust companies, misconduct by employees: RCW 30.12.050, 30.12.110.

Baseball, bribery and illegal practices: Chapter 67.04 RCW.

Bribery or corrupt solicitation: State Constitution Art. 2 § 30.

Cities and towns, commission form, misconduct of officers and employees: RCW 35.17.150.

County commissioners, misconduct relating to inventories: RCW 36.32.220.

County officers, misconduct: RCW 36.18.160, 36.18.170.

Elections, bribery or coercion: Chapter 29.85 RCW.

Employees, corrupt influencing, grafting by: RCW 49.44.060, 49.44.070.

Insurance, fraud and unfair practices: Chapter 48.30 RCW.

Labor representative bribery: RCW 49.44.020, 49.44.030.

Misconduct in signing a petition: RCW 9.44.080.

Public officers, misconduct: Chapter 42.20 RCW.

School officials, grafting: RCW 28A.635.050.

Wages, rebating by employers: RCW 49.52.050, 49.52.090.

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

Bribery and corruption: Chapter 9A.68 RCW.

Incriminating testimony not to be used: RCW 10.52.090.

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

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

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agent or officer of another person, persons, or corporation, will refrain from bidding upon such public work or improvement, or that he will on behalf of himself or such others submit or permit another to submit for him any bid upon such public work or improvement in such sum as to eliminate full and unrestricted competition thereon. [1921 c 12 § 1; RRS § 2333-1.]

9.18.130 Collusion to prevent competitive bidding.

It shall be unlawful for any person for himself or as an agent or officer of any other person, persons, or corporation to in any manner enter into collusion or an understanding with any other person, persons, or corporation to prevent or eliminate full and unrestricted competition upon any public work or improvement mentioned in RCW 9.18.120. [1921 c 12 § 2; RRS § 2333-2.]

9.18.140 Penalty. Any person violating any provisions of RCW 9.18.120 through 9.18.150 shall be guilty of a gross misdemeanor. [1921 c 12 § 3; RRS § 2333-3.]

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

Chapter 9.24

CORPORATIONS, CRIMES RELATING TO

Sections

- 9.24.010 Fraud in stock subscription.
 9.24.020 Fraudulent issue of stock, scrip, etc.
 9.24.030 Insolvent bank receiving deposit.
 9.24.040 Corporation doing business without license.
 9.24.050 False report of corporation.
 9.24.060 Warehouseman or carrier refusing to issue receipt.
 9.24.070 Fictitious bill of lading or receipt.
 9.24.080 Warehouseman or carrier fraudulently mixing goods.
 9.24.090 Duplicate receipt.
 9.24.100 Bill of lading or receipt must be canceled on redelivery of property.
 9.24.110 Regulating sale of passage tickets.
 9.24.120 Redemption of unused passage ticket.
 9.24.125 Filing false statements—Penalty.

Banks and trust companies, penalties: RCW 30.04.020, 30.04.050, 30.04.060, 30.04.230, 30.04.240, 30.04.260, 30.04.310, 30.12.090 through 30.12.120, 30.12.190, 30.16.010, 30.44.110, 30.44.120.

Business corporations: Title 23B RCW.

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

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

Corporations, criminal process against: Chapter 10.01 RCW.

Credit unions, penalties: Chapter 31.12 RCW.

Crop credit associations, penalties: RCW 31.16.320.

Discrimination in employment: Chapter 49.60 RCW.

Fraud: Chapter 9A.60 RCW.

Hours of labor: Chapter 49.28 RCW.

Industrial welfare: Chapter 49.12 RCW.

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

Labor

conditions of: Chapter 49.12 RCW.

prohibited practices: Chapter 49.44 RCW.

Legal services, advertising of—Penalty: RCW 30.04.260.

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

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

Public service companies: Title 80 RCW.

Railroad rolling stock, penalties: RCW 81.60.080, 81.60.090.

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

Trading stamps, penalties: RCW 19.84.040.

Transportation companies: Title 81 RCW.

Unemployment compensation, penalties: Chapter 50.36 RCW.

Uniform Fraudulent Conveyance Act: Chapter 19.40 RCW.

Wages—Payment—Collection: Chapter 49.48 RCW.

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

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

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

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

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

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

Application to mutual savings banks: RCW 32.04.120.

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

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

Application to mutual savings banks: RCW 32.04.120.

9.24.050 False report of corporation. Every director, officer or agent of any corporation or joint stock association, and every person engaged in organizing or promoting any enterprise, who shall knowingly make or publish or concur in making or publishing any written prospectus, report, exhibit or statement of its affairs or pecuniary condition, containing any material statement that is false or exaggerated, shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars. [1992 c 7 § 7; 1909 c 249 § 390; RRS § 2642. Formerly RCW 9.38.040.]

Application to mutual savings banks: RCW 32.04.120.

9.24.060 Warehouseman or carrier refusing to issue receipt. See RCW 22.32.010.

9.24.070 Fictitious bill of lading or receipt. See RCW 22.32.020.

9.24.080 Warehouseman or carrier fraudulently mixing goods. See RCW 22.32.030.

9.24.090 Duplicate receipt. See RCW 22.32.040.

9.24.100 Bill of lading or receipt must be canceled on redelivery of property. See RCW 22.32.050.

9.24.110 Regulating sale of passage tickets. See RCW 81.56.150.

9.24.120 Redemption of unused passage ticket. See RCW 81.56.160.

9.24.125 Filing false statements—Penalty. See RCW 43.07.210.

Chapter 9.26A

TELECOMMUNICATIONS CRIME

(Formerly: Credit cards, crimes relating to)

Sections

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

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

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

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

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

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

(4) "Credit card number" means the card number or coding appearing on a credit card or other form of authorization, including an identification card or plate issued to a person by any telecommunications provider that permits the person to whom it has been issued to obtain telecommunications service on credit. The term includes the number or description of the card or plate, even if the card or plate itself is not produced at the time the telecommunications service is obtained.

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

recordings, computer networks, bulletin boards, or other means of electronic storage and retrieval.

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

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

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

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

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

(a) Fifty dollars in the aggregate, then such person shall be guilty of a gross misdemeanor;

(b) Two hundred fifty dollars in the aggregate, then such person shall be guilty of a class C felony.

However, for any act that constitutes a violation of both this subsection and subsection (2) of this section the provisions of subsection (2) of this section shall be exclusive.

(2) Every person who:

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

(b) Sells, gives, or otherwise transfers to another plans or instructions for making or assembling a telecommunications device described in subparagraph (a) of this subsection with knowledge or reason to believe that the plans may be used to make or assemble such device shall be guilty of a felony. [1990 c 11 § 2; 1981 c 252 § 1; 1977 ex.s. c 42 § 1; 1974 ex.s. c 160 § 2; 1972 ex.s. c 75 § 1; 1955 c 114 § 1. Formerly RCW 9.45.240.]

Injunctive relief for violations: RCW 7.40.230.

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

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

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

Chapter 9.27

INTERFERENCE WITH COURT

Sections

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

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

9.27.015 Interference, obstruction of any court, building, or residence—Violations. Whoever, interfering with, obstructing, or impeding the administration of justice, pickets or parades in or near a building housing a court of the state of Washington or any political subdivision thereof, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or uses any

sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be guilty of a gross misdemeanor.

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

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

Chapter 9.31

ESCAPED PRISONER RECAPTURED

(Formerly: Escape)

Sections

9.31.090 Escaped prisoner recaptured.

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

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

Parole revoked prisoner deemed escapee: RCW 9.95.130.

Prisoners—State penal institutions: Chapter 9.94 RCW.

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

Indeterminate sentences: Chapter 9.95 RCW.

Chapter 9.38

FALSE REPRESENTATIONS

Sections

9.38.010 False representation concerning credit.

9.38.020 False representation concerning title.

County commissioners, falsifying inventory: RCW 36.32.220.

Domestic insurers, corrupt practices: RCW 48.06.190.

Elections

falsification by voters: Chapter 29.85 RCW.

initiative and referendum petitions: RCW 29.79.440.

recall petitions: Chapter 29.82 RCW.

Employment, obtaining by false recommendation: RCW 49.44.040.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Fraud: Chapter 9A.60 RCW.

Honey act, falsification: RCW 69.28.180.

Insurance, unfair practices: Chapter 48.30 RCW.

Liquor permit falsification: RCW 66.20.200.

Marriage affidavit: RCW 26.04.210.

Motor vehicles, certificates of ownership: RCW 46.12.210, 46.12.220.

Pharmacy licensing: RCW 18.64.250.

Public assistance falsification: RCW 74.08.055.

Warehouse receipts and documents, falsifying: Chapter 22.32 RCW.

9.38.010 False representation concerning credit. Every person who, with intent thereby to obtain credit or financial rating, shall wilfully make any false statement in writing of his assets or liabilities to any person with whom he may be either actually or prospectively engaged in any business transaction or to any commercial agency or other person engaged in the business of collecting or disseminating information concerning financial or commercial ratings, shall

be guilty of a misdemeanor. [1909 c 249 § 368; RRS § 2620.]

9.38.020 False representation concerning title.

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

Chapter 9.40

FIRE, CRIMES RELATING TO

Sections

- 9.40.040 Operating engine or boiler without spark arrester.
 9.40.100 Injuring or tampering with fire alarm apparatus or equipment or fire fighting equipment—Sounding false alarm of fire—Penalties.
 9.40.110 Incendiary devices—Definitions.
 9.40.120 Incendiary devices—Penalty.
 9.40.130 Incendiary devices—Exceptions.

Arson: Chapter 9A.48 RCW.

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

County fire regulations: RCW 36.43.040.

Doors of buildings used by public: RCW 70.54.070.

Explosives, crimes relating to: Chapter 70.74 RCW.

Forest fire protection: Chapter 76.04 RCW.

Fraudulent destruction of insured property: RCW 9.91.090, 48.30.220.

Special rights of action: Chapter 4.24 RCW.

State parks, fire violations: RCW 43.51.180.

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

9.40.100 Injuring or tampering with fire alarm apparatus or equipment or fire fighting equipment—Sounding false alarm of fire—Penalties. (1) Any person who willfully and without cause tampers with, molests, injures or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any fire fighting equipment, or who willfully and without having reasonable grounds for believing a fire exists, sends, gives, transmits, or sounds any false alarm of fire, by shouting in a public place or by means of any public or private fire alarm system or signal, or by telephone, is guilty of a misdemeanor. This provision shall not prohibit the testing of fire alarm systems by persons authorized to do so, by a fire department or the director of community development, through the director of fire protection.

(2) Any person who willfully and without cause tampers with, molests, injures, or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any fire fighting equipment with the intent to

commit arson, is guilty of a felony. [1990 c 177 § 1; 1986 c 266 § 80; 1967 c 204 § 1.]

Severability—1990 c 177: See RCW 18.160.902.

Severability—1986 c 266: See note following RCW 38.52.005.

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

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

(2) "Incendiary device" means any material, substance, device, or combination thereof which is capable of supplying the initial ignition and/or fuel for a fire and is designed to be used as an instrument of wilful destruction. However, no device commercially manufactured primarily for the purpose of illumination shall be deemed to be an incendiary device for purposes of this section. [1971 ex.s. c 302 § 3; 1969 ex.s. c 79 § 2.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

9.40.120 Incendiary devices—Penalty. Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than twenty-five years. [1971 ex.s. c 302 § 4; 1969 ex.s. c 79 § 3.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

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

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

Chapter 9.41

FIREARMS AND DANGEROUS WEAPONS

Sections

- 9.41.010 Terms defined.
 9.41.030 Being armed prima facie evidence of intent.
 9.41.040 Unlawful possession of a short firearm or pistol—Ownership, possession of firearms by certain persons.
 9.41.045 Possession by offenders.
 9.41.050 Carrying pistol.
 9.41.060 Exception to restriction on carrying pistol.
 9.41.070 Issue of licenses to carry—Fee—Revocation—Renewal.
 9.41.080 Delivery to minors and others forbidden.
 9.41.090 Commercial sales regulated—Requirements for delivery—Hold on delivery.
 9.41.093 Exemptions.
 9.41.095 Denial of application—Appeal.
 9.41.097 Supplying information on persons purchasing pistols or applying for concealed pistol licenses.
 9.41.098 Forfeiture of firearms, order by courts—Return to owner—Confiscation by law enforcement officer.

- 9.41.100 Dealers to be licensed.
 9.41.110 Dealer's licenses, by whom granted and conditions thereof—Wholesale sales excepted—Permits prohibited.
 9.41.120 Certain transfers forbidden.
 9.41.130 False information forbidden.
 9.41.140 Alteration of identifying marks—Exceptions.
 9.41.150 Exemptions—Antique firearms.
 9.41.160 Penalty.
 9.41.170 Alien's license to carry firearms—Exception.
 9.41.180 Setting spring gun.
 9.41.185 Coyote getters.
 9.41.190 Machine guns prohibited—Exception.
 9.41.200 Machine gun defined.
 9.41.210 Penalty.
 9.41.220 Machine guns and parts contraband.
 9.41.225 Use of machine gun in felony—Penalty.
 9.41.230 Aiming or discharging firearms.
 9.41.240 Use of firearms by minor.
 9.41.250 Dangerous weapons—Evidence.
 9.41.260 Dangerous exhibitions.
 9.41.270 Weapons apparently capable of producing bodily harm—Unlawful carrying or handling—Penalty—Exceptions.
 9.41.280 Students carrying dangerous weapons on school premises—Penalty—Exceptions.
 9.41.290 State preemption.
 9.41.300 Firearms prohibited in certain places—Local laws and ordinances—Exceptions—Penalty.
 9.41.310 Information pamphlet.

Carrying loaded shotgun or rifle in vehicle: RCW 77.16.250.

Explosives: Chapter 70.74 RCW.

Rifles and shotguns, purchasing out-of-state and by nonresidents: Chapter 19.70 RCW.

Shooting firearm from, across, or along public highway: RCW 77.16.260.

9.41.010 Terms defined. (1) "Short firearm" or "pistol" as used in this chapter means any firearm with a barrel less than twelve inches in length.

(2) "Crime of violence" as used in this chapter means:

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

(b) Any conviction or adjudication for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a crime of violence in subsection (2)(a) of this section; and

(c) Any federal or out-of-state conviction or adjudication for an offense comparable to a felony classified as a crime of violence under subsection (2) (a) or (b) of this section.

(3) "Firearm" as used in this chapter means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(4) "Commercial seller" as used in this chapter means a person who has a federal firearms license. [1992 c 205 § 117; 1992 c 145 § 5; 1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

Reviser's note: This section was amended by 1992 c 145 § 5 and by 1992 c 205 § 117, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Severability—1983 c 232: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 232 § 14.]

Severability—1971 ex.s. c 302: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 302 § 35.]

Severability—1961 c 124: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1961 c 124 § 13.]

Preemption and general repealer—1961 c 124: "All laws or parts of laws of the state of Washington, its subdivisions and municipalities inconsistent herewith are hereby preempted and repealed." [1961 c 124 § 14.]

Short title—1935 c 172: "This act may be cited as the 'Uniform Firearms Act.'" [1935 c 172 § 18.]

Severability—1935 c 172: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1935 c 172 § 17.]

Construction—1935 c 172: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." [1935 c 172 § 19.]

9.41.030 Being armed prima facie evidence of intent. In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a pistol and had no license to carry the same shall be prima facie evidence of his intention to commit said crime of violence. [1935 c 172 § 3; RRS § 2516-3.]

9.41.040 Unlawful possession of a short firearm or pistol—Ownership, possession of firearms by certain persons. (1) A person is guilty of the crime of unlawful possession of a short firearm or pistol, if, having previously been convicted or, as a juvenile, adjudicated in this state or elsewhere of a crime of violence or of a felony in which a firearm was used or displayed, the person owns or has in his possession any short firearm or pistol.

(2) Unlawful possession of a short firearm or pistol shall be punished as a class C felony under chapter 9A.20 RCW.

(3) As used in this section, a person has been "convicted or adjudicated" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. A person shall not be precluded from possession if the conviction or adjudication has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or adjudicated or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(4) Except as provided in subsection (5) of this section, a person is guilty of the crime of unlawful possession of a short firearm or pistol if, after having been convicted or adjudicated of any felony violation of the uniform controlled substances act, chapter 69.50 RCW, or equivalent statutes of another jurisdiction, the person owns or has in his or her possession or under his or her control any short firearm or pistol.

(5) Notwithstanding subsection (1) of this section, a person convicted of an offense other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401(a) and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from ownership, possession, or control of a firearm as a result of the conviction.

(6)(a) A person who has been committed by court order for treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW, or equivalent statutes of another jurisdiction, may not possess, in any manner, a firearm as defined in RCW 9.41.010.

(b) At the time of commitment, the court shall specifically state to the person under (a) of this subsection and give the person notice in writing that the person is barred from possession of firearms.

(c) The secretary of social and health services shall develop appropriate rules to create an approval process under this subsection. The rules must provide for the immediate restoration of the right to possess a firearm upon a showing in a court of competent jurisdiction that a person no longer is required to participate in an inpatient or outpatient treatment program, and is no longer required to take medication to treat any condition related to the commitment. Unlawful possession of a firearm under this subsection shall be punished as a class C felony under chapter 9A.20 RCW. [1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

Reviser's note: This section was amended by 1992 c 168 § 2 and by 1992 c 205 § 118, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Severability—1992 c 168: See note following RCW 9.41.070.

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.045 Possession by offenders. As a sentence condition and requirement, offenders under the supervision of the department of corrections pursuant to chapter 9.94A RCW shall not own, use, or possess firearms or ammunition. In addition to any penalty imposed pursuant to RCW 9.41.040 when applicable, offenders found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions as provided for in RCW 9.94A.200. Firearms or ammunition owned, used, or possessed by offenders may be confiscated by community corrections officers and turned over to the Washington state patrol for disposal as provided in RCW 9.41.098. [1991 c 221 § 1.]

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

(2) A person who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(3) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed weapon and: (a) The pistol is on the licensee's person, (b) the licensee is within the vehicle at all times that the pistol is there, or (c) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle. [1982 1st ex.s. c 47 § 3; 1961 c 124 § 4; 1935 c 172 § 5; RRS § 2516-5.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.060 Exception to restriction on carrying pistol. The provisions of RCW 9.41.050 shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers, or to members of the army, navy or marine corps of the United States or of the national guard or organized reserves when on duty, or to regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state, or to regularly enrolled members of clubs organized for the purpose of target shooting or modern and antique firearm collecting or to individual hunters: PROVIDED, Such members are at, or are going to or from their places of target practice, or their collector's gun shows and exhibits, or are on a hunting, camping or fishing trip, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business, or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving from one place of abode or business to another. [1961 c 124 § 5; 1935 c 172 § 6; RRS § 2516-6.]

9.41.070 Issue of licenses to carry—Fee—Revocation—Renewal. (1) The judge of a court of record, the chief of police of a municipality, or the sheriff of a county, shall within thirty days after the filing of an application of any person issue a license to such person to carry a pistol concealed on his or her person within this state for four years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. Such applicant's constitutional right to bear arms shall not be denied, unless he or she:

(a) Is ineligible to own a pistol under the provisions of RCW 9.41.040; or

(b) Is under twenty-one years of age; or

(c) Is subject to a court order or injunction regarding firearms pursuant to RCW 10.99.040, 10.99.045, or 26.09.060; or

(d) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime of violence; or

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

(f) Has been ordered to forfeit a firearm under RCW 9.41.098(1)(d) within one year before filing an application to carry a pistol concealed on his or her person; or

(g) Has been convicted of any of the following offenses: Assault in the third degree, indecent liberties, malicious mischief in the first degree, possession of stolen property in the first or second degree, or theft in the first or second degree. Any person who becomes ineligible for a concealed pistol permit as a result of a conviction for a crime listed in this subsection (1)(g) and then successfully completes all terms of his or her sentence, as evidenced by a certificate of discharge issued under RCW 9.94A.220 in the case of a sentence under chapter 9.94A RCW, and has not again been convicted of any crime and is not under indictment for any crime, may, one year or longer after such successful sentence completion, petition the district court for a declaration that the person is no longer ineligible for a concealed pistol permit under this subsection (1)(g).

(2) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the secretary of the treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored.

(3) The license shall be revoked by the issuing authority immediately upon conviction of a crime which makes such a person ineligible to own a pistol or upon the third conviction for a violation of this chapter within five calendar years.

(4) Upon an order to forfeit a firearm under RCW 9.41.098(1)(d) the issuing authority shall:

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

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

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

Any person whose license is revoked as a result of a forfeiture of a firearm under RCW 9.41.098(1)(d) may not reapply for a new license until the end of the revocation period. The issuing authority shall notify, in writing, the department of licensing upon revocation of a license. The department of licensing shall record the revocation.

(5) The license shall be in triplicate, in form to be prescribed by the department of licensing, and shall bear the name, address, and description, fingerprints, and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. The license application shall contain a warning substantially as follows:

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

The license application shall contain a description of the major differences between state and federal law and an

explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law. The application shall contain questions about the applicant's place of birth, whether the applicant is a United States citizen, and if not a citizen whether the applicant has declared the intent to become a citizen and whether he or she has been required to register with the state or federal government and any identification or registration number, if applicable. The applicant shall not be required to produce a birth certificate or other evidence of citizenship. An applicant who is not a citizen shall provide documentation showing resident alien status and the applicant's intent to become a citizen. A person who makes a false statement regarding citizenship on the application is guilty of a misdemeanor. A person who is not a citizen of the United States, or has not declared his or her intention to become a citizen shall meet the additional requirements of RCW 9.41.170.

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

(6) The fee for the original issuance of a four-year license shall be twenty-three dollars: PROVIDED, That no other additional charges by any branch or unit of government shall be borne by the applicant for the issuance of the license: PROVIDED FURTHER, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund;

(b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed;

(c) Twelve dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and

(d) Three dollars to the firearms range account in the general fund.

(7) The fee for the renewal of such license shall be fifteen dollars: PROVIDED, That no other additional charges by any branch or unit of government shall be borne by the applicant for the renewal of the license: PROVIDED FURTHER, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund;

(b) Eight dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and

(c) Three dollars to the firearms range account in the general fund.

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

(9) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (7) of this section. The fee shall be distributed as follows:

(a) Three dollars shall be deposited in the state wildlife fund and used exclusively for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law. The pamphlet shall be given to each applicant for a license; and

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

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section.

(11) A political subdivision of the state shall not modify the requirements of this section or chapter, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section. A civil suit may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section or chapter. The civil suit may be brought in the county in which the application was made or in Thurston county at the discretion of the petitioner. Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded costs, including reasonable attorneys' fees, incurred in connection with such legal action. [1992 c 168 § 1; 1990 c 195 § 6. Prior: 1988 c 263 § 10; 1988 c 223 § 1; 1988 c 219 § 1; 1988 c 36 § 1; 1985 c 428 § 3; 1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

Severability—1992 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 168 § 4.]

Severability—1985 c 428: See note following RCW 9.41.290.

Severability—1983 c 232: See note following RCW 9.41.010.

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

9.41.080 Delivery to minors and others forbidden.

No person shall deliver a pistol to any person under the age of twenty-one or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind. [1935 c 172 § 8; RRS § 2516-8.]

9.41.090 Commercial sales regulated—Requirements for delivery—Hold on delivery. (1) In addition to the other requirements of this chapter, no commercial seller shall deliver a pistol to the purchaser thereof until:

(a) The purchaser produces a valid concealed pistol license and the commercial seller has recorded the purchaser's name, license number, and issuing agency, such record to be made in triplicate and processed as provided in subsection (4) of this section; or

(b) The seller is notified in writing by the chief of police of the municipality or the sheriff of the county that the purchaser meets the requirements of RCW 9.41.040 and that the application to purchase is granted; or

(c) Five consecutive days including Saturday, Sunday and holidays have elapsed from the time of receipt of the application for the purchase thereof as provided herein by the chief of police or sheriff designated in subsection (4) of this section, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. However, if the purchaser does not have a valid permanent Washington driver's license or state identification card or has not been a resident of the state for the previous consecutive ninety days,

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the waiting period under this subsection (1)(c) shall be up to sixty days.

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

(3) In any case where the chief or sheriff of the local jurisdiction has reasonable grounds based on the following circumstances: (a) Open criminal charges, (b) pending criminal proceedings, (c) pending commitment proceedings, (d) an outstanding warrant for a crime of violence, or (e) an arrest for a crime of violence if the records of disposition have not yet been reported or entered sufficiently to determine eligibility to purchase a pistol, the local jurisdiction may hold the sale and delivery of the pistol beyond five days up to thirty days in order to confirm existing records in this state or elsewhere. After thirty days, the hold will be lifted unless an extension of the thirty days is approved by a local district court or municipal court for good cause shown. An applicant shall be notified of each hold placed on the sale by local law enforcement and of any application to the court for additional hold period to confirm records or confirm the identity of the applicant.

(4) At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the seller an application containing his or her full name, address, place of birth, and the date and hour of the application; the applicant's driver's license number or state identification card number; and a description of the weapon including, the make, model, caliber and manufacturer's number; and a statement that the purchaser is eligible to own a pistol under RCW 9.41.040. The application shall contain a warning substantially as follows:

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

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

The seller shall, by the end of the business day, sign and attach his or her address and deliver the original of the application and such other documentation as required under subsection (1) of this section to the chief of police of the municipality or the sheriff of the county of which the seller is a resident. The seller shall deliver the pistol to the purchaser following the period of time specified in this

section unless the seller is notified in writing by the chief of police of the municipality or the sheriff of the county, whichever is applicable, denying the purchaser's application to purchase and the grounds thereof. The application shall not be denied unless the purchaser fails to meet the requirements specified in RCW 9.41.040. The chief of police of the municipality or the county sheriff shall maintain a file containing the original of the application to purchase a pistol. [1988 c 36 § 2; 1985 c 428 § 4; 1983 c 232 § 4; 1969 ex.s. c 227 § 1; 1961 c 124 § 7; 1935 c 172 § 9; RRS § 2516-9.]

Severability—1985 c 428: See note following RCW 9.41.290.

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.093 Exemptions. The following shall be exempt from the provisions of RCW 9.41.090 as now or hereinafter amended: sales by wholesalers to dealers; and the sale of antique pistols exempted by the provisions of RCW 9.41.150, as amended. [1969 ex.s. c 227 § 2.]

9.41.095 Denial of application—Appeal. Any person whose application to purchase a pistol as provided in RCW 9.41.090 as now or hereinafter amended is denied shall have a right to appeal to the legislative body of the municipality or of the county, whichever is applicable, for a review of the denial at a public hearing to be conducted within fifteen days after denial. It shall be the duty of the law enforcement officer recommending the denial to appear at such hearing and to present proof relating to the grounds for denial. In the event that the evidence so presented does not sustain one of the grounds for denial enumerated in RCW 9.41.090, the legislative authority shall authorize the sale.

Any person aggrieved by a determination of the appropriate legislative body not to permit the sale of such weapon is entitled to judicial review by the superior court in the appropriate county. [1969 ex.s. c 227 § 3.]

9.41.097 Supplying information on persons purchasing pistols or applying for concealed pistol licenses. The department of social and health services, mental health institutions, and other health care facilities shall, upon request of a court or law enforcement agency, supply such relevant information as is necessary to determine the eligibility of a person to possess a pistol or to be issued a concealed pistol license under RCW 9.41.070 or to purchase a pistol under RCW 9.41.090. Such information shall be used exclusively for the purposes specified in this section and shall not be made available for public inspection except by the person who is the subject of the information. [1983 c 232 § 5.]

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.098 Forfeiture of firearms, order by courts—Return to owner—Confiscation by law enforcement officer. (1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become

ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

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

(c) Found in the possession or under the control of a person at the time the person committed or was arrested for committing a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniform controlled substances act, chapter 69.50 RCW;

(d) Found concealed on a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, having 0.10 grams or more of alcohol per two hundred ten liters of breath or 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's breath, blood, or other bodily substance;

(e) Found in the possession of a person prohibited from possessing the firearm under RCW 9.41.040;

(f) Found in the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a crime of violence or a crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

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

(h) Known to have been used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Known to have been used in the commission of a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniformed controlled substances act, chapter 69.50 RCW.

(2) Upon order of forfeiture, the court in its discretion shall order destruction of any firearm that is illegal for any person to possess. All firearms legal for citizen possession that are judicially forfeited or forfeited due to failure to make a claim under RCW 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction to commercial sellers once a year if the submitting agency has accumulated at least ten firearms authorized for sale. Law enforcement agencies may conduct joint auctions for the purpose of maximizing efficiency. A maximum of ten percent of such firearms may be retained for use by local law enforcement agencies and the Washington state patrol. Before submission for auction, a court may temporarily retain forfeited firearms if needed for evidence. The proceeds from any sale shall be divided as follows: The local jurisdiction and the Washington state patrol shall retain its costs, including actual costs of storage and sale, and shall forward the remainder to the state department of wildlife for use in its firearms training program pursuant to RCW 77.32.155.

If a firearm is delivered to a law enforcement agency and the agency no longer requires use of the firearm, the agency shall dispose of the firearm by auction as provided by this subsection. The public auctioning agency shall, as a minimum, maintain a record of all forfeited firearms by manufacturer, model, caliber, serial number, date and

circumstances of forfeiture, and final disposition. The records shall be open to public inspection and copying.

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

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

Severability—1989 c 222: See RCW 63.35.900.

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

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

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.100 Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided. [1935 c 172 § 10; RRS § 2516-10.]

9.41.110 Dealer's licenses, by whom granted and conditions thereof—Wholesale sales excepted—Permits prohibited. The duly constituted licensing authorities of any city, town, or political subdivision of this state shall grant licenses in forms prescribed by the director of licensing effective for not more than one year from the date of issue permitting the licensee to sell pistols within this state subject to the following conditions, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in RCW 9.41.010 through 9.41.160.

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

(3) No pistol shall be sold (a) in violation of any provisions of RCW 9.41.010 through 9.41.160, nor (b) shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

(4) A true record in triplicate shall be made of every pistol sold, in a book kept for the purpose, the form of which may be prescribed by the director of licensing and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name,

address, occupation, color and place of birth of the purchaser and a statement signed by the purchaser that he has never been convicted in this state or elsewhere of a crime of violence. One copy shall within six hours be sent by registered mail to the chief of police of the municipality or the sheriff of the county of which the dealer is a resident; the duplicate the dealer shall within seven days send to the director of licensing; the triplicate the dealer shall retain for six years.

(5) This section shall not apply to sales at wholesale.

(6) The dealer's licenses authorized to be issued by this section are general licenses covering all sales by the licensee within the effective period of the licenses.

(7) Except as provided in RCW 9.41.090 as now or hereinafter amended, every city, town and political subdivision of this state is prohibited from requiring the purchaser to secure a permit to purchase or from requiring the dealer to secure an individual permit for each sale.

The fee paid for issuing said license shall be five dollars which fee shall be paid into the state treasury. [1979 c 158 § 2; 1969 ex.s. c 227 § 4; 1963 c 163 § 1; 1961 c 124 § 8; 1935 c 172 § 11; RRS § 2516-11.]

9.41.120 Certain transfers forbidden. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. [1961 c 124 § 9; 1935 c 172 § 12; RRS § 2516-12.]

Pawnbrokers and second-hand dealers: Chapter 19.60 RCW.

9.41.130 False information forbidden. No person shall, in purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same, give false information or offer false evidence of his identity. [1935 c 172 § 13; RRS § 2516-13.]

9.41.140 Alteration of identifying marks—Exceptions. No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same. This shall not apply to replacement barrels in old revolvers, which barrels are produced by current manufacturers and therefor do not have the markings on the barrels of the original manufacturers who are no longer in business. [1961 c 124 § 10; 1935 c 172 § 14; RRS § 2516-14.]

9.41.150 Exemptions—Antique firearms. RCW 9.41.010 through 9.41.160 shall not apply to antique firearms. "Antique firearm," as used in this section, means a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock,

flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. [1989 c 132 § 1; 1961 c 124 § 11; 1935 c 172 § 15; RRS § 2516-15.]

9.41.160 Penalty. Any violation of any provision of this chapter, except as otherwise provided, shall be a misdemeanor and punishable accordingly. [1984 c 258 § 312; 1983 c 232 § 11; 1983 c 3 § 7; 1961 c 124 § 12; 1935 c 172 § 16; RRS § 2516-16.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.170 Alien's license to carry firearms—Exception. It shall be unlawful for any person who is not a citizen of the United States, or who has not declared his intention to become a citizen of the United States, to carry or have in his possession at any time any shotgun, rifle, or other firearm, without first having obtained a license from the director of licensing, and such license is not to be issued by the director of licensing except upon the certificate of the consul domiciled in the state and representing the country of such alien, that he is a responsible person and upon the payment for the license of the sum of fifteen dollars: PROVIDED, That this section shall not apply to Canadian citizens resident in a province which has an enactment or public policy providing substantially similar privilege to residents of the state of Washington and who are carrying or possessing weapons for the purpose of using them in the hunting of game while such persons are in the act of hunting, or while on a hunting trip, or while such persons are competing in a bona fide trap or skeet shoot or any other organized contest where rifles, pistols, or shotguns are used as to weapons used in such contest. Nothing in this section shall be construed to allow aliens to hunt or fish in this state without first having obtained a regular hunting or fishing license. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1979 c 158 § 3; 1969 ex.s. c 90 § 1; 1953 c 109 § 1. Prior: 1911 c 52 § 1; RRS § 2517-1.]

9.41.180 Setting spring gun. Every person who shall set a so-called trap, spring pistol, rifle, or other deadly weapon, shall be punished as follows:

(1) If no injury result therefrom to any human being, by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars, or by both.

(2) If injuries not fatal result therefrom to any human being, by imprisonment in a state correctional facility for not more than twenty years.

(3) If the death of a human being results therefrom, by imprisonment in a state correctional facility for not more than twenty years. [1992 c 7 § 8; 1909 c 249 § 266; RRS § 2518.]

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

9.41.190 Machine guns prohibited—Exception. It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun: PROVIDED, HOWEVER, That such limitation shall not apply to any peace officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state of Washington: PROVIDED FURTHER, That this section does not apply to a person, including an employee of such person, who or which is exempt from or licensed under the National Firearms Act (26 U.S.C. section 5801 et seq.), and engaged in the production, manufacture, or testing of weapons or equipment to be used or purchased by the armed forces of the United States, and having a United States government industrial security clearance. [1982 1st ex.s. c 47 § 2; 1933 c 64 § 1; RRS § 2518-1.]

Severability—1982 1st ex.s. c 47: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 47 § 31.]

9.41.200 Machine gun defined. For the purpose of RCW 9.41.190 through 9.41.225, a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second. [1989 c 231 § 2; 1933 c 64 § 2; RRS § 2518-2.]

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

9.41.210 Penalty. Any person violating any of the provisions of RCW 9.41.190 through 9.41.220 shall be guilty of a felony. [1933 c 64 § 3; RRS § 2518-3.]

9.41.220 Machine guns and parts contraband. All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband, and it shall be the duty

of all peace officers, and/or any officer or member of the armed forces of the United States or the state of Washington, to seize said machine gun, or parts thereof, wherever and whenever found. [1933 c 64 § 4; RRS § 2518-4.]

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

Intent—1989 c 231: See note following RCW 9.41.200.

9.41.230 Aiming or discharging firearms. Every person who shall aim any gun, pistol, revolver or other firearm, whether loaded or not, at or towards any human being, or who shall wilfully discharge any firearm, air gun or other weapon, or throw any deadly missile in a public place, or in any place where any person might be endangered thereby, although no injury result, shall be guilty of a misdemeanor. [1909 c 249 § 307; 1888 p 100 §§ 2, 3; RRS § 2559.]

Discharging firearm at railroad rolling stock: RCW 81.60.070.

9.41.240 Use of firearms by minor. No minor under the age of fourteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian or other adult approved for the purpose of this section by the parent or guardian, or while under the supervision of a certified safety instructor at an established gun range or firearm training class, any firearm of any kind for hunting or target practice or for other purposes. Every person violating any of the foregoing provisions, or aiding or knowingly permitting any such minor to violate the same, shall be guilty of a misdemeanor. [1971 c 34 § 1; 1909 c 249 § 308; 1883 p 67 § 1; RRS § 2560.]

9.41.250 Dangerous weapons—Evidence. Every person who shall manufacture, sell or dispose of or have in his possession any instrument or weapon of the kind usually known as slung shot, sand club, or metal knuckles, or spring blade knife, or any knife the blade of which is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement; who shall furtively carry with intent to conceal any dagger, dirk, pistol, or other dangerous weapon; or who shall use any contrivance or device for suppressing the noise of any firearm, shall be guilty of a gross misdemeanor. [1959 c 143 § 1; 1957 c 93 § 1; 1909 c 249 § 265; 1886 p 81 § 1; Code 1881 § 929; RRS § 2517.]

9.41.260 Dangerous exhibitions. Every proprietor, lessee or occupant of any place of amusement, or any plat of ground or building, who shall allow it to be used for the exhibition of skill in throwing any sharp instrument or in shooting any bow gun, pistol or firearm of any description,

at or toward any human being, shall be guilty of a misdemeanor. [1909 c 249 § 283; RRS § 2535.]

Fireworks: Chapter 70.77 RCW.

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

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor.

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

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

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

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

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

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

9.41.280 Students carrying dangerous weapons on school premises—Penalty—Exceptions. (1) It is unlawful for an elementary or secondary school student under the age of twenty-one knowingly to carry onto public or private elementary or secondary school premises:

(a) Any firearm; or

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

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

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

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

(2) Any such student violating subsection (1) of this section is guilty of a gross misdemeanor.

Any violation of subsection (1) of this section constitutes grounds for expulsion.

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

(a) Any student of a private military academy; or

(b) Any student engaged in military activities, sponsored by the federal or state governments while engaged in official duties; or

(c) Any student who is attending a convention or firearms safety course authorized by school authorities in

which the firearms of collectors or instructors are handled or displayed; or

(d) Any student who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes conducted on the school premises; or

(e) Any student while the student is participating in a firearms or air gun competition approved by the school or school district. [1989 c 219 § 1; 1982 1st ex.s. c 47 § 4.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.290 State preemption. The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reload components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law and are consistent with this chapter. Such local ordinances shall have the same or lesser penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality. [1985 c 428 § 1; 1983 c 232 § 12.]

Severability—1985 c 428: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 428 § 6.]

Application—1983 c 232 § 12: "Section 12 of this act shall not apply to any offense committed prior to July 24, 1983." [1983 c 232 § 13.]

Severability—1983 c 232: See note following RCW 9.41.010.

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

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020, (iii) held for extradition or as a material witness, or (iv) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) A courtroom or judge's chamber, while either is being used for any judicial proceeding. This does not include common areas of egress and ingress of the courthouse;

(c) The restricted access areas of a public mental health facility certified by the department of social and health services for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public; or

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

(2) Notwithstanding RCW 9.41.290, cities, towns, counties, and other municipalities may enact laws and ordinances:

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

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

(i) Any firearm in the possession of a person licensed under RCW 9.41.070; or

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

(3) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted at reasonable intervals to alert the public as to the existence of any law restricting the possession of firearms on the premises.

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

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

(b) Law enforcement personnel; or

(c) Security personnel while engaged in official duties.

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

(6) Subsection (1)(b) of this section does not apply to a judge or court employee or to any person licensed under RCW 9.41.070 who, before entering the restricted area, directly and promptly proceeds to the court administrator or the administrator's designee and obtains written permission to possess the firearm.

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

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

(9) Any person violating subsection (1) of this section is guilty of a misdemeanor. [1985 c 428 § 2.]

Severability—1985 c 428: See note following RCW 9.41.290.

9.41.310 Information pamphlet. After a public hearing, the department of wildlife shall publish a pamphlet

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

Severability—1985 c 428: See note following RCW 9.41.290.

Chapter 9.44 FORGERY

Sections

- 9.44.080 Misconduct in signing a petition.
Ballots, forgery: RCW 29.85.040.
Cigarette tax stamps, forgery: RCW 82.24.100.
Food, drugs, and cosmetics act: Chapter 69.04 RCW.
Forest products, forgery of brands or marks: RCW 76.36.110, 76.36.120.
Forged instruments, tools for making, search and seizure: RCW 10.79.015.
Forgery: RCW 9A.60.020.
Honey act: RCW 69.28.180.
Land registration forgery: RCW 65.12.760.
Misdescription of instrument forged immaterial: RCW 10.37.080.
Mutual savings bank, falsification: RCW 32.04.100.
Obtaining employment by forged recommendation: RCW 49.44.040.
Offering forged instrument for filing: RCW 40.16.030.
Optometry certificates falsification: RCW 18.53.140, 18.53.150.
Osteopathy license falsification: RCW 18.57.160.
Public bonds, forgery: Chapter 39.44 RCW.
Public works, falsification of records, etc.: RCW 39.04.110, 39.12.050.

9.44.080 Misconduct in signing a petition. Every person who shall wilfully sign the name of another person or of a fictitious person, or for any consideration, gratuity or reward shall sign his own name to or withdraw his name from any referendum or other petition circulated in pursuance of any law of this state or any municipal ordinance; or in signing his name to such petition shall wilfully subscribe to any false statement concerning his age, citizenship, residence or other qualifications to sign the same; or knowing that any such petition contains any such false or wrongful signature or statement, shall file the same, or put the same off with intent that it should be filed, as a true and genuine petition, shall be guilty of a misdemeanor. [1909 c 249 § 337; RRS § 2589.]

Initiative and referendum petition forgery: RCW 29.79.440, 29.79.490.

Recall petition forgery: RCW 29.82.170, 29.82.220.

Chapter 9.45 FRAUDS AND SWINDLES

Sections

- 9.45.020 Substitution of child.
 9.45.060 Encumbered, leased, or rented personal property—Construction.
 9.45.062 Failure to deliver leased personal property—Requisites for prosecution—Construction.

- 9.45.070 Mock auctions.
 9.45.080 Fraudulent removal of property.
 9.45.090 Knowingly receiving fraudulent conveyance.
 9.45.100 Fraud in assignment for benefit of creditors.
 9.45.122 Measurement of goods, raw materials, and agricultural products—Declaration of public policy.
 9.45.124 Measurement of goods, raw materials, and agricultural products—Measuring inaccurately—Altering measuring devices—Penalty.
 9.45.126 Measurement of goods, raw materials, and agricultural products—Inducing violations—Penalty.
 9.45.160 Fraud in liquor warehouse receipts.
 9.45.170 Penalty.
 9.45.210 Altering sample or certificate of assay.
 9.45.220 Making false sample or assay of ore.
 9.45.230 Penalty.
 9.45.260 Fire protection sprinkler system contractors—Wrongful acts.

Bank or trust company

- falsification or destruction of records:* RCW 30.12.090, 30.12.100.
preferential transfers: RCW 30.44.110.
purchase of assets by officer: RCW 30.12.050.
receiving deposits when insolvent: RCW 30.44.120.
using name of unlawfully: RCW 30.04.020.
Caskets, record when body cremated: RCW 68.50.250.
Cemeteries, representing fund as perpetual: RCW 68.40.085.
Cigarette tax fraud: RCW 82.24.110.
Domestic insurers, illegal or corrupt practices: RCW 48.06.190, 48.07.060, 48.08.040.
Election fraud: Chapter 29.85 RCW.
Employment agent, fraud: RCW 49.44.050.
Falsification of books of credit union: Chapter 31.12 RCW.
Food, drugs, and cosmetics: RCW 69.04.040, 69.04.060, 69.04.070.
Food fish and shellfish, false or misleading information: RCW 75.12.430.
Fraud: Chapter 9A.60 RCW.
Fraud by engraver of public bonds: RCW 39.44.101.
Fraudulent conveyances: Chapter 19.40 RCW.
Insurance
agent, etc., appropriating funds, etc.: RCW 48.17.480.
fraud and unfair practices: Chapter 48.30 RCW.
Insured property, fraudulent injury or destruction: RCW 9.91.090, 48.30.220.

Intent to defraud: RCW 10.58.040.

Land registration fraud: RCW 65.12.750.

Motor vehicle

- certificates of ownership, falsifying:* RCW 46.12.210, 46.12.220.
excise tax fraud: RCW 82.44.120.
fuel tax fraud: RCW 82.36.330, 82.36.380 through 82.36.400.

Mutual savings banks

- falsification of books, etc.:* RCW 32.04.100.
transfers due to insolvency: RCW 32.24.080.
Obtaining employment by false recommendation: RCW 49.44.040.
Ownership of property, proof of: RCW 10.58.060.
Public assistance fraud: RCW 74.08.055, 74.08.331.
Savings and loan associations
falsification of books, etc.: RCW 33.36.040.
illegal loans and purchasing at discount by employees: RCW 33.36.010, 33.36.020.
preferential transfers of property: RCW 33.36.030.
Sporting contest fraud: RCW 67.24.010.
State employees' retirement, falsification of statements, etc.: RCW 41.40.055.

State patrol retirement fund, falsifications: RCW 43.43.320.

Tax assessed property, removal to avoid payment: RCW 84.56.120, 84.56.200.

Teachers' retirement, falsification of statements, etc.: RCW 41.32.055.

Wages, rebating, etc., by employers: RCW 49.52.050, 49.52.090.

Warehouseman or common carrier issuing false documents: Chapter 22.32 RCW.

9.45.020 Substitution of child. Every person to whom a child has been confided for nursing, education or any other purpose, who, with intent to deceive a person, guardian or relative of such child, shall substitute or produce to such parent, guardian or relative, another child or person in the place of the child so confided, shall be punished by imprisonment in a state correctional facility for not more than ten years. [1992 c 7 § 9; 1909 c 249 § 123; RRS § 2375.]

9.45.060 Encumbered, leased, or rented personal property—Construction. Every person being in possession thereof, who shall sell, remove, conceal, convert to his own use, or destroy or connive at or consent to the sale, removal, conversion, concealment or destruction of any personal property or any part thereof, upon which a security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease exists, with intent to hinder, delay, or defraud the secured party of such security agreement, or the holder of such mortgage, lien, or conditional sales contract or the lessor under such lease or rentor of [under] such rental agreement, or any assignee of such security agreement, mortgage, lien, conditional sales contract, rental agreement or lease shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

The provisions of this section shall be cumulative and nonexclusive and shall not affect any other criminal provision. [1971 c 61 § 1; 1965 ex.s. c 109 § 1; 1909 c 249 § 377; RRS § 2629.]

Destruction or removal of fixtures, etc., from mortgaged real property: RCW 61.12.030.

Larceny, sale of mortgaged property: Chapter 9A.56 RCW.

9.45.062 Failure to deliver leased personal property—Requisites for prosecution—Construction. Every person being in possession thereof who shall wilfully and without reasonable cause fail to deliver leased personal property to the lessor within ten days after written notice of the expiration of the lease has been mailed to the lessee by registered or certified mail with return receipt requested, mailed to the last known address of the lessee, shall be guilty of a gross misdemeanor: PROVIDED, That there shall be no prosecution under this section unless such lease is in writing, and contains a warning that failure to promptly return the leased property may result in a criminal prosecution, and the notice mailed pursuant to the provisions of this section shall clearly state that the lessee may be guilty of a crime upon his failure to return the property to the lessor within ten days.

In any prosecution under this section, any allegation containing a description of the lease by reference to the date thereof and names of the parties shall be sufficiently definite and certain.

As used in this section, the term "lease" shall also include rental agreements.

The provisions of this section shall be cumulative and nonexclusive and shall not affect any other criminal provision. [1971 c 61 § 2.]

9.45.070 Mock auctions. Every person who shall obtain any money or property from another or shall obtain the signature of another to any writing the false making of which would be forgery, by color or aid of any false or fraudulent sale of property or pretended sale of property by auction, or by any of the practices known as mock auction, shall be punished by imprisonment in a state correctional facility for not more than five years or in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

Every person who shall buy or sell or pretend to buy or sell any goods, wares or merchandise, exposed to sale by auction, if an actual sale, purchase and change of ownership therein does not thereupon take place, shall be guilty of a misdemeanor. [1992 c 7 § 10; 1909 c 249 § 378; RRS § 2630.]

Auctioneering without license: RCW 36.71.070.

Auctioneers: Chapter 18.11 RCW.

9.45.080 Fraudulent removal of property. Every person who, with intent to defraud a prior or subsequent purchaser thereof, or prevent any of his property being made liable for the payment of any of his debts, or levied upon by an execution or warrant of attachment, shall remove any of his property, or secrete, assign, convey or otherwise dispose of the same, or with intent to defraud a creditor shall remove, secrete, assign, convey or otherwise dispose of any of his books or accounts, vouchers or writings in any way relating to his business affairs, or destroy, obliterate, alter or erase any of such books of account, accounts, vouchers or writing or any entry, memorandum or minute therein contained, shall be guilty of a gross misdemeanor. [1909 c 249 § 379; RRS § 2631.]

9.45.090 Knowingly receiving fraudulent conveyance. Every person who shall receive any property or conveyance thereof from another, knowing that the same is transferred or delivered to him in violation of, or with the intent to violate RCW 9.45.080, shall be guilty of a misdemeanor. [1909 c 249 § 380; RRS § 2632.]

9.45.100 Fraud in assignment for benefit of creditors. Every person who, having made, or being about to make, a general assignment of his property to pay his debts, shall by color or aid of any false or fraudulent representation, pretense, token or writing induce any creditor to participate in the benefits of such assignments, or to give any release or discharge of his claim or any part thereof, or shall connive at the payment in whole or in part of any false, fraudulent or fictitious claim, shall be guilty of a gross misdemeanor. [1909 c 249 § 381; RRS § 2633.]

Assignment for benefit of creditors: Chapter 7.08 RCW.

Banks and trust companies, preferential transfers: RCW 30.44.110.

Mutual savings banks, transfer of assets due to insolvency: RCW 32.24.080.

9.45.122 Measurement of goods, raw materials, and agricultural products—Declaration of public policy. Because of the widespread importance to the marketing of goods, raw materials, and agricultural products such as, but not limited to, grains, timber, logs, wood chips, scrap metal, oil, gas, petroleum products, coal, fish and other commodities, that qualitative and quantitative measurements of such goods, materials and products be accurately and honestly made, it is declared to be the public policy of this state that certain conduct with respect to said measurement be declared unlawful. [1967 c 200 § 1.]

Severability—1967 c 200: "If any provision of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1967 c 200 § 13.]

Weights and measures: Chapter 19.94 RCW.

9.45.124 Measurement of goods, raw materials, and agricultural products—Measuring inaccurately—Altering measuring devices—Penalty. Every person, corporation, or association whether profit or nonprofit, who shall ask or receive, or conspire to ask or receive, directly or indirectly, any compensation, gratuity, or reward or any promise thereof, on any agreement or understanding that he or she shall (1) intentionally make an inaccurate visual or mechanical measurement or an intentionally inaccurate recording of any visual or mechanical measurement of goods, raw materials, and agricultural products (whether severed or unsevered from the land) which he or she has or will have the duty to measure, or shall (2) intentionally change, alter or affect, for the purpose of making an inaccurate measurement, any equipment or other device which is designed to measure, either qualitatively or quantitatively, such goods, raw materials, and agricultural products, or shall intentionally alter the recordation of such measurements, shall be guilty of a felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [1992 c 7 § 11; 1967 c 200 § 2.]

9.45.126 Measurement of goods, raw materials, and agricultural products—Inducing violations—Penalty. Every person who shall give, offer or promise, or conspire to give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any person, corporation, independent contractor, or agent, employee or servant thereof with intent to violate RCW 9.45.124, shall be guilty of a felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [1992 c 7 § 12; 1967 c 200 § 3.]

9.45.160 Fraud in liquor warehouse receipts. It shall be unlawful for any person, firm, association or corporation to make, utter, circulate, sell or offer for sale any certificate of any warehouse, distillery or depository for intoxicating liquors unless the identical liquor mentioned in such certificate is in the possession of the warehouse, distillery or depository mentioned in such certificate fully paid for, so that the owners and holder of such certificate

will be entitled to obtain such intoxicating liquors without the payment of any additional sum except the tax of the government and the tax of the state, county and city in which such warehouse, distillery or depository may be located, and any storage charges. [1909 c 202 § 1. No RRS.]

9.45.170 Penalty. Any person violating any of the provisions of RCW 9.45.160, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not more than five years nor less than one year, or imprisonment in the county jail for any length of time not exceeding one year. [1909 c 202 § 2. No RRS.]

9.45.210 Altering sample or certificate of assay. Any person who shall interfere with or in any manner change samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong or defraud, shall be deemed guilty of a felony. [1890 p 99 § 2; RRS § 2712.]

9.45.220 Making false sample or assay of ore. Any person who shall, with intent to cheat, wrong or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, shall be deemed guilty of a felony. [1890 p 99 § 3; RRS § 2713.]

9.45.230 Penalty. Any person violating any of the provisions of RCW 9.45.210 or 9.45.220 shall be deemed guilty of a felony, and upon conviction thereof, shall be fined in any sum not less than fifty nor more than one thousand dollars, or by imprisonment in the penitentiary for not less than one year nor more than five years, or by both such fine and imprisonment. [1983 c 3 § 8; 1890 p 99 § 4; RRS § 2714.]

9.45.260 Fire protection sprinkler system contractors—Wrongful acts. Any fire protection sprinkler system contractor, defined under RCW 18.160.010, who willfully and maliciously constructs, installs, or maintains a fire protection sprinkler system in any structure so as to threaten the safety of any occupant or user of the structure in the event of a fire, is guilty of a class C felony. This section may not be construed to create any criminal liability for a prime contractor or an owner of a structure unless it is proved that the prime contractor or owner had actual knowledge of an illegal construction, installation, or maintenance of a fire protection sprinkler system by a fire protection sprinkler system contractor. [1992 c 116 § 1.]

Fire protection sprinkler system contractors, licensing and regulation: Chapter 18.160 RCW.

Chapter 9.46
GAMBLING—1973 ACT

Sections

- 9.46.010 Legislative declaration.
 9.46.0201 "Amusement game."
 9.46.0205 "Bingo."
 9.46.0209 "Bona fide charitable or nonprofit organization."
 9.46.0213 "Bookmaking."
 9.46.0217 "Commercial stimulant."
 9.46.0221 "Commission."
 9.46.0225 "Contest of chance."
 9.46.0229 "Fishing derby."
 9.46.0233 "Fund raising event."
 9.46.0237 "Gambling."
 9.46.0241 "Gambling device."
 9.46.0245 "Gambling information."
 9.46.0249 "Gambling premises."
 9.46.0253 "Gambling record."
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 9.46.0261 "Member," "bona fide member."
 9.46.0265 "Player."
 9.46.0269 "Professional gambling."
 9.46.0273 "Punch boards," "pull-tabs."
 9.46.0277 "Raffle."
 9.46.0281 "Social card game."
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 9.46.0311 Charitable, nonprofit organizations—Authorized gambling activities.
 9.46.0315 Raffles—No license required, when.
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 9.46.0325 Social card games, punch boards, pull-tabs authorized.
 9.46.0331 Amusement games authorized—Minimum rules.
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 9.46.040 Gambling commission—Members—Appointment—Vacancies, filling.
 9.46.050 Gambling commission—Chairman—Quorum—Meetings—Compensation and travel expenses—Bond—Removal.
 9.46.060 Gambling commission—Counsel—Audits—Payment for.
 9.46.070 Gambling commission—Powers and duties.
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9.46.010 Legislative declaration. It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting

participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

The legislature further declares that the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.

The legislature further declares that the conducting of bingo, raffles, and amusement games and the operation of punch boards, pull-tabs, card games and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.

The legislature further declares that fishing derbies shall not constitute any form of gambling and shall not be considered as a lottery, a raffle, or an amusement game and shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder.

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end. [1975 1st ex.s. c 259 § 1; 1974 ex.s. c 155 § 1; 1974 ex.s. c 135 § 1; 1973 1st ex.s. c 218 § 1.]

Reviser's note: Throughout this chapter, as derived from 1973 1st ex.s. c 218, the phrase "this act" has been changed to "this chapter." In addition to sections codified in this chapter, 1973 1st ex.s. c 218 had a repealer section (29) and a legislative directive section (30).

Severability—1974 ex.s. c 155: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 155 § 13; 1974 ex.s. c 135 § 13.] Section 14 of the act, which provided for an effective date and that the act would be subject to referendum petition, was vetoed by the governor. The veto and the related message can be found in chapter 155, Laws of 1974 ex. sess.

9.46.0201 "Amusement game." "Amusement game," as used in this chapter, means a game played for entertainment in which:

- (1) The contestant actively participates;
- (2) The outcome depends in a material degree upon the skill of the contestant;
- (3) Only merchandise prizes are awarded;
- (4) The outcome is not in the control of the operator;
- (5) The wagers are placed, the winners are determined, and a distribution of prizes or property is made in the presence of all persons placing wagers at such game; and
- (6) Said game is conducted or operated by any agricultural fair, person, association, or organization in such manner and at such locations as may be authorized by rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended.

Cake walks as commonly known and fish ponds as commonly known shall be treated as amusement games for all purposes under this chapter. [1987 c 4 § 2. Formerly RCW 9.46.020(1), part.]

9.46.0205 "Bingo." "Bingo," as used in this chapter, means a game conducted only in the county within which

the organization is principally located in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and in which no cards are sold except at the time and place of said game, when said game is conducted by a bona fide charitable or nonprofit organization which does not conduct or allow its premises to be used for conducting bingo on more than three occasions per week and which does not conduct bingo in any location which is used for conducting bingo on more than three occasions per week, or if an agricultural fair authorized under chapters 15.76 and 36.37 RCW, which does not conduct bingo on more than twelve consecutive days in any calendar year, and except in the case of any agricultural fair as authorized under chapters 15.76 and 36.37 RCW, no person other than a bona fide member or an employee of said organization takes any part in the management or operation of said game, and no person who takes any part in the management or operation of said game takes any part in the management or operation of any game conducted by any other organization or any other branch of the same organization, unless approved by the commission, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game. For the purposes of this section, the organization shall be deemed to be principally located in the county within which it has its primary business office. If the organization has no business office, the organization shall be deemed to be located in the county of principal residence of its chief executive officer: **PROVIDED,** That any organization which is conducting any licensed and established bingo game in any locale as of January 1, 1981, shall be exempt from the requirement that such game be conducted in the county in which the organization is principally located. [1987 c 4 § 3. Formerly RCW 9.46.020(2).]

9.46.0209 "Bona fide charitable or nonprofit organization." "Bona fide charitable or nonprofit organization," as used in this chapter, means: (1) Any organization duly existing under the provisions of chapters 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or (2) any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same. Such an organization must have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any license to

operate a gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required. It must have not less than fifteen bona fide active members each with the right to an equal vote in the election of the officers, or board members, if any, who determine the policies of the organization in order to receive a gambling license. An organization must demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter. [1987 c 4 § 4. Formerly RCW 9.46.020(3).]

9.46.0213 "Bookmaking." "Bookmaking," as used in this chapter, means accepting bets, upon the outcome of future contingent events, as a business or in which the bettor is charged a fee or "vigorous" for the opportunity to place a bet. [1991 c 261 § 1; 1987 c 4 § 5. Formerly RCW 9.46.020(4).]

9.46.0217 "Commercial stimulant." "Commercial stimulant," as used in this chapter, means an activity is operated as a commercial stimulant, for the purposes of this chapter, only when it is an incidental activity operated in connection with, and incidental to, an established business, with the primary purpose of increasing the volume of sales of food or drink for consumption on that business premises. The commission may by rule establish guidelines and criteria for applying this definition to its applicants and licensees for gambling activities authorized by this chapter as commercial stimulants. [1987 c 4 § 6. Formerly RCW 9.46.020(5).]

9.46.0221 "Commission." "Commission," as used in this chapter, means the Washington state gambling commission created in RCW 9.46.040. [1987 c 4 § 7. Formerly RCW 9.46.020(6).]

9.46.0225 "Contest of chance." "Contest of chance," as used in this chapter, means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein. [1987 c 4 § 8. Formerly RCW 9.46.020(7).]

9.46.0229 "Fishing derby." "Fishing derby," as used in this chapter, means a fishing contest, with or without the payment or giving of an entry fee or other consideration by

some or all of the contestants, wherein prizes are awarded for the species, size, weight, or quality of fish caught in a bona fide fishing or recreational event. [1987 c 4 § 9. Formerly RCW 9.46.020(8).]

9.46.0233 "Fund raising event." (1) "Fund raising event," as used in this chapter, means a fund raising event conducted during any seventy-two consecutive hours but exceeding twenty-four consecutive hours and not more than once in any calendar year or a fund raising event conducted not more than twice each calendar year for not more than twenty-four consecutive hours each time by a bona fide charitable or nonprofit organization as defined in RCW 9.46.0209 other than any agricultural fair referred to thereunder, upon authorization therefor by the commission, which the legislature hereby authorizes to issue a license therefor, with or without fee, permitting the following activities, or any of them, during such event: Bingo, amusement games, contests of chance, lotteries and raffles: PROVIDED, That (a) gross wagers and bets received by the organization less the amount of money paid by the organization as winnings and for the purchase cost of prizes given as winnings do not exceed ten thousand dollars during the total calendar days of such fund raising event in the calendar year; (b) such activities shall not include any mechanical gambling or lottery device activated by the insertion of a coin or by the insertion of any object purchased by any person taking a chance by gambling in respect to the device; (c) only bona fide members of the organization who are not paid for such service shall participate in the management or operation of the activities, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization; and (d) such organization shall notify the appropriate local law enforcement agency of the time and place where such activities shall be conducted. The commission shall require an annual information report setting forth in detail the expenses incurred and the revenue received relative to the activities permitted.

(2) Bona fide charitable or nonprofit organizations holding a license to conduct a fund raising event may join together to jointly conduct a fund raising event if:

(a) Approval to do so is received from the commission; and

(b) The method of dividing the income and expenditures and the method of recording and handling of funds are disclosed to the commission in the application for approval of the joint fund raising event and are approved by the commission.

The gross wagers and bets received by the organizations less the amount of money paid by the organizations as winnings and for the purchase costs of prizes given as winnings may not exceed ten thousand dollars during the total calendar days of such event. The net receipts each organization receives shall count against the organization's annual limit stated in this subsection.

A joint fund raising event shall count against only the lead organization or organizations receiving fifty percent or more of the net receipts for the purposes of the number of such events an organization may conduct each year.

The commission may issue a joint license for a joint fund raising event and charge a license fee for such license according to a schedule of fees adopted by the commission which reflects the added cost to the commission of licensing more than one licensee for the event. [1987 c 4 § 24. Formerly RCW 9.46.020(23).]

9.46.0237 "Gambling." "Gambling," as used in this chapter, means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling does not include fishing derbies as defined by this chapter, parimutuel betting as authorized by chapter 67.16 RCW, bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guarantee and life, health, or accident insurance. In addition, a contest of chance which is specifically excluded from the definition of lottery under this chapter shall not constitute gambling. [1987 c 4 § 10. Formerly RCW 9.46.020(9).]

9.46.0241 "Gambling device." "Gambling device," as used in this chapter, means: (1) Any device or mechanism the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance; (2) any device or mechanism which, when operated for a consideration, does not return the same value or thing of value for the same consideration upon each operation thereof; (3) any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and (4) any subassembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation. In the application of this definition, a pinball machine or similar mechanical amusement device which confers only an immediate and unrecorded right of replay on players thereof, which does not contain any mechanism which varies the chance of winning free games or the number of free games which may be won or a mechanism or a chute for dispensing coins or a facsimile thereof, and which prohibits multiple winnings depending upon the number of coins inserted and requires the playing of five balls individually upon the insertion of a nickel or dime, as the case may be, to complete any one operation thereof, shall not be deemed a gambling device: PROVIDED, That owning, possessing, buying, selling, renting, leasing, financing, holding a security interest in, storing, repairing and transporting such pinball machines or similar mechanical amusement devices shall not be deemed engaging in professional gambling for the purposes of this chapter and shall not be a violation of this chapter: PROVIDED FURTHER, That any fee for the purchase or rental of any such pinball machines or similar amusement devices shall have no relation to the use to which such machines are put but be based only upon the market value of any such

machine, regardless of the location of or type of premises where used, and any fee for the storing, repairing and transporting thereof shall have no relation to the use to which such machines are put, but be commensurate with the cost of labor and other expenses incurred in any such storing, repairing and transporting. [1987 c 4 § 11. Formerly RCW 9.46.020(10).]

9.46.0245 "Gambling information." "Gambling information," as used in this chapter, means any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition, information as to wagers, betting odds and changes in betting odds shall be presumed to be intended for use in professional gambling. This section shall not apply to newspapers of general circulation or commercial radio and television stations licensed by the federal communications commission. [1987 c 4 § 12. Formerly RCW 9.46.020(11).]

9.46.0249 "Gambling premises." "Gambling premises," as used in this chapter, means any building, room, enclosure, vehicle, vessel or other place used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall be presumed to be intended to be used for professional gambling. [1987 c 4 § 13. Formerly RCW 9.46.020(12).]

9.46.0253 "Gambling record." "Gambling record," as used in this chapter, means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling. [1987 c 4 § 14. Formerly RCW 9.46.020(13).]

9.46.0257 "Lottery." "Lottery," as used in this chapter, means a scheme for the distribution of money or property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance. [1987 c 4 § 15. Formerly RCW 9.46.020(14).]

9.46.0261 "Member," "bona fide member." "Member" and "bona fide member," as used in this chapter, mean a person accepted for membership in an organization eligible to be licensed by the commission under this chapter upon application, with such action being recorded in the official minutes of a regular meeting or who has held full and regular membership status in the organization for a period of not less than twelve consecutive months prior to participating in the management or operation of any gambling activity. Such membership must in no way be dependent upon, or in any way related to, the payment of consideration to participate in any gambling activity.

Member or bona fide member shall include only members of an organization's specific chapter or unit licensed by the commission or otherwise actively conducting the gambling activity: PROVIDED, That:

(1) Members of chapters or local units of a state, regional or national organization may be considered members of the parent organization for the purpose of a gambling activity conducted by the parent organization, if the rules of the parent organization so permit;

(2) Members of a bona fide auxiliary to a principal organization may be considered members of the principal organization for the purpose of a gambling activity conducted by the principal organization. Members of the principal organization may also be considered members of its auxiliary for the purpose of a gambling activity conducted by the auxiliary; and

(3) Members of any chapter or local unit within the jurisdiction of the next higher level of the parent organization, and members of a bona fide auxiliary to that chapter or unit, may assist any other chapter or local unit of that same organization licensed by the commission in the conduct of gambling activities.

No person shall be a member of any organization if that person's primary purpose for membership is to become, or continue to be, a participant in, or an operator or manager of, any gambling activity or activities. [1987 c 4 § 16. Formerly RCW 9.46.020(15).]

9.46.0265 "Player." "Player," as used in this chapter, means a natural person who engages, on equal terms with the other participants, and solely as a contestant or bettor, in any form of gambling in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of a particular gambling activity. A natural person who gambles at a social game of chance on equal terms with the other participants shall not be considered as rendering material assistance to the establishment, conduct or operation of the social game merely by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises for the game, or supplying cards or other equipment to be used in the games. A person who engages in "bookmaking" as defined in this chapter is not a "player." A person who pays a fee or "vigorous" enabling him or her to place a wager with a bookmaker, or pays a fee to participate in a card game, contest of chance, lottery, or gambling activity, is not a player. [1991 c 261 § 2; 1987 c 4 § 17. Formerly RCW 9.46.020(16).]

9.46.0269 "Professional gambling." (1) A person is engaged in "professional gambling" for the purposes of this chapter when:

(a) Acting other than as a player or in the manner authorized by this chapter, the person knowingly engages in conduct which materially aids any other form of gambling activity; or

(b) Acting other than as a player or in the manner authorized by this chapter, the person knowingly accepts or receives money or other property pursuant to an agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of gambling activity;

(c) The person engages in bookmaking; or

(d) The person conducts a lottery.

(2) Conduct under subsection (1)(a) of this section, except as exempted under this chapter, includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or

activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. If a person having substantial proprietary or other authoritative control over any premises shall permit the premises to be used with the person's knowledge for the purpose of conducting gambling activity other than gambling activities authorized by this chapter, and acting other than as a player, and the person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, the person shall be considered as being engaged in professional gambling: PROVIDED, That the proprietor of a bowling establishment who awards prizes obtained from player contributions, to players successfully knocking down pins upon the contingency of identifiable pins being placed in a specified position or combination of positions, as designated by the posted rules of the bowling establishment, where the proprietor does not participate in the proceeds of the "prize fund" shall not be construed to be engaging in "professional gambling" within the meaning of this chapter: PROVIDED FURTHER, That the books and records of the games shall be open to public inspection. [1987 c 4 § 18. Formerly RCW 9.46.020(17).]

9.46.0273 "Punch boards," "pull-tabs." "Punch boards" and "pull-tabs," as used in this chapter, shall be given their usual and ordinary meaning as of July 16, 1973, except that such definition may be revised by the commission pursuant to rules and regulations promulgated pursuant to this chapter. [1987 c 4 § 19. Formerly RCW 9.46.020(18).]

9.46.0277 "Raffle." "Raffle," as used in this chapter, means a game in which tickets bearing an individual number are sold for not more than five dollars each and in which a prize or prizes are awarded on the basis of a drawing from the tickets by the person or persons conducting the game, when the game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of the organization takes any part in the management or operation of the game, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting the game. [1987 c 4 § 20. Formerly RCW 9.46.020(19).]

9.46.0281 "Social card game." "Social card game," as used in this chapter, means a card game, including but not limited to the game commonly known as "Mah-Jongg," which constitutes gambling and contains each of the following characteristics:

(1) There are two or more participants and each of them are players. However, no business with a public cardroom on its premises may have more than five separate tables at which card games are played;

(2) A player's success at winning money or other thing of value by overcoming chance is in the long run largely determined by the skill of the player;

(3) No organization, corporation or person collects or obtains or charges any percentage of or collects or obtains any portion of the money or thing of value wagered or won by any of the players: PROVIDED, That this subsection shall not preclude a player from collecting or obtaining his or her winnings;

(4) No organization or corporation, or person collects or obtains any money or thing of value from, or charges or imposes any fee upon, any person which either enables him or her to play or results in or from his or her playing in excess of two dollars per half hour of playing time by that person collected in advance: PROVIDED, That a fee may also be charged for entry into a tournament for prizes, which fee shall not exceed fifty dollars, including all separate fees which might be paid by a player for various phases or events of the tournament: PROVIDED FURTHER, That this subsection shall not apply to the membership fee in any bona fide charitable or nonprofit organization;

(5) The type of card game is one specifically approved by the commission pursuant to RCW 9.46.070; and

(6) The extent of wagers, money or other thing of value which may be wagered or contributed by any player does not exceed the amount or value specified by the commission pursuant to RCW 9.46.070. [1987 c 4 § 21. Formerly RCW 9.46.020(20).]

9.46.0285 "Thing of value." "Thing of value," as used in this chapter, means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. [1987 c 4 § 22. Formerly RCW 9.46.020(21).]

9.46.0289 "Whoever," "person." "Whoever" and "person," as used in this chapter, include natural persons, corporations and partnerships and associations of persons; and when any corporate officer, director or stockholder or any partner authorizes, participates in, or knowingly accepts benefits from any violation of this chapter committed by his or her corporation or partnership, he or she shall be punishable for such violation as if it had been directly committed by him or her. [1987 c 4 § 23. Formerly RCW 9.46.020(22).]

9.46.0305 Dice or coin contests for music, food, or beverage payment. The legislature hereby authorizes the wagering on the outcome of the roll of dice or the flipping of or matching of coins on the premises of an establishment engaged in the business of selling food or beverages for consumption on the premises to determine which of the participants will pay for coin-operated music on the premises or certain items of food or beverages served or sold by such establishment and therein consumed. Such establishments are hereby authorized to possess dice and dice cups on their premises, but only for use in such limited wagering. Persons engaged in such limited form of wagering shall not be subject to the criminal or civil penalties otherwise provided for in this chapter: PROVIDED, That minors shall be barred

from engaging in the wagering activities allowed by this chapter. [1987 c 4 § 25. Formerly RCW 9.46.020(1), part.]

9.46.0311 Charitable, nonprofit organizations—Authorized gambling activities. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct bingo games, raffles, amusement games, and fund raising events, and to utilize punch boards and pull-tabs and to allow their premises and facilities to be used by only members, their guests, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, to play social card games authorized by the commission, when licensed, conducted or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto. [1987 c 4 § 26. Formerly RCW 9.46.030(1).]

9.46.0315 Raffles—No license required, when. Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of raffles, are hereby authorized to conduct raffles without obtaining a license to do so from the commission when such raffles are held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission; when gross revenues from all such raffles held by the organization during the calendar year do not exceed five thousand dollars; and when tickets to such raffles are sold only to, and winners are determined only from among, the regular members of the organization conducting the raffle. The organization may provide unopened containers of beverages containing alcohol as raffle prizes if the appropriate permit has been obtained from the liquor control board: PROVIDED, That the term members for this purpose shall mean only those persons who have become members prior to the commencement of the raffle and whose qualification for membership was not dependent upon, or in any way related to, the purchase of a ticket, or tickets, for such raffles. [1991 c 192 § 4; 1987 c 4 § 27. Formerly RCW 9.46.030(2).]

9.46.0321 Bingo, raffles, amusement games—No license required, when. Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of such activities are hereby authorized to conduct bingo, raffles, and amusement games, without obtaining a license to do so from the commission but only when:

(1) Such activities are held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission;

(2) Said activities are, alone or in any combination, conducted no more than twice each calendar year and over a period of no more than twelve consecutive days each time, notwithstanding the limitations of RCW 9.46.0205: PROVIDED, That a raffle conducted under this subsection may be conducted for a period longer than twelve days;

(3) Only bona fide members of that organization, who are not paid for such services, participate in the management or operation of the activities;

(4) Gross revenues to the organization from all the activities together do not exceed five thousand dollars during any calendar year;

(5) All revenue therefrom, after deducting the cost of prizes and other expenses of the activity, is devoted solely to the purposes for which the organization qualifies as a bona fide charitable or nonprofit organization;

(6) The organization gives notice at least five days in advance of the conduct of any of the activities to the local police agency of the jurisdiction within which the activities are to be conducted of the organization's intent to conduct the activities, the location of the activities, and the date or dates they will be conducted; and

(7) The organization conducting the activities maintains records for a period of one year from the date of the event which accurately show at a minimum the gross revenue from each activity, details of the expenses of conducting the activities, and details of the uses to which the gross revenue therefrom is put. [1987 c 4 § 28. Formerly RCW 9.46.030(3).]

9.46.0325 Social card games, punch boards, pull-tabs authorized. The legislature hereby authorizes any person, association or organization operating an established business primarily engaged in the selling of food or drink for consumption on the premises to conduct social card games and to utilize punch boards and pull-tabs as a commercial stimulant to such business when licensed and utilized or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto. [1987 c 4 § 29. Formerly RCW 9.46.030(4).]

9.46.0331 Amusement games authorized—Minimum rules. The legislature hereby authorizes any person to conduct or operate amusement games when licensed and operated pursuant to the provisions of this chapter and rules and regulations adopted by the commission at such locations as the commission may authorize. The rules shall provide for at least the following:

(1) Persons other than bona fide charitable or bona fide nonprofit organizations shall conduct amusement games only after obtaining a special amusement game license from the commission.

(2) Amusement games may be conducted under such a license only as a part of, and upon the site of:

(a) Any agricultural fair as authorized under chapter 15.76 or 36.37 RCW; or

(b) A civic center of a county, city, or town; or

(c) A world's fair or similar exposition that is approved by the bureau of international expositions at Paris, France; or

(d) A community-wide civic festival held not more than once annually and sponsored or approved by the city, town, or county in which it is held; or

(e) A commercial exposition organized and sponsored by an organization or association representing the retail sales and service operators conducting business in a shopping center or other commercial area developed and operated for retail sales and service, but only upon a parking lot or similar area located in said shopping center or commercial

area for a period of no more than seventeen consecutive days by any licensee during any calendar year; or

(f) An amusement park. An amusement park is a group of activities, at a permanent location, to which people go to be entertained through a combination of various mechanical or aquatic rides, theatrical productions, motion picture, and/or slide show presentations with food and drink service. The amusement park must include at least five different mechanical, or aquatic rides, three additional activities, and the gross receipts must be primarily from these amusement activities; or

(g) Within a regional shopping center. A regional shopping center is a shopping center developed and operated for retail sales and service by retail sales and service operators and consisting of more than six hundred thousand gross square feet not including parking areas. Amusement games conducted as a part of, and upon the site of, a regional shopping center shall not be subject to the prohibition on revenue sharing set forth in RCW 9.46.120(2); or

(h) A location that possesses a valid license from the Washington state liquor [control] board and prohibits minors on their premises; or

(i) Movie theaters, bowling alleys, miniature golf course facilities, and amusement centers. For the purposes of this section an amusement center shall be defined as a permanent location whose primary source of income is from the operation of ten or more amusement devices; or

(j) Any business whose primary activity is to provide food service for on premises consumption and who offers family entertainment which includes at least three of the following activities: Amusement devices; theatrical productions; mechanical rides; motion pictures; and slide show presentations.

(3) No amusement games may be conducted in any location except in conformance with local zoning, fire, health, and similar regulations. In no event may the licensee conduct any amusement games at any of the locations set out in subsection (2) of this section without first having obtained the written permission to do so from the person or organization owning the premises or an authorized agent thereof, and from the persons sponsoring the fair, exhibition, commercial exhibition, or festival, or from the city or town operating the civic center, in connection with which the games are to be operated.

(4) In no event may a licensee conduct any amusement games at the location described in subsection (2)(g) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from entry during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and providing for hours for the close of business at such location that are no later than 10:00 p.m. on Fridays and Saturdays and on all other days that are the same as those of the regional shopping center in which the licensee is located.

(5) In no event may a licensee conduct any amusement game at a location described in subsection (2)(i) or (j) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from playing licensed amusement games during school hours,

maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and prohibiting minors from playing the amusement games after 10:00 p.m. on any day. [1991 c 287 § 1; 1987 c 4 § 30. Formerly RCW 9.46.030(5).]

9.46.0335 Sports pools authorized. The legislature hereby authorizes any person, association, or organization to conduct sports pools without a license to do so from the commission but only when the outcome of which is dependent upon the score, or scores, of a certain athletic contest and which is conducted only in the following manner:

(1) A board or piece of paper is divided into one hundred equal squares, each of which constitutes a chance to win in the sports pool and each of which is offered directly to prospective contestants at one dollar or less;

(2) The purchaser of each chance or square signs his or her name on the face of each square or chance he or she purchases; and

(3) At some time not later than prior to the start of the subject athletic contest the pool is closed and no further chances in the pool are sold;

(4) After the pool is closed a prospective score is assigned by random drawing to each square;

(5) All money paid by entrants to enter the pool less taxes is paid out as the prize or prizes to those persons holding squares assigned the winning score or scores from the subject athletic contest;

(6) The sports pool board is available for inspection by any person purchasing a chance thereon, the commission, or by any law enforcement agency upon demand at all times prior to the payment of the prize;

(7) The person or organization conducting the pool is conducting no other sports pool on the same athletic event; and

(8) The sports pool conforms to any rules and regulations of the commission applicable thereto. [1987 c 4 § 31. Formerly RCW 9.46.030(6).]

9.46.0341 Golfing sweepstakes authorized. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct, without the necessity of obtaining a permit or license to do so from the commission, golfing sweepstakes permitting wagers of money, and the same shall not constitute such gambling or lottery as otherwise prohibited in this chapter, or be subject to civil or criminal penalties thereunder, but this only when the outcome of such golfing sweepstakes is dependent upon the score, or scores, or the playing ability, or abilities, of a golfing contest between individual players or teams of such players, conducted in the following manner:

(1) Wagers are placed by buying tickets on any players in a golfing contest to "win," "place," or "show" and those holding tickets on the three winners may receive a payoff similar to the system of betting identified as parimutuel, such moneys placed as wagers to be used primarily as winners' proceeds, except moneys used to defray the expenses of such golfing sweepstakes or otherwise used to carry out the purposes of such organization; or

(2) Participants in any golfing contest(s) pay a like sum of money into a common fund on the basis of attaining a

stated number of points ascertainable from the score of such participants, and those participants attaining such stated number of points share equally in the moneys in the common fund, without any percentage of such moneys going to the sponsoring organization; and

(3) Participation is limited to members of the sponsoring organization and their bona fide guests. [1987 c 4 § 32. Formerly RCW 9.46.030(7).]

9.46.0345 Bowling sweepstakes authorized. The legislature hereby authorizes bowling establishments to conduct, without the necessity of obtaining a permit or license to do so, as a commercial stimulant, a bowling activity which permits bowlers to purchase tickets from the establishment for a predetermined and posted amount of money, which tickets are then selected by the luck of the draw and the holder of the matching ticket so drawn has an opportunity to bowl a strike and if successful receives a predetermined and posted monetary prize: PROVIDED, That all sums collected by the establishment from the sale of tickets shall be returned to purchasers of tickets and no part of the proceeds shall inure to any person other than the participants winning in the game or a recognized charity. The tickets shall be sold, and accounted for, separately from all other sales of the establishment. The price of any single ticket shall not exceed one dollar. Accounting records shall be available for inspection during business hours by any person purchasing a chance thereon, by the commission or its representatives, or by any law enforcement agency. [1987 c 4 § 33. Formerly RCW 9.46.030(8).]

9.46.0351 Social card, dice games—Use of premises of charitable, nonprofit organizations. (1) The legislature hereby authorizes any bona fide charitable or nonprofit organization which is licensed pursuant to RCW 66.24.400, and its officers and employees, to allow the use of the premises, furnishings, and other facilities not gambling devices of such organization by members of the organization, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, who engage as players in the following types of gambling activities only:

(a) Social card games as defined in RCW 9.46.0281 (1) through (4); and

(b) Social dice games, which shall be limited to contests of chance, the outcome of which are determined by one or more rolls of dice.

(2) Bona fide charitable or nonprofit organizations shall not be required to be licensed by the commission in order to allow use of their premises in accordance with this section. However, the following conditions must be met:

(a) No organization, corporation, or person shall collect or obtain or charge any percentage of or shall collect or obtain any portion of the money or thing of value wagered or won by any of the players: PROVIDED, That a player may collect his or her winnings; and

(b) No organization, corporation, or person shall collect or obtain any money or thing of value from, or charge or impose any fee upon, any person which either enables him or her to play or results in or from his or her playing: PROVIDED, That this subsection shall not preclude collec-

tion of a membership fee which is unrelated to participation in gambling activities authorized under this section. [1987 c 4 § 34. Formerly RCW 9.46.030(9).]

9.46.0355 Promotional contests of chance authorized. (1) The legislature hereby authorizes promotional contests of chance conducted in this state, or partially in this state, in which a person is required, in order to participate in the contest equally with other participants, to do only one or more of the following:

(a) Listen to or watch a television or radio program or subscribe to a cable television service;

(b) Fill out and return a coupon or entry blank or facsimile which is received through the mail, or published in a bona fide newspaper or magazine, or in a program sold in conjunction with and at a regularly scheduled sporting event, or the purchase of such newspaper, magazine, or program;

(c) Send a coupon or entry blank by United States mail to a designated address;

(d) Visit a business establishment to obtain or deposit a coupon or entry blank;

(e) Merely register, without the purchase of goods or services;

(f) Expend time, thought, attention, and energy in perusing promotional material;

(g) Place or answer a telephone call in a prescribed manner or otherwise make a prescribed response, guess, or answer;

(h) Furnish the container of a product as packaged by the manufacturer, or a particular portion thereof, but only if furnishing a plain piece of paper or card with the name of the manufacturer or product handwritten thereon is acceptable in lieu thereof; or

(i) Pay an admission fee to gain admission to any bona fide exposition, fair, or show for the display or promotion of goods, wares, or services, or any agricultural fair authorized under chapter 15.76 or 36.37 RCW, if (i) the scheme is conducted for promotional or advertising purposes, not including the promotion or advertisement of the scheme itself; and (ii) the person or organization conducting the scheme receives no portion of the admission fee either directly or indirectly and receives no other money for conducting the scheme either directly or indirectly, other than what might be received indirectly as a result of the success of the promotional or advertising aspect of the scheme.

(2) Notwithstanding any other provision of this section, where any contest of chance is conducted by or on behalf of in-state retail grocery outlets in connection with business promotions, no such in-state retail grocery outlet may conduct more than one such contest of chance during each calendar year and the period of the contest of chance and its promotion shall not extend for more than fourteen consecutive days: PROVIDED, That if the sponsoring organization has more than one outlet in the state, such contests of chance must be held in all such outlets at the same time except that a sponsoring organization with more than one outlet may conduct a separate contest of chance in connection with the initial opening of any such outlet: PROVIDED FURTHER, That such contests of chance may be conducted on an ongoing basis if the prizes awarded or accumulated to award

do not exceed thirty dollars a day or five thousand dollars a year in the aggregate for all outlets of the sponsoring organizations. Nothing in this subsection applies to contests of chance conducted by or in connection with business promotions by manufacturers.

For purposes of this chapter, in-state retail grocery outlet includes any establishment or recognized grocery department thereof in which more than twenty percent of the gross receipts result from the sale of food items for off-premises preparation. These food items include such products as meat, poultry, fish, bread, cereals, vegetables, fruit, dairy products, coffee, tea, cocoa, carbonated and uncarbonated beverages, candy, condiments, spices, and canned goods, and like products; but not including prepared hot foods or hot food products ready for immediate consumption.

(3) For the purposes of this chapter, radio and television broadcasting is hereby declared to be preempted by applicable federal statutes and the applicable rules of the federal communications commission. Broadcast programming, including advertising for others and station promotion, that complies with federal statutes and regulations is hereby authorized. [1987 c 4 § 35. Formerly RCW 9.46.030(10).]

9.46.0361 Turkey shoots authorized. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct, without the necessity of obtaining a permit or license to do so from the commission, turkey shoots permitting wagers of money. Such contests shall not constitute such gambling or lottery as otherwise prohibited in this chapter, or be subject to civil or criminal penalties. Such organizations must be organized for purposes other than the conduct of turkey shoots.

Such turkey shoots shall be held in accordance with all other requirements of this chapter, other applicable laws, and rules that may be adopted by the commission. Gross revenues from all such turkey shoots held by the organization during the calendar year shall not exceed five thousand dollars. Turkey shoots conducted under this section shall meet the following requirements:

(1) The target shall be divided into one hundred or fewer equal sections, with each section constituting a chance to win. Each chance shall be offered directly to a prospective contestant for one dollar or less;

(2) The purchaser of each chance shall sign his or her name on the face of the section he or she purchases;

(3) The person shooting at the target shall not be a participant in the contest, but shall be a member of the organization conducting the contest;

(4) Participation in the contest shall be limited to members of the organization which is conducting the contest and their guests;

(5) The target shall contain the following information:

(a) Distance from the shooting position to the target;

(b) The gauge of the shotgun;

(c) The type of choke on the barrel;

(d) The size of shot that will be used; and

(e) The prize or prizes that are to be awarded in the contest;

(6) The targets, shotgun, and ammunition shall be available for inspection by any person purchasing a chance

thereon, the commission, or by any law enforcement agency upon demand, at all times before the prizes are awarded;

(7) The turkey shoot shall award the prizes based upon the greatest number of shots striking a section;

(8) No turkey shoot may offer as a prize the right to advance or continue on to another turkey shoot or turkey shoot target; and

(9) Only bona fide members of the organization who are not paid for such service may participate in the management or operation of the turkey shoot, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization. [1987 c 4 § 36. Formerly RCW 9.46.030(12).]

9.46.040 Gambling commission—Members—Appointment—Vacancies, filling. There shall be a commission, known as the "Washington state gambling commission", consisting of five members appointed by the governor with the consent of the senate. The members of the commission shall be appointed within thirty days of July 16, 1973 for terms beginning July 1, 1973, and expiring as follows: One member of the commission for a term expiring July 1, 1975; one member of the commission for a term expiring July 1, 1976; one member of the commission for a term expiring July 1, 1977; one member of the commission for a term expiring July 1, 1978; and one member of the commission for a term expiring July 1, 1979; each as the governor so determines. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six year terms: PROVIDED, That no member of the commission who has served a full six year term shall be eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the commission shall impair the right of the remaining member or members to act, except as in RCW 9.46.050(2) provided.

In addition to the members of the commission there shall be four ex officio members without vote from the legislature consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives; such appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first; members may be reappointed; vacancies shall be filled in the same manner as original appointments are made. Such ex officio members who shall collect data deemed essential to future legislative proposals and exchange information with the board shall be deemed engaged in legislative business while in attendance upon the business of the board and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the "gambling revolving fund" as being expenses relative to commission business. [1974 ex.s. c 155 § 12; 1974 ex.s. c 135 § 12; 1973 1st ex.s. c 218 § 4.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.050 Gambling commission—Chairman—Quorum—Meetings—Compensation and travel expenses—Bond—Removal. (1) Upon appointment of the initial membership the commission shall meet at a time and place designated by the governor and proceed to organize, electing one of such members as chairman of the commission who shall serve until July 1, 1974; thereafter a chairman shall be elected annually.

(2) A majority of the members shall constitute a quorum of the commission: PROVIDED, That all actions of the commission relating to the regulation of licensing under this chapter shall require an affirmative vote by three or more members of the commission.

(3) The principal office of the commission shall be at the state capitol, and meetings shall be held at least quarterly and at such other times as may be called by the chairman or upon written request to the chairman of a majority of the commission.

(4) Members shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) Before entering upon the duties of his office, each of the members of the commission shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the commission.

(6) Any member of the commission may be removed for inefficiency, malfeasance, or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final. Removal of any member of the commission by the tribunal shall disqualify such member for reappointment. [1984 c 287 § 9; 1975-'76 2nd ex.s. c 34 § 7; 1973 1st ex.s. c 218 § 5.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

9.46.060 Gambling commission—Counsel—Audits—Payment for. (1) The attorney general shall be general counsel for the state gambling commission and shall assign such assistants as may be necessary in carrying out the purposes and provisions of this chapter, which shall include instituting and prosecuting any actions and proceedings necessary thereto.

(2) The state auditor shall audit the books, records, and affairs of the commission annually. The commission shall pay to the state treasurer for the credit of the state auditor

such funds as may be necessary to defray the costs of such audits. The commission may provide for additional audits by certified public accountants. All such audits shall be public records of the state.

The payment for legal services and audits as authorized in this section shall be paid upon authorization of the commission from moneys in the gambling revolving fund. [1973 1st ex.s. c 218 § 6.]

9.46.070 Gambling commission—Powers and duties.

The commission shall have the following powers and duties:

(1) To authorize and issue licenses for a period not to exceed one year to bona fide charitable or nonprofit organizations approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said organizations to conduct bingo games, raffles, amusement games, and social card games, to utilize punch boards and pull-tabs in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter or any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission or director shall not issue, deny, suspend or revoke any license because of considerations of race, sex, creed, color, or national origin: AND PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(2) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization operating a business primarily engaged in the selling of items of food or drink for consumption on the premises, approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said person, association, or organization to utilize punch boards and pull-tabs and to conduct social card games as a commercial stimulant in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter and any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(3) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization approved by the commission meeting the requirements of this chapter and meeting the requirements of any rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended, permitting said person, association, or organization to conduct or operate amusement games in such manner and at such locations as the commission may determine;

(4) To authorize, require, and issue, for a period not to exceed one year, such licenses as the commission may by

rule provide, to any person, association, or organization to engage in the selling, distributing, or otherwise supplying or in the manufacturing of devices for use within this state for those activities authorized by this chapter;

(5) To establish a schedule of annual license fees for carrying on specific gambling activities upon the premises, and for such other activities as may be licensed by the commission, which fees shall provide to the commission not less than an amount of money adequate to cover all costs incurred by the commission relative to licensing under this chapter and the enforcement by the commission of the provisions of this chapter and rules and regulations adopted pursuant thereto: PROVIDED, That all licensing fees shall be submitted with an application therefor and such portion of said fee as the commission may determine, based upon its cost of processing and investigation, shall be retained by the commission upon the withdrawal or denial of any such license application as its reasonable expense for processing the application and investigation into the granting thereof: PROVIDED FURTHER, That if in a particular case the basic license fee established by the commission for a particular class of license is less than the commission's actual expenses to investigate that particular application, the commission may at any time charge to that applicant such additional fees as are necessary to pay the commission for those costs. The commission may decline to proceed with its investigation and no license shall be issued until the commission has been fully paid therefor by the applicant: AND PROVIDED FURTHER, That the commission may establish fees for the furnishing by it to licensees of identification stamps to be affixed to such devices and equipment as required by the commission and for such other special services or programs required or offered by the commission, the amount of each of these fees to be not less than is adequate to offset the cost to the commission of the stamps and of administering their dispersal to licensees or the cost of administering such other special services, requirements or programs;

(6) To prescribe the manner and method of payment of taxes, fees and penalties to be paid to or collected by the commission;

(7) To require that applications for all licenses contain such information as may be required by the commission: PROVIDED, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: PROVIDED FURTHER, That the commission may require fingerprinting and background checks on any persons seeking licenses under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity;

(8) To require that any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(9) To require that all income from bingo games, raffles, and amusement games be recorded and reported as established by rule or regulation of the commission to the extent deemed necessary by considering the scope and character of the gambling activity in such a manner that will disclose gross income from any gambling activity, amounts received from each player, the nature and value of prizes, and the fact of distributions of such prizes to the winners thereof;

(10) To regulate and establish maximum limitations on income derived from bingo: PROVIDED, That in establishing limitations pursuant to this subsection the commission shall take into account (i) the nature, character, and scope of the activities of the licensee; (ii) the source of all other income of the licensee; and (iii) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from nonprofit, purposes;

(11) To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities;

(12) To regulate the collection of and the accounting for the fee which may be imposed by an organization, corporation or person licensed to conduct a social card game on a person desiring to become a player in a social card game in accordance with RCW 9.46.0281(4);

(13) To cooperate with and secure the cooperation of county, city, and other local or state agencies in investigating any matter within the scope of its duties and responsibilities;

(14) In accordance with RCW 9.46.080, to adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions of this chapter. All rules and regulations shall be adopted pursuant to the administrative procedure act, chapter 34.05 RCW;

(15) To set forth for the perusal of counties, city-counties, cities and towns, model ordinances by which any legislative authority thereof may enter into the taxing of any gambling activity authorized by this chapter;

(16) To establish and regulate a maximum limit on salaries or wages which may be paid to persons employed in connection with activities conducted by bona fide charitable or nonprofit organizations and authorized by this chapter, where payment of such persons is allowed, and to regulate and establish maximum limits for other expenses in connection with such authorized activities, including but not limited to rent or lease payments.

In establishing these maximum limits the commission shall take into account the amount of income received, or expected to be received, from the class of activities to which the limits will apply and the amount of money the games could generate for authorized charitable or nonprofit purposes absent such expenses. The commission may also take into account, in its discretion, other factors, including but not limited to, the local prevailing wage scale and whether charitable purposes are benefited by the activities;

(17) To authorize, require, and issue for a period not to exceed one year such licenses or permits, for which the commission may by rule provide, to any person to work for any operator of any gambling activity authorized by this chapter in connection with that activity, or any manufacturer, supplier, or distributor of devices for those activities in

connection with such business. The commission shall not require that persons working solely as volunteers in an authorized activity conducted by a bona fide charitable or bona fide nonprofit organization, who receive no compensation of any kind for any purpose from that organization, and who have no managerial or supervisory responsibility in connection with that activity, be licensed to do such work. The commission may require that licensees employing such unlicensed volunteers submit to the commission periodically a list of the names, addresses, and dates of birth of the volunteers. If any volunteer is not approved by the commission, the commission may require that the licensee not allow that person to work in connection with the licensed activity;

(18) To publish and make available at the office of the commission or elsewhere to anyone requesting it a list of the commission licensees, including the name, address, type of license, and license number of each licensee;

(19) To establish guidelines for determining what constitutes active membership in bona fide nonprofit or charitable organizations for the purposes of this chapter; and

(20) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1987 c 4 § 38; 1981 c 139 § 3. Prior: 1977 ex.s. c 326 § 3; 1977 ex.s. c 76 § 2; 1975-'76 2nd ex.s. c 87 § 4; 1975 1st ex.s. c 259 § 4; 1974 ex.s. c 155 § 4; 1974 ex.s. c 135 § 4; 1973 2nd ex.s. c 41 § 4; 1973 1st ex.s. c 218 § 7.]

Severability—1981 c 139: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 139 § 19.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.
Enforcement—Commission as a law enforcement agency: RCW 9.46.210.

9.46.075 Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable. The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein:

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(2) Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the commission;

(3) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor

involving any gambling activity or physical harm to individuals or involving moral turpitude;

(5) Denies the commission or its authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted or who fails promptly to produce for inspection or audit any book, record, document or item required by law or commission rule;

(6) Shall fail to display its license on the premises where the licensed activity is conducted at all times during the operation of the licensed activity;

(7) Makes a misrepresentation of, or fails to disclose, a material fact to the commission;

(8) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter;

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section: PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal;

(10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

(11) Is a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates probable cause to believe that the association is of such a nature as to be inimical to the policy of this chapter or to the proper operation of the authorized gambling or related activities in this state. For the purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel shall be defined as any group of persons who operate together as career offenders.

For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license the gambling commission may consider any prior criminal conduct of the applicant or licensee and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. [1981 c 139 § 4; 1975 1st ex.s. c 166 § 12.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.077 Gambling commission—Vacation of certain suspensions upon payment of monetary penalty. The commission, when suspending any license for a period of thirty days or less, may further provide in the order of

suspension that such suspension shall be vacated upon payment to the commission of a monetary penalty in an amount then fixed by the commission. [1981 c 139 § 5.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.080 Gambling commission—Administrator—Staff—Rules and regulations—Service contracts. The commission shall employ a full time director, who shall be the administrator for the commission in carrying out its powers and duties and who shall issue rules and regulations adopted by the commission governing the activities authorized hereunder and shall supervise commission employees in carrying out the purposes and provisions of this chapter. In addition, the director shall employ a deputy director, two assistant directors, together with such investigators and enforcement officers and such staff as the commission determines is necessary to carry out the purposes and provisions of this chapter. The director, the deputy director, both assistant directors, and personnel occupying positions requiring the performing of undercover investigative work shall be exempt from the provisions of chapter 41.06 RCW, as now law or hereafter amended. Neither the director nor any commission employee working therefor shall be an officer or manager of any bona fide charitable or bona fide nonprofit organization, or of any organization which conducts gambling activity in this state.

The director, subject to the approval of the commission, is authorized to enter into agreements on behalf of the commission for mutual assistance and services, based upon actual costs, with any state or federal agency or with any city, town, or county, and such state or local agency is authorized to enter into such an agreement with the commission. If a needed service is not available from another agency of state government within a reasonable time, the director may obtain that service from private industry. [1981 c 139 § 6; 1977 ex.s. c 326 § 4; 1974 ex.s. c 155 § 7; 1974 ex.s. c 135 § 7; 1973 1st ex.s. c 218 § 8.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.085 Gambling commission—Members and employees—Activities prohibited. A member or employee of the gambling commission shall not:

(1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;

(2) Receive or share in, directly or indirectly, the gross profits of any gambling activity regulated by the commission;

(3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of [a] gambling activity, or the provision of independent consultant services in connection with a gambling activity. [1986 c 4 § 1.]

9.46.090 Gambling commission—Reports. Subject to RCW 40.07.040, the commission shall, from time to time, make reports to the governor and the legislature covering such matters in connection with this chapter as the governor and the legislature may require. These reports shall be public documents and contain such general information and remarks as the commission deems pertinent thereto and any

information requested by either the governor or members of the legislature: PROVIDED, That the commission appointed pursuant to RCW 9.46.040 may conduct a thorough study of the types of gambling activity permitted and the types of gambling activity prohibited by this chapter and may make recommendations to the legislature as to: (1) Gambling activity that ought to be permitted; (2) gambling activity that ought to be prohibited; (3) the types of licenses and permits that ought to be required; (4) the type and amount of tax that ought to be applied to each type of permitted gambling activity; (5) any changes which may be made to the law of this state which further the purposes and policies set forth in RCW 9.46.010 as now law or hereafter amended; and (6) any other matter that the commission may deem appropriate. Members of the commission and its staff may contact the legislature, or any of its members, at any time, to advise it of recommendations of the commission. [1987 c 505 § 3; 1981 c 139 § 7; 1977 c 75 § 4; 1975 1st ex.s. c 166 § 4; 1973 1st ex.s. c 218 § 9.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1975 1st ex.s. c 166: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 166 § 15.]

9.46.095 Gambling commission—Proceedings against, jurisdiction—Immunity from liability. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the commission or any member thereof for anything done or omitted to be done in or arising out of the performance of his or her duties under this title: PROVIDED, That an appeal from an adjudicative proceeding involving a final decision of the commission to deny, suspend, or revoke a license shall be governed by chapter 34.05 RCW, the Administrative Procedure Act.

Neither the commission nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done, or omitted to be done, by the commission or any member of the commission, or any employee of the commission, in the performance of his or her duties and in the administration of this title. [1989 c 175 § 41; 1981 c 139 § 17.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.100 Gambling revolving fund—Created—Receipts—Disbursements—Use. There is hereby created the gambling revolving fund which shall consist of all moneys receivable for licensing, penalties, forfeitures, and all other moneys, income, or revenue received by the commission. The state treasurer shall be custodian of the fund. All moneys received by the commission or any employee thereof, except for change funds and an amount of petty cash as fixed by rule or regulation of the commission, shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the gambling revolving fund. Disbursements from the revolving fund shall be on authorization of the commission or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the

gambling revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. All expenses relative to commission business, including but not limited to salaries and expenses of the director and other commission employees shall be paid from the gambling revolving fund.

The state treasurer shall transfer to the general fund one million dollars from the gambling revolving fund for the 1991-93 fiscal biennium. [1991 sp.s. c 16 § 917; 1985 c 405 § 505; 1977 ex.s. c 326 § 5; 1973 1st ex.s. c 218 § 10.]

Severability—1991 sp.s. c 16: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 16 § 926.]

Effective date—1991 sp.s. c 16: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991 except for section 916, which shall take effect immediately." [1991 sp.s. c 16 § 927.]

Severability—1985 c 405: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 405 § 510.]

9.46.110 Taxation of gambling activities—Limitations—Restrictions on punch boards and pull-tabs. The legislative authority of any county, city-county, city, or town, by local law and ordinance, and in accordance with the provisions of this chapter and rules and regulations promulgated hereunder, may provide for the taxing of any gambling activity authorized by this chapter within its jurisdiction, the tax receipts to go to the county, city-county, city, or town so taxing the same: PROVIDED, That any such tax imposed by a county alone shall not apply to any gambling activity within a city or town located therein but the tax rate established by a county, if any, shall constitute the tax rate throughout the unincorporated areas of such county: PROVIDED FURTHER, That (1) punch boards and pull-tabs, chances on which shall only be sold to adults, which shall have a fifty cent limit on a single chance thereon, shall be taxed on a basis which shall reflect only the gross receipts from such punch boards and pull-tabs; and (2) no punch board or pull-tab may award as a prize upon a winning number or symbol being drawn the opportunity of taking a chance upon any other punch board or pull-tab; and (3) all prizes for punch boards and pull-tabs must be on display within the immediate area of the premises wherein any such punch board or pull-tab is located and upon a winning number or symbol being drawn, such prize must be immediately removed therefrom, or such omission shall be deemed a fraud for the purposes of this chapter; and (4) when any person shall win over twenty dollars in money or merchandise from any punch board or pull-tab, every licensee hereunder shall keep a public record thereof for at least ninety days thereafter containing such information as the commission shall deem necessary: AND PROVIDED FURTHER, That taxation of bingo and raffles shall never be in an amount greater than ten percent of the gross revenue received therefrom less the amount paid for or as prizes. Taxation of amusement games shall only be in an amount sufficient to pay the actual costs of enforcement of the provisions of this chapter by the county, city or town law

enforcement agency and in no event shall such taxation exceed two percent of the gross revenue therefrom less the amount paid for as prizes: PROVIDED FURTHER, That no tax shall be imposed under the authority of this chapter on bingo or amusement games when such activities or any combination thereof are conducted by any bona fide charitable or nonprofit organization as defined in this chapter, which organization has no paid operating or management personnel and has gross income from bingo or amusement games, or a combination thereof, not exceeding five thousand dollars per year, less the amount paid for as prizes. No tax shall be imposed on the first ten thousand dollars of net proceeds from raffles conducted by any bona fide charitable or nonprofit organization as defined in this chapter. Taxation of punch boards and pull-tabs shall not exceed five percent of gross receipts, nor shall taxation of social card games exceed twenty percent of the gross revenue from such games. [1991 c 161 § 1; 1987 c 4 § 39. Prior: 1985 c 468 § 2; 1985 c 172 § 1; 1981 c 139 § 8; 1977 ex.s. c 198 § 1; 1974 ex.s. c 155 § 8; 1974 ex.s. c 135 § 8; 1973 1st ex.s. c 218 § 11.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.113 Taxation of gambling activities—Disbursement. Any county, city or town which collects a tax on gambling activities authorized pursuant to RCW 9.46.110 shall use the revenue from such tax primarily for the purpose of enforcement of the provisions of this chapter by the county, city or town law enforcement agency. [1975 1st ex.s. c 166 § 11.]

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.116 Fees on pull-tab and punchboard sales. The commission shall charge fees or increased fees on pull tabs sold over-the-counter and on sales from punchboards and pull tab devices at levels necessary to assure that the increased revenues are equal or greater to the amount of revenue lost by removing the special tax on coin-operated gambling devices by the 1984 repeal of RCW 9.46.115. [1985 c 7 § 2; 1984 c 135 § 2.]

Effective date—1984 c 135: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1984." [1984 c 135 § 3.]

9.46.120 Restrictions as to management or operation personnel—Restriction as to leased premises. (1) Except in the case of an agricultural fair as authorized under chapters 15.76 and 36.37 RCW, no person other than a member of a bona fide charitable or nonprofit organization (and their employees) or any other person, association or organization (and their employees) approved by the commission, shall take any part in the management or operation of any gambling activity authorized under this chapter, and no person who takes any part in the management or operation of any such gambling activity shall take any part in the management or operation of any gambling activity conducted by any other organization or any other branch of the same organization, unless approved by the commission, and no part of the proceeds thereof shall inure to the benefit of any

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person other than the organization conducting such gambling activities or if such gambling activities be for the charitable benefit of any specific persons designated in the application for a license, then only for such specific persons as so designated.

(2) No bona fide charitable or nonprofit organization or any other person, association or organization shall conduct any gambling activity authorized under this chapter in any leased premises if rental for such premises is unreasonable or to be paid, wholly or partly, on the basis of a percentage of the receipts or profits derived from such gambling activity. [1987 c 4 § 40; 1973 1st ex.s. c 218 § 12.]

9.46.130 Inspection and audit of premises, paraphernalia, books, and records—Reports for the commission. The premises and paraphernalia, and all the books and records of any person, association or organization conducting gambling activities authorized under this chapter and any person, association or organization receiving profits therefrom or having any interest therein shall be subject to inspection and audit at any reasonable time, with or without notice, upon demand, by the commission or its designee, the attorney general or his designee, the chief of the Washington state patrol or his designee or the prosecuting attorney, sheriff or director of public safety or their designees of the county wherein located, or the chief of police or his designee of any city or town in which said organization is located, for the purpose of determining compliance or noncompliance with the provisions of this chapter and any rules or regulations or local ordinances adopted pursuant thereto. A reasonable time for the purpose of this section shall be: (1) If the items or records to be inspected or audited are located anywhere upon a premises any portion of which is regularly open to the public or members and guests, then at any time when the premises are so open, or at which they are usually open; or (2) if the items or records to be inspected or audited are not located upon a premises set out in subsection (1) above, then any time between the hours of 8:00 a.m. and 9:00 p.m., Monday through Friday.

The commission shall be provided at such reasonable intervals as the commission shall determine with a report, under oath, detailing all receipts and disbursements in connection with such gambling activities together with such other reasonable information as required in order to determine whether such activities comply with the purposes of this chapter or any local ordinances relating thereto. [1981 c 139 § 10; 1975 1st ex.s. c 166 § 7; 1973 1st ex.s. c 218 § 13.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.140 Gambling commission—Investigations—Inspections—Hearing and subpoena power—Administrative law judges. (1) The commission or its authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this

chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the commission or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the commission's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, who may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in RCW 34.05.446, 34.05.449, and 34.05.452.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 175 § 42; 1981 c 67 § 16; 1977 ex.s. c 326 § 7; 1975 1st ex.s. c 166 § 8; 1973 1st ex.s. c 218 § 14.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.150 Injunctions—Voiding of licenses, permits, or certificates. (1) Any activity conducted in violation of any provision of this chapter may be enjoined in an action commenced by the commission through the attorney general or by the prosecuting attorney or legal counsel of any city or town in which the prohibited activity may occur.

(2) When a violation of any provision of this chapter or any rule or regulation adopted pursuant hereto has occurred on any property or premises for which one or more licenses, permits, or certificates issued by this state, or any political subdivision or public agency thereof are in effect, all such licenses, permits and certificates may be voided and no license, permit, or certificate so voided shall be issued or reissued for such property or premises for a period of up to sixty days thereafter. [1973 1st ex.s. c 218 § 15.]

9.46.153 Applicants and licensees—Responsibilities and duties—Waiver of liability—Investigation statement as privileged. (1) It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted;

(2) All applicants and licensees shall consent to inspections, searches and seizures and the supplying of handwriting examples as authorized by this chapter and rules adopted hereunder;

(3) All licensees, and persons having any interest in licensees, including but not limited to employees and agents of licensees, and other persons required to be qualified under this chapter or rules of the commission shall have a duty to inform the commission or its staff of any action or omission which they believe would constitute a violation of this chapter or rules adopted pursuant thereto. No person who so informs the commission or the staff shall be discriminated against by an applicant or licensee because of the supplying of such information;

(4) All applicants, licensees, persons who are operators or directors thereof and persons who otherwise have a substantial interest therein shall have the continuing duty to provide any assistance or information required by the commission and to investigations conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee or officer or director thereof or person with a substantial interest therein, refuses to comply, the applicant or licensee may be denied or revoked by the commission;

(5) All applicants and licensees shall waive any and all liability as to the state of Washington, its agencies, employees and agents for any damages resulting from any disclosure or publication in any manner, other than a wilfully unlawful disclosure or publication, of any information acquired by the commission during its licensing or other investigations or inquiries or hearings;

(6) Each applicant or licensee may be photographed for investigative and identification purposes in accordance with rules of the commission;

(7) An application to receive a license under this chapter or rules adopted pursuant thereto constitutes a request for determination of the applicant's and those person's with an interest in the applicant, general character, integrity and ability to engage or participate in, or be associated with, gambling or related activities impacting this state. Any written or oral statement made in the course of an official investigation, proceeding or process of the commission by any member, employee or agent thereof or by any witness, testifying under oath, which is relevant to the investigation, proceeding or process, is absolutely privileged and shall not impose any liability for slander, libel or defamation, or constitute any grounds for recovery in any civil action. [1981 c 139 § 14.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.155 Applicants and licensees—Bribes to public officials, employees, agents—Penalty. No applicant or licensee shall give or provide, or offer to give or provide,

directly or indirectly, to any public official or employee or agent of this state, or any of its agencies or political subdivisions, any compensation or reward, or share of the money or property paid or received through gambling activities, in consideration for obtaining any license, authorization, permission or privilege to participate in any gaming operations except as authorized by this chapter or rules adopted pursuant thereto. Violation of this section shall be a felony for which a person, upon conviction, shall be punished by imprisonment for not more than five years or a fine of not more than one hundred thousand dollars, or both. [1981 c 139 § 15.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.158 Applicants, licensees, operators—Commission approval for hiring certain persons. No applicant for a license from, nor licensee of, the commission, nor any operator of any gambling activity, shall, without advance approval of the commission, knowingly permit any person to participate in the management or operation of any activity for which a license from the commission is required or which is otherwise authorized by this chapter if that person:

(1) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; or

(2) Has violated, failed, or refused to comply with provisions, requirements, conditions, limitations or duties imposed by this chapter, and any amendments thereto, or any rules adopted by the commission pursuant thereto, or has permitted, aided, abetted, caused, or conspired with another to cause, any person to violate any of the provisions of this chapter or rules of the commission. [1981 c 139 § 18.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.160 Conducting activity without license. Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission shall be guilty of a class B felony. If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [1991 c 261 § 3; 1975 1st ex.s. c 166 § 9; 1973 1st ex.s. c 218 § 16.]

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.170 False or misleading entries or statements, refusal to produce records. Whoever, in any application for a license or in any book or record required to be maintained by the commission or in any report required to be submitted to the commission, shall make any false or misleading statement, or make any false or misleading entry or wilfully fail to maintain or make any entry required to be

maintained or made, or who wilfully refuses to produce for inspection by the commission, or its designee, any book, record, or document required to be maintained or made by federal or state law, shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 4; 1973 1st ex.s. c 218 § 17.]

9.46.180 Causing person to violate chapter. Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any provision of this chapter shall be guilty of a class B felony subject to the penalty in RCW 9A.20.021. [1991 c 261 § 5; 1977 ex.s. c 326 § 8; 1973 1st ex.s. c 218 § 18.]

9.46.185 Causing person to violate rule or regulation. Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule or regulation adopted pursuant to this chapter shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 6; 1977 ex.s. c 326 § 9.]

9.46.190 Violations relating to fraud or deceit. Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation:

(1) Employ any device, scheme, or artifice to defraud; or

(2) Make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made not misleading, in the light of the circumstances under which said statement is made; or

(3) Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person;

Shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 7; 1977 ex.s. c 326 § 10; 1973 1st ex.s. c 218 § 19.]

9.46.192 Cities and towns—Ordinance enacting certain sections of chapter—Limitations—Penalties. Every city or town is authorized to enact as an ordinance of that city or town any or all of the sections of this chapter the violation of which constitutes a misdemeanor or gross misdemeanor. The city or town may not modify the language of any section of this chapter in enacting such section except as necessary to put the section in the proper form of an ordinance or to provide for a sentence [to] be served in the appropriate detention facility. The ordinance must provide for the same maximum penalty for its violation as may be imposed under the section in this chapter. [1977 ex.s. c 326 § 11.]

9.46.193 Cities and towns—Ordinance adopting certain sections of chapter—Jurisdiction of courts. District courts operating under the provisions of chapters 3.30 through 3.74 RCW, except municipal departments of such courts operating under chapter 3.46 RCW and municipal courts operating under chapter 3.50 RCW, shall have concurrent jurisdiction with the superior court to hear, try, and determine misdemeanor and gross misdemeanor violations of this chapter and violations of any ordinance passed under authority of this chapter by any city or town.

Municipal courts operating under chapters 35.20 or 3.50 RCW and municipal departments of the district court operating under chapter 3.46 RCW, shall have concurrent jurisdiction with the superior court to hear, try, and determine violations of any ordinance passed under authority of this chapter by the city or town in which the court is located.

Notwithstanding any other provision of law, each of these courts shall have the jurisdiction and power to impose up to the maximum penalties provided for the violation of the ordinances adopted under the authority of this chapter. Review of the judgments of these courts shall be as provided in other criminal actions. [1977 ex.s. c 326 § 12.]

9.46.195 Obstruction of public servant in administration or enforcement as violation—Penalty. No person shall intentionally obstruct or attempt to obstruct a public servant in the administration or enforcement of this chapter by using or threatening to use physical force or by means of any unlawful act. Any person who violates this section shall be guilty of a misdemeanor. [1974 ex.s. c 155 § 11; 1974 ex.s. c 135 § 11.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.196 Defrauding or cheating other participant or operator—Causing another to do so. No person participating in a gambling activity shall in the course of such participation, directly or indirectly:

(1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;

(2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;

(3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or

(4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section.

Any person violating this section shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 8; 1977 ex.s. c 326 § 13.]

9.46.198 Working in gambling activity without license as violation—Penalty. Any person who works as an employee or agent or in a similar capacity for another person in connection with the operation of an activity for which a license is required under this chapter or by commission rule without having obtained the applicable license required by the commission under *RCW 9.46.070(16) shall be guilty of a gross misdemeanor and shall, upon conviction, be punished by not more than one year in the county jail or a fine of not more than five thousand dollars, or both. [1977 ex.s. c 326 § 14.]

***Reviser's note:** The reference to RCW 9.46.070(16) is to that section as amended by 1977 ex.s. c 326 § 3.

9.46.200 Action for money damages due to violations—Interest—Attorneys' fees—Evidence for exoneration. In addition to any other penalty provided for in this

chapter, every person, directly or indirectly controlling the operation of any gambling activity authorized by this chapter, including a director, officer, and/or manager of any association, organization or corporation conducting the same, whether charitable, nonprofit, or profit, shall be liable, jointly and severally, for money damages suffered by any person because of any violation of this chapter, together with interest on any such amount of money damages at six percent per annum from the date of the loss, and reasonable attorneys' fees: PROVIDED, That if any such director, officer, and/or manager did not know any such violation was taking place and had taken all reasonable care to prevent any such violation from taking place, and if such director, officer and/or manager shall establish by a preponderance of the evidence that he did not have such knowledge and that he had exercised all reasonable care to prevent the violations he shall not be liable hereunder. Any civil action under this section may be considered a class action. [1987 c 4 § 41; 1974 ex.s. c 155 § 10; 1974 ex.s. c 135 § 10; 1973 1st ex.s. c 218 § 20.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.210 Enforcement—Commission as a law enforcement agency. (1) It shall be the duty of all peace officers, law enforcement officers, and law enforcement agencies within this state to investigate, enforce, and prosecute all violations of this chapter.

(2) In addition to the authority granted by subsection (1) of this section law enforcement agencies of cities and counties shall investigate and report to the commission all violations of the provisions of this chapter and of the rules of the commission found by them and shall assist the commission in any of its investigations and proceedings respecting any such violations. Such law enforcement agencies shall not be deemed agents of the commission.

(3) In addition to its other powers and duties, the commission shall have the power to enforce the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, both assistant directors, and each of the commission's investigators, enforcement officers, and inspectors shall have the power, under the supervision of the commission, to enforce the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power to arrest without a

warrant, any person or persons found in the act of violating any of the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth above, the commission shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions of this chapter, as now law or hereafter amended, and to obtain information from and provide information to all other law enforcement agencies. [1981 c 139 § 11; 1977 ex.s. c 326 § 15; 1975 1st ex.s. c 166 § 10; 1974 ex.s. c 155 § 9; 1974 ex.s. c 135 § 9; 1973 1st ex.s. c 218 § 21.]

Reviser's note: For codification of 1973 1st ex.s. c 218 see note to RCW 9.46.010. Through the 1974 ex.s., the contents of chapter 9.46 RCW derive either from 1973 1st ex.s. c 218, amend the session law chapter, or have been specifically added to the chapter.

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.220 Professional gambling in the first degree.

(1) A person is guilty of professional gambling in the first degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) While engaging in professional gambling acts in concert with or conspires with five or more people;

(b) Accepts wagers exceeding five thousand dollars during any calendar month on future contingent events; or

(c) Operates, manages, or profits from the operation of a premises or location where persons are charged a fee to participate in card games, lotteries, or other gambling activities that are not authorized by this chapter or licensed by the commission.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the first degree is a class B felony subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 10; 1987 c 4 § 42; 1973 1st ex.s. c 218 § 22.]

9.46.221 Professional gambling in the second degree.

(1) A person is guilty of professional gambling in the second degree if he or she engages in or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:

(a) While engaging in professional gambling acts in concert with or conspires with less than five people;

(b) Accepts wagers exceeding two thousand dollars during any calendar month on future contingent events;

(c) Maintains a "gambling premises" as defined in this chapter; or

(d) Maintains gambling records as defined in *RCW 9.46.020.

(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.

(3) Professional gambling in the second degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. [1991 c 261 § 11.]

***Reviser's note:** RCW 9.46.020 was repealed by 1987 c 4 § 47; "gambling record" is now defined in RCW 9.46.0253.

9.46.222 Professional gambling in the third degree.

(1) A person is guilty of professional gambling in the third degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter; and

(a) His or her conduct does not constitute first or second degree professional gambling;

(b) Operates any of the unlicensed gambling activities authorized by this chapter in a manner other than as prescribed by this chapter; or

(c) Is directly employed in but not managing or directing any gambling operation.

(2) This section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and the rules adopted pursuant to this chapter.

(3) Professional gambling in the third degree is a gross misdemeanor subject to the penalty established in RCW 9A.20.021. [1991 c 261 § 12.]

9.46.225 Professional gambling—Penalties not applicable to authorized activities. The penalties provided for professional gambling in this chapter shall not apply to the activities authorized by this chapter when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations of the commission. [1987 c 4 § 37. Formerly RCW 9.46.030(11).]

9.46.230 Seizure and disposition of gambling devices—Owning, buying, selling, etc., gambling devices or records—Penalties. (1) All gambling devices as defined in this chapter are common nuisances and shall be subject to seizure, immediately upon detection by any peace officer, and to confiscation and destruction by order of a superior or district court, except when in the possession of officers enforcing this chapter.

(2) No property right in any gambling device shall exist or be recognized in any person, except the possessory right of officers enforcing this chapter.

(3) All furnishings, fixtures, equipment, and stock, including without limitation furnishings and fixtures adaptable to nongambling uses and equipment and stock for printing, recording, computing, transporting, or safekeeping, used in connection with professional gambling or maintaining a gambling premises, and all money or other things of value at stake or displayed in or in connection with professional gambling or any gambling device used therein, shall be subject to seizure, immediately upon detection, by any

peace officer, and unless good cause is shown to the contrary by the owner, shall be forfeited to the state or political subdivision by which seized by order of a court having jurisdiction, for disposition by public auction or as otherwise provided by law. Bona fide liens against property so forfeited, on good cause shown by the lienor, shall be transferred from the property to the proceeds of the sale of the property. Forfeit moneys and other proceeds realized from the enforcement of this subsection shall be paid into the general fund of the state if the property was seized by officers thereof or to the political subdivision or other public agency, if any, whose officers made the seizure, except as otherwise provided by law. This subsection shall not apply to such items which are actually being used by, or being held for use by, a person licensed by the commission or who is otherwise authorized by this chapter or by commission rule to conduct gambling activities without a license in connection with gambling activities authorized by this section when:

(a) The person is acting in conformance with the provisions of chapter 9.46 RCW, as now or hereafter amended, and the rules and regulations adopted pursuant thereto; and

(b) The items are of the type and kind traditionally and usually employed in connection with the particular activity. Nor shall this subsection apply to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto.

(4) Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs, or transports any gambling device or offers or solicits any interest therein, whether through an agent or employee or otherwise, shall be guilty of a felony and fined not more than one hundred thousand dollars or imprisoned not more than five years or both: PROVIDED, HOWEVER, That this subsection shall not apply to persons licensed by the commission, or who are otherwise authorized by this chapter, or by commission rule, to conduct gambling activities without a license, respecting devices which are to be used, or are being used, solely in that activity for which the license was issued, or for which the person has been otherwise authorized when:

(a) The person is acting in conformance with the provisions of chapter 9.46 RCW, as now or hereafter amended, and the rules and regulations adopted pursuant thereto; and

(b) The devices are a type and kind traditionally and usually employed in connection with the particular activity. Nor shall this subsection apply to any act or acts by such persons in furtherance of the activity for which the license was issued, or for which the person is authorized, when such activity is conducted in compliance with the provisions of this chapter, as now or hereafter amended, and in accordance with the rules and regulations adopted pursuant thereto. Subsection (2) of this section shall have no application in the enforcement of this subsection. In the enforcement of this subsection direct possession of any such gambling device shall be presumed to be knowing possession thereof.

(5) Whoever knowingly prints, makes, possesses, stores, or transports any gambling record, or buys, sells, offers, or solicits any interest therein, whether through an agent or

employee or otherwise, shall be guilty of a gross misdemeanor: PROVIDED, HOWEVER, That this subsection shall not apply to records relating to and kept for activities authorized by this chapter when the records are of the type and kind traditionally and usually employed in connection with the particular activity. Nor shall this subsection apply to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. In the enforcement of this subsection direct possession of any such gambling record shall be presumed to be knowing possession thereof. [1987 c 202 § 139; 1987 c 4 § 43; 1981 c 139 § 12; 1977 ex.s. c 326 § 16; 1974 ex.s. c 155 § 5; 1974 ex.s. c 135 § 5; 1973 1st ex.s. c 218 § 23.]

Reviser's note: This section was amended by 1987 c 4 § 43 and by 1987 c 202 § 139, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.235 Slot machines, antique—Defenses concerning—Presumption created. (1) For purposes of a prosecution under RCW 9.46.230(4) or a seizure, confiscation, or destruction order under RCW 9.46.230(1), it shall be a defense that the gambling device involved is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or defendant's possession. Operation of an antique slot machine shall be only by free play or with coins provided at no cost by the owner. No slot machine, having been seized under this chapter, may be altered, destroyed, or disposed of without affording the owner thereof an opportunity to present a defense under this section. If the defense is applicable, the antique slot machine shall be returned to the owner or defendant, as the court may direct.

(2) RCW 9.46.230(2) shall have no application to any antique slot machine that has not been operated for gambling purposes while in the owner's possession.

(3) For the purposes of this section, a slot machine shall be conclusively presumed to be an antique slot machine if it is at least twenty-five years old. [1987 c 191 § 1; 1977 ex.s. c 165 § 1.]

9.46.240 Gambling information, transmitting or receiving. Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021: PROVIDED, HOWEVER, That this section shall not apply to such information transmitted or received or equipment installed or maintained relating to activities authorized by this chapter or to any act or acts in furtherance thereof when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. [1991 c 261 § 9; 1987 c 4 § 44; 1973 1st ex.s. c 218 § 24.]

9.46.250 Gambling property or premises—Common nuisances, abatement—Termination of mortgage, contract, or leasehold interests, licenses—Enforcement. (1) All gambling premises are common nuisances and shall be subject to abatement by injunction or as otherwise provided by law. The plaintiff in any action brought under this subsection against any gambling premises, need not show special injury and may, in the discretion of the court, be relieved of all requirements as to giving security.

(2) When any property or premise held under a mortgage, contract or leasehold is determined by a court having jurisdiction to be a gambling premises, all rights and interests of the holder therein shall terminate and the owner shall be entitled to immediate possession at his election: PROVIDED, HOWEVER, That this subsection shall not apply to those premises in which activities authorized by this chapter or any act or acts in furtherance thereof are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto.

(3) When any property or premises for which one or more licenses issued by the commission are in effect, is determined by a court having jurisdiction to be a gambling premise, all such licenses may be voided and no longer in effect, and no license so voided shall be issued or reissued for such property or premises for a period of up to sixty days thereafter. Enforcement of this subsection shall be the duty of all peace officers and all taxing and licensing officials of this state and its political subdivisions and other public agencies. This subsection shall not apply to property or premises in which activities authorized by this chapter, or any act or acts in furtherance thereof, are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. [1987 c 4 § 45; 1973 1st ex.s. c 218 § 25.]

9.46.260 Proof of possession as evidence of knowledge of its character. Proof of possession of any device used for professional gambling or any record relating to professional gambling specified in RCW 9.46.230 is prima facie evidence of possession thereof with knowledge of its character or contents. [1973 1st ex.s. c 218 § 26.]

9.46.270 Chapter as exclusive authority for taxation of gambling activities. This chapter shall constitute the exclusive legislative authority for the taxing by any city, town, city-county or county of any gambling activity and its application shall be strictly construed to those activities herein permitted and to those persons, associations or organizations herein permitted to engage therein. [1973 1st ex.s. c 218 § 27.]

9.46.285 Chapter as exclusive authority for licensing and regulation of gambling activity. This chapter constitutes the exclusive legislative authority for the licensing and regulation of any gambling activity and the state preempts such licensing and regulatory functions, except as to the powers and duties of any city, town, city-county, or county which are specifically set forth in this chapter. Any ordinance, resolution, or other legislative act by any city,

town, city-county, or county relating to gambling in existence on September 27, 1973 shall be as of that date null and void and of no effect. Any such city, town, city-county, or county may thereafter enact only such local law as is consistent with the powers and duties expressly granted to and imposed upon it by chapter 9.46 RCW and which is not in conflict with that chapter or with the rules of the commission. [1973 2nd ex.s. c 41 § 8.]

9.46.291 Chapter not applicable to state lottery. The provisions of this chapter shall not apply to the conducting, operating, participating, or selling or purchasing of tickets or shares in the "lottery" or "state lottery" as defined in RCW 67.70.010 when such conducting, operating, participating, or selling or purchasing is in conformity to the provisions of chapter 67.70 RCW and to the rules adopted thereunder. [1982 2nd ex.s. c 7 § 39.]

Construction—Severability—1982 2nd ex.s. c 7: See RCW 67.70.902 and 67.70.903.

9.46.293 Fishing derbies exempted. Any fishing derby, defined under RCW 9.46.0229, shall not be subject to any other provisions of this chapter or to any rules or regulations of the commission. [1989 c 8 § 1; 1975 1st ex.s. c 166 § 13.]

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.295 Licenses as legal authority to engage in activities for which issued—Exception. Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued. [1974 ex.s. c 155 § 6; 1974 ex.s. c 135 § 6.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.300 Licenses and reports—Public inspection—Exceptions and requirements—Charges. All applications for licenses made to the commission, with the exception of any portions of the applications describing the arrest or conviction record of any person, and all reports required by the commission to be filed by its licensees on a periodic basis concerning the operation of the licensed activity or concerning any organization, association, or business in connection with which a licensed activity is operated, in the commission files, shall be open to public inspection at the commission's offices upon a prior written request of the commission. The staff of the commission may decline to allow an inspection until such time as the inspection will not unduly interfere with the other duties of the staff. The commission may charge the person making a request for an inspection an amount necessary to offset the costs to the commission of providing the inspection and copies of any requested documents. [1977 ex.s. c 326 § 17.]

9.46.310 Licenses for manufacture, sale, distribution, or supply of gambling devices. No person shall manufacture, and no person shall sell, distribute, furnish or supply to any other person, any gambling device, including but not limited to punchboards and pull tabs, in this state, or for use within this state, without first obtaining a license to do so from the commission under the provisions of this chapter.

Such licenses shall not be issued by the commission except respecting devices which are designed and permitted for use in connection with activities authorized under this chapter: PROVIDED, That this requirement for licensure shall apply only insofar as the commission has adopted, or may adopt, rules implementing it as to particular categories of gambling devices and related equipment. [1981 c 139 § 13.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.350 Civil action to collect fees, interest, penalties, or tax—Writ of attachment—Records as evidence.

At any time within five years after any amount of fees, interest, penalties, or tax which is imposed pursuant to this chapter, or rules adopted pursuant thereto, shall become due and payable, the attorney general, on behalf of the commission, may bring a civil action in the courts of this state, or any other state, or of the United States, to collect the amount delinquent, together with penalties and interest: PROVIDED, That where the tax is one imposed by a county, city or town under RCW 9.46.110, any such action shall be brought by that county, city or town on its own behalf. An action may be brought whether or not the person owing the amount is at such time a licensee pursuant to the provisions of this chapter.

If such an action is brought in the courts of this state, a writ of attachment may be issued and no bond or affidavit prior to the issuance thereof shall be required. In all actions in this state, the records of the commission, or the appropriate county, city or town, shall be prima facie evidence of the determination of the tax due or the amount of the delinquency. [1981 c 139 § 16.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.360 Indian tribes—Compact negotiation process. (1) The negotiation process for compacts with federally recognized Indian tribes for conducting class III gaming, as defined in the Indian Gaming Regulatory Act, 25 U.S.C. Sec. 2701 et seq., on federal Indian lands is governed by this section.

(2) The gambling commission through the director or the director's designee shall negotiate compacts for class III gaming on behalf of the state with federally recognized Indian tribes in the state of Washington.

(3) When a tentative agreement with an Indian tribe on a proposed compact is reached, the director shall immediately transmit a copy of the proposed compact to all voting and ex officio members of the gambling commission and to the standing committees designated pursuant to subsection (5) of this section.

(4) Notwithstanding RCW 9.46.040, the four ex officio members of the gambling commission shall be deemed voting members of the gambling commission for the sole

purpose of voting on proposed compacts submitted under this section.

(5) Within thirty days after receiving a proposed compact from the director, one standing committee from each house of the legislature shall hold a public hearing on the proposed compact and forward its respective comments to the gambling commission. The president of the senate shall designate the senate standing committee that is to carry out the duties of this section, and the speaker of the house of representatives shall designate the house standing committee that is to carry out the duties of this section. The designated committees shall continue to perform under this section until the president of the senate or the speaker of the house of representatives, as the case may be, designates a different standing committee.

(6) The gambling commission may hold public hearings on the proposed compact any time after receiving a copy of the compact from the director. Within forty-five days after receiving the proposed compact from the director, the gambling commission, including the four ex officio members, shall vote on whether to return the proposed compact to the director with instructions for further negotiation or to forward the proposed compact to the governor for review and final execution.

(7) Notwithstanding provisions in this section to the contrary, if the director forwards a proposed compact to the gambling commission and the designated standing committees within ten days before the beginning of a regular session of the legislature, or during a regular or special session of the legislature, the thirty-day time limit set forth in subsection (5) of this section and the forty-five day limit set forth in subsection (6) of this section are each forty-five days and sixty days, respectively.

(8) Funding for the negotiation process under this section must come from the gambling revolving fund.

(9) In addition to the powers granted under this chapter, the commission, consistent with the terms of any compact, is authorized and empowered to enforce the provisions of any compact between a federally recognized Indian tribe and the state of Washington. [1992 c 172 § 2.]

Severability—1992 c 172: See note following RCW 43.06.010.

9.46.900 Severability—1973 1st ex.s. c 218. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 218 § 31.]

Reviser's note: See note following RCW 9.46.010.

9.46.901 Intent—1987 c 4. The separation of definitions and authorized activities provisions of the state's gambling statutes into shorter sections is intended to improve the readability and facilitate the future amendment of these sections. This separation shall not change the meaning of any of the provisions involved. [1987 c 4 § 1.]

9.46.902 Construction—1987 c 4. This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order

adopted under those sections, nor as affecting any proceeding instituted under those sections. [1987 c 4 § 48.]

Chapter 9.47 GAMBLING

Sections

- 9.47.080 Bucket shop defined.
9.47.090 Maintaining bucket shop—Penalty.
9.47.100 Written statement to be furnished—Presumption.
9.47.120 Bunco steering.

Action to recover

leased premises used for gambling: RCW 4.24.080.
money lost at gambling: RCW 4.24.070, 4.24.090.

Allowing minor to gamble: RCW 26.28.080.

Baseball, bribery and illegal practices: RCW 67.04.010, 67.04.020, 67.04.050.

Gaming apparatus, search and seizure: RCW 10.79.015.

Sporting contests, fraud: RCW 67.24.010.

9.47.080 Bucket shop defined. A bucket shop is hereby defined to be a shed, tent, tenement, booth, building, float or vessel, or any part thereof, wherein may be made contracts respecting the purchase or sale upon margin or credit of any commodities, securities, or property, or option for the purchase thereof, wherein both parties intend that such contract shall or may be terminated, closed and settled; either,

(1) Upon the basis of the market prices quoted or made on any board of trade or exchange upon which such commodities, securities, or property may be dealt in; or,

(2) When the market prices for such commodities, securities or property shall reach a certain figure in any such board of trade or exchange; or,

(3) On the basis of the difference in the market prices at which said commodities, securities or property are, or purport to be, bought and sold. [1909 c 249 § 223; RRS § 2475.]

Securities and investments: Title 21 RCW.

9.47.090 Maintaining bucket shop—Penalty. Every person, whether in his or her own behalf, or as agent, servant or employee of another person, within or outside of this state, who shall open, conduct or carry on any bucket shop, or make or offer to make any contract described in RCW 9.47.080, or with intent to make such a contract, or assist therein, shall receive, exhibit, or display any statement of market prices of any commodities, securities, or property, shall be punished by imprisonment in a state correctional facility for not more than five years. [1992 c 7 § 13; 1909 c 249 § 224; RRS § 2476.]

9.47.100 Written statement to be furnished—Presumption. Every person, whether in his own behalf, or as the servant, agent or employee of another person, within or outside of this state, who shall buy or sell for another, or execute any order for the purchase or sale of any commodities, securities or property, upon margin or credit, whether for immediate or future delivery, shall, upon written demand therefor, furnish such principal or customer with a written statement containing the names of the persons from whom

such property was bought, or to whom it has been sold, as the case may be, the time when, the place where, the amount of, and the price at which the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within forty-eight hours after such written demand, such refusal shall be prima facie evidence as against him that such purchase or sale was made in violation of RCW 9.47.090. [1909 c 249 § 225; RRS § 2477.]

9.47.120 Bunco steering. Every person who shall entice, or induce another, upon any pretense, to go to any place where any gambling game, scheme or device, or any trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice or device, is being conducted or operated; or while in such place shall entice or induce another to bet, wager or hazard any money or property, or representative of either, upon any such game, scheme, device, trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice, or device, or to execute any obligation for the payment of money, or delivery of property, or to lose, advance, or loan any money or property, or representative of either, shall be punished by imprisonment in a state correctional facility for not more than ten years. [1992 c 7 § 14; 1909 c 249 § 227; RRS § 2479.]

Swindling: Chapter 9A.60 RCW.

Chapter 9.47A INHALING TOXIC FUMES (Formerly: Glue sniffing)

Sections

- 9.47A.010 Definition.
9.47A.020 Unlawful inhalation—Exception.
9.47A.030 Possession of certain substances prohibited, when.
9.47A.040 Sale of certain substances prohibited, when.
9.47A.050 Penalty.

9.47A.010 Definition. As used in this chapter, the phrase "substance containing a solvent having the property of releasing toxic vapors or fumes" shall mean and include any substance containing one or more of the following chemical compounds:

- (1) Acetone;
- (2) Amylacetate;
- (3) Benzol or benzene;
- (4) Butyl acetate;
- (5) Butyl alcohol;
- (6) Carbon tetrachloride;
- (7) Chloroform;
- (8) Cyclohexanone;
- (9) Ethanol or ethyl alcohol;
- (10) Ethyl acetate;
- (11) Hexane;
- (12) Isopropanol or isopropyl alcohol;
- (13) Isopropyl acetate;
- (14) Methyl "cellosolve" acetate;
- (15) Methyl ethyl ketone;
- (16) Methyl isobutyl ketone;
- (17) Toluol or toluene;
- (18) Trichloroethylene;
- (19) Tricresyl phosphate;

(20) Xylol or xylene; or

(21) Any other solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors. [1984 c 68 § 1; 1969 ex.s. c 149 § 1.]

9.47A.020 Unlawful inhalation—Exception. It is unlawful for any person to intentionally smell or inhale the fumes of any type of substance as defined in RCW 9.47A.010 or to induce any other person to do so, for the purpose of causing a condition of, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes. This section does not apply to the inhalation of any anesthesia for medical or dental purposes. [1984 c 68 § 2; 1969 ex.s. c 149 § 2.]

9.47A.030 Possession of certain substances prohibited, when. No person may, for the purpose of violating RCW 9.47A.020, use, or possess for the purpose of so using, any substance containing a solvent having the property of releasing toxic vapors or fumes. [1984 c 68 § 3; 1969 ex.s. c 149 § 3.]

9.47A.040 Sale of certain substances prohibited, when. No person may sell, offer to sell, deliver, or give to any other person any container of a substance containing a solvent having the property of releasing toxic vapors or fumes, if he has knowledge that the product sold, offered for sale, delivered, or given will be used for the purpose set forth in RCW 9.47A.020. [1984 c 68 § 4; 1969 ex.s. c 149 § 4.]

9.47A.050 Penalty. Any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or by both. [1969 ex.s. c 149 § 5.]

Chapter 9.51

JURIES, CRIMES RELATING TO

Sections

- 9.51.010 Misconduct of officer drawing jury.
- 9.51.020 Soliciting jury duty.
- 9.51.030 Misconduct of officer in charge of jury.
- 9.51.040 Grand juror acting after challenge allowed.
- 9.51.050 Disclosing transaction of grand jury.
- 9.51.060 Disclosure of deposition returned by grand jury.

Grand juries: Chapter 10.27 RCW.

Juries: Chapter 2.36 RCW.

Juror asking or receiving bribe: RCW 9A.72.100.

Trial

district courts: Chapter 12.12 RCW.

generally: Chapter 4.44 RCW.

juries in criminal cases: Chapter 10.49 RCW.

9.51.010 Misconduct of officer drawing jury. Every person charged by law with the preparation of any jury list or list of names from which any jury is to be drawn, and

every person authorized by law to assist at the drawing of a grand or petit jury to attend a court or term of court or to try any cause or issue, who shall—

(1) Place in any such list any name at the request or solicitation, direct or indirect, of any person; or

(2) Designedly put upon the list of jurors, as having been drawn, any name which was not lawfully drawn for that purpose; or

(3) Designedly omit to place upon such list any name which was lawfully drawn; or

(4) Designedly sign or certify a list of such jurors as having been drawn which were not lawfully drawn; or

(5) Designedly and wrongfully withdraw from the box or other receptacle for the ballots containing the names of such jurors any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omit to place therein any name lawfully drawn or designated, or place therein a paper or ballot-containing the name of a person not lawfully drawn and designated as a juror; or

(6) In drawing or impanelling such jury, do any act which is unfair, partial or improper in any respect;

Shall be guilty of a gross misdemeanor. [1909 c 249 § 75; Code 1881 § 922; 1854 p 94 § 107; RRS § 2327.]

9.51.020 Soliciting jury duty. Every person who shall, directly or indirectly, solicit or request any person charged with the duty of preparing any jury list to put his name, or the name of any other person, on any such list, shall be guilty of a gross misdemeanor. [1909 c 249 § 76; 1888 p 114 § 1; RRS § 2328.]

9.51.030 Misconduct of officer in charge of jury. Every person to whose charge a jury shall be committed by a court or magistrate, who shall knowingly, without leave of such court or magistrate, permit them or any one of them to receive any communication from any person, to make any communication to any person, to obtain or receive any book, paper or refreshment, or to leave the jury room, shall be guilty of a gross misdemeanor. [1909 c 249 § 77; RRS § 2329.]

9.51.040 Grand juror acting after challenge allowed. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, shall be present at, or take part, or attempt to take part, in the consideration of the charge against the defendant who interposed such challenge, or the deliberations of the grand jury thereon, shall be guilty of a misdemeanor. [1909 c 249 § 121; RRS § 2373.]

9.51.050 Disclosing transaction of grand jury. Every judge, grand juror, prosecuting attorney, clerk, stenographer or other officer who, except in the due discharge of his official duty, shall disclose the fact that a presentment has been made or indictment found or ordered against any person, before such person shall be in custody; and every grand juror, clerk or stenographer who, except when lawfully required by a court or officer, shall disclose any evidence adduced before the grand jury, or any proceeding, discussion or vote of the grand jury or any member

thereof, shall be guilty of a misdemeanor. [1909 c 249 § 126; Code 1881 § 991; 1854 p 111 § 56; RRS § 2378.]

9.51.060 Disclosure of deposition returned by grand jury. Every clerk of any court or other officer who shall wilfully permit any deposition, or the transcript of any testimony, returned by a grand jury and filed with such clerk or officer, to be inspected by any person except the court, the deputies or assistants of such clerk, and the prosecuting attorney and his deputies, until after the arrest of the defendant, shall be guilty of a misdemeanor. [1909 c 249 § 127; RRS § 2379.]

Chapter 9.54 LARCENY

Sections

- 9.54.130 Restoration of stolen property—Duty of officers.
Insurance agent, appropriation of premiums: RCW 48.17.480.
Pawnbrokers and second-hand dealers: RCW 19.60.066.
Public lands, taking or destroying property is larceny: RCW 79.01.748.
Public officer misappropriating funds: RCW 42.20.070, 42.20.090.
Removing native flora from state lands or highways: RCW 47.40.080.
Retaining books, etc., from public library: RCW 27.12.340.
Search and seizures: Chapter 10.79 RCW.
Stealing, receiving railroad property: RCW 81.60.080, 81.60.090.
Stolen property, restoration, sale does not divest rights, duty of officer: RCW 10.79.050.
Sufficiency of indictment or information alleging crime of larceny: RCW 10.37.110.
Theft and robbery: Chapter 9A.56 RCW.
Theft of food fish or shellfish—Molestation of fishing gear: RCW 75.12.090.

9.54.130 Restoration of stolen property—Duty of officers. The officer arresting any person charged as principal or accessory in any robbery or larceny shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his hands, and shall annex a schedule thereof to his return of the warrant.

Whenever the prosecuting attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his demand, shall deliver it to him and take his receipt therefor, after which such prosecuting attorney shall be answerable for the same. [1909 c 249 § 357; RRS § 2609.]

Chapter 9.55 LEGISLATURE, CRIMES RELATING TO

Sections

- 9.55.020 Witness refusing to attend legislature or committee or to testify.

9.55.020 Witness refusing to attend legislature or committee or to testify. Every person duly summoned to attend as a witness before either house of the legislature of this state, or any committee thereof authorized to summon witnesses, who shall refuse or neglect, without lawful

excuse, to attend pursuant to such summons, or who shall wilfully refuse to be sworn or to affirm or to answer any material or proper question or to produce, upon reasonable notice, any material or proper books, papers or documents in his possession or under his control, shall be guilty of a gross misdemeanor. [1909 c 249 § 86; RRS § 2338.]

Legislative inquiry: Chapter 44.16 RCW.

Chapter 9.58 LIBEL AND SLANDER

Sections

- 9.58.010 Libel, what constitutes.
9.58.020 How justified or excused—Malice, when presumed.
9.58.030 Publication defined.
9.58.040 Liability of editors and others.
9.58.050 Report of proceedings privileged.
9.58.060 Venue punishment restricted.
9.58.070 Privileged communications.
9.58.080 Furnishing libelous information.
9.58.090 Threatening to publish libel.
9.58.110 Slander of woman.
9.58.120 Testimony necessary to convict.
Blacklisting: RCW 49.44.010.
Judge or justice using unfit language: RCW 42.20.110.
Sufficiency of indictment or information for libel: RCW 10.37.120.

9.58.010 Libel, what constitutes. Every malicious publication by writing, printing, picture, effigy, sign[,] radio broadcasting or which shall in any other manner transmit the human voice or reproduce the same from records or other appliances or means, which shall tend:—

(1) To expose any living person to hatred, contempt, ridicule or obloquy, or to deprive him of the benefit of public confidence or social intercourse; or

(2) To expose the memory of one deceased to hatred, contempt, ridicule or obloquy; or

(3) To injure any person, corporation or association of persons in his or their business or occupation, shall be libel. Every person who publishes a libel shall be guilty of a gross misdemeanor. [1935 c 117 § 1; 1909 c 249 § 172; 1891 c 69 § 3; Code 1881 §§ 1230, 1231; 1879 p 144 § 1; 1869 p 383 §§ 1, 2; RRS § 2424.]

9.58.020 How justified or excused—Malice, when presumed. Every publication having the tendency or effect mentioned in RCW 9.58.010 shall be deemed malicious unless justified or excused. Such publication is justified whenever the matter charged as libelous charges the commission of a crime, is a true and fair statement, and was published with good motives and for justifiable ends. It is excused when honestly made in belief of its truth and fairness and upon reasonable grounds for such belief, and consists of fair comments upon the conduct of any person in respect of public affairs, made after a fair and impartial investigation. [1909 c 249 § 173; Code 1881 § 1233; 1879 p 144 § 4; 1869 p 384 § 3; RRS § 2425.]

9.58.030 Publication defined. Any method by which matter charged as libelous may be communicated to another shall be deemed a publication thereof. [1909 c 249 § 174; Code 1881 § 1234; 1869 p 384 § 5; RRS § 2426.]

9.58.040 Liability of editors and others. Every editor or proprietor of a book, newspaper or serial, and every manager of a copartnership or corporation by which any book, newspaper or serial is issued, is chargeable with the publication of any matter contained in any such book, newspaper or serial, and every owner, operator, proprietor or person exercising control over any broadcasting station or reproducing [reproducing] record of human voice or who broadcasts over the radio or reproduces the human voice or aids or abets either directly or indirectly in such broadcast or reproduction shall be chargeable with the publication of any matter so disseminated: PROVIDED, That in any prosecution or action for libel it shall be an absolute defense if the defendant shows that the matter complained of was published without his knowledge or fault and against his wishes by another who had no authority from him to make such publication and was promptly retracted by the defendant with an equal degree of publicity upon written request of the complainant. [1935 c 117 § 2; 1909 c 249 § 175; Code 1881 §§ 1230, 1231; 1879 p 144 § 1; 1869 p 383 §§ 1, 2; RRS § 2427.]

Radio and television broadcasting: Chapter 19.64 RCW.

9.58.050 Report of proceedings privileged. No prosecution for libel shall be maintained against a reporter, editor, proprietor, or publisher of a newspaper for the publication therein of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report. The editor or proprietor of a book, newspaper or serial shall be proceeded against in the county where such book, newspaper or serial is published. [1909 c 249 § 176; RRS § 2428.]

9.58.060 Venue punishment restricted. Every other person publishing a libel in this state may be proceeded against in any county where such libelous matter was published or circulated, but a person shall not be proceeded against for the publication of the same libel against the same person in more than one county. [1909 c 249 § 177; RRS § 2429.]

9.58.070 Privileged communications. Every communication made to a person entitled to or concerned in such communication, by one also concerned in or entitled to make it, or who stood in such relation to the former as to offer a reasonable ground for supposing his motive to be innocent, shall be presumed not to be malicious, and shall be termed a privileged communication. [1909 c 249 § 178; RRS § 2430.]

9.58.080 Furnishing libelous information. Every person who shall wilfully state, deliver or transmit by any means whatever, to any manager, editor, publisher, reporter or other employee of a publisher of any newspaper, magazine, publication, periodical or serial, any statement concerning any person or corporation, which, if published therein, would be a libel, shall be guilty of a misdemeanor. [1909 c 249 § 179; RRS § 2431.]

9.58.090 Threatening to publish libel. Every person who shall threaten another with the publication of a libel concerning the latter, or his spouse, parent, child, or other member of his family, and every person who offers to prevent the publication of a libel upon another person upon condition of the payment of, or with intent to extort money or other valuable consideration from any person, shall be guilty of a gross misdemeanor. [1909 c 249 § 180; RRS § 2432.]

Extortion, blackmail, and coercion: Chapter 9A.56 RCW.

9.58.110 Slander of woman. Every person who, in the presence or hearing of any person other than the female slandered, whether she be present or not, shall maliciously speak of or concerning any female of the age of twelve years or upwards, not a common prostitute, any false or defamatory words or language which shall injure or impair the reputation of any such female for virtue or chastity or which shall expose her to hatred, contempt or ridicule, shall be guilty of a misdemeanor. Every slander herein mentioned shall be deemed to be malicious unless justified, and shall be justified when the language charged as slanderous, false or defamatory is true and fair, and was spoken with good motives and for justifiable ends. [1909 c 249 § 181; RRS § 2433.]

9.58.120 Testimony necessary to convict. No conviction shall be had under RCW 9.58.110, upon the testimony of the woman slandered as to the speaking of the slander, unsupported by other evidence. [1927 c 90 § 1; 1909 c 249 § 182; RRS § 2434.]

Chapter 9.61

MALICIOUS MISCHIEF—INJURY TO PROPERTY

Sections

- 9.61.140 Endangering life and property by explosives—Penalty.
- 9.61.150 Damaging building, etc., by explosion—Penalty.
- 9.61.160 Threats to bomb or injure property.
- 9.61.170 Threats to bomb or injure property—Hoax no defense.
- 9.61.180 Threats to bomb or injure property—Penalty.
- 9.61.190 Carrier or racing pigeons—Injury to.
- 9.61.200 Carrier or racing pigeons—Removal or alteration of identification.
- 9.61.230 Telephone calls to harass, intimidate, torment, or embarrass.
- 9.61.240 Telephone calls to harass, intimidate, torment, or embarrass—Permitting telephone to be used.
- 9.61.250 Telephone calls to harass, intimidate, torment, or embarrass—Offense, where deemed committed.

Endangering life by breach of labor contract: RCW 49.44.080.

Insured property, injury or destruction: RCW 9.91.090, 48.30.220.

Malicious mischief: RCW 9A.48.070 through 9A.48.100.

Mutilation or destruction of property by school official: RCW 28A.635.070.

Nuisance: Chapter 9.66 RCW.

Ownership of property—Proof of: RCW 10.58.060.

Public library property, intentional injury: RCW 27.12.330.

9.61.140 Endangering life and property by explosives—Penalty. See RCW 70.74.270.

9.61.150 Damaging building, etc., by explosion—Penalty. See RCW 70.74.280.*Gas bombs, stink bombs, etc.: RCW 70.74.310.*

9.61.160 Threats to bomb or injure property. It shall be unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any governmental property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated. [1977 ex.s. c 231 § 1; 1959 c 141 § 1.]

9.61.170 Threats to bomb or injure property—Hoax no defense. It shall not be a defense to any prosecution under RCW 9.61.160 through 9.61.180 that the threatened bombing or injury was a hoax. [1959 c 141 § 2.]

9.61.180 Threats to bomb or injure property—Penalty. Any violation of RCW 9.61.160 through 9.61.180 shall be a felony. [1977 ex.s. c 231 § 2; 1959 c 141 § 3.]

9.61.190 Carrier or racing pigeons—Injury to. It is a class 1 civil infraction for any person, other than the owner thereof or his authorized agent, to knowingly shoot, kill, maim, injure, molest, entrap, or detain any Antwerp Messenger or Racing Pigeon, commonly called "carrier or racing pigeons", having the name of its owner stamped upon its wing or tail or bearing upon its leg a band or ring with the name or initials of the owner or an identification or registration number stamped thereon. [1987 c 456 § 25; 1963 c 69 § 1.]

*Legislative finding—1987 c 456: See RCW 7.80.005.**Effective date—1987 c 456 §§ 9-31: See RCW 7.80.901.*

9.61.200 Carrier or racing pigeons—Removal or alteration of identification. It is a class 2 civil infraction for any person other than the owner thereof or his authorized agent to remove or alter any stamp, leg band, ring, or other mark of identification attached to any Antwerp Messenger or Racing Pigeon. [1987 c 456 § 26; 1963 c 69 § 2.]

*Legislative finding—1987 c 456: See RCW 7.80.005.**Effective date—1987 c 456 §§ 9-31: See RCW 7.80.901.*

9.61.230 Telephone calls to harass, intimidate, torment, or embarrass. Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

(1) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

(2) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

(3) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household;

shall be guilty of a gross misdemeanor, except that the person is guilty of a class C felony if either of the following applies:

(a) That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state; or

(b) That person harasses another person under subsection (3) of this section by threatening to kill the person threatened or any other person. [1992 c 186 § 6; 1985 c 288 § 11; 1967 c 16 § 1.]

*Severability—1992 c 186: See note following RCW 9A.46.110.**Effective date—Severability—1985 c 288: See RCW 9A.46.905 and 9A.46.910.**Severability—1967 c 16: "If any portion of this act is held to be unconstitutional or void, such decision shall not affect the validity of the remaining parts of this act." [1967 c 16 § 4.]**Communicating with child for immoral purposes: RCW 9.68A.090.**Interference with telephone message: RCW 9A.48.070, 9A.48.080.*

9.61.240 Telephone calls to harass, intimidate, torment, or embarrass—Permitting telephone to be used. Any person who knowingly permits any telephone under his control to be used for any purpose prohibited by RCW 9.61.230 shall be guilty of a misdemeanor. [1967 c 16 § 2.]

9.61.250 Telephone calls to harass, intimidate, torment, or embarrass—Offense, where deemed committed. Any offense committed by use of a telephone as set forth in RCW 9.61.230 may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received. [1967 c 16 § 3.]

Chapter 9.62**MALICIOUS PROSECUTION—ABUSE OF PROCESS**

Sections

- 9.62.010 Malicious prosecution.
9.62.020 Instituting suit in name of another.

9.62.010 Malicious prosecution. Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:

(1) If such crime be a felony, shall be punished by imprisonment in a state correctional facility for not more than five years; and

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor. [1992 c 7 § 15; 1909 c 249 § 117; Code 1881 § 899; 1873 p 203 § 98; 1854 p 92 § 89; RRS § 2369.]

9.62.020 Instituting suit in name of another. Every person who shall institute or prosecute any action or other proceeding in the name of another, without his consent and contrary to law, shall be guilty of a gross misdemeanor. [1909 c 249 § 124; RRS § 2376.]

Chapter 9.66 NUISANCE

Sections

- 9.66.010 Public nuisance.
9.66.020 Unequal damage.
9.66.030 Maintaining or permitting nuisance.
9.66.040 Abatement of nuisance.
9.66.050 Deposit of unwholesome substance.

Cemeteries established illegally: RCW 68.56.040.

Furnishing impure water: RCW 70.54.020.

Malicious mischief—Injury to property: Chapters 9.61, 9A.48 RCW.

Mausoleums and columbariums constructed illegally: RCW 68.28.060.

Nuisances: Chapter 7.48 RCW.

Poisoning food or water: RCW 69.40.030.

Sexually transmitted disease control, penalty: RCW 70.24.080.

9.66.010 Public nuisance. A public nuisance is a crime against the order and economy of the state. Every place

(1) Wherein any fighting between men or animals or birds shall be conducted; or,

(2) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

(3) Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

(1) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,

(2) Shall offend public decency; or,

(3) Shall unlawfully interfere with, befoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley or highway; or,

(4) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance. [1971 ex.s. c 280 § 22; 1909 c 249 § 248; 1895 c 14 § 1; Code 1881 § 1246; RRS § 2500.]

Severability—Construction—1971 ex.s. c 280: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That should provisions of this 1971 amendatory act pertaining to the playing of bingo, or holding raffles, permitting the operation of amusement games be held invalid or unconstitutional by the supreme court of the state of Washington as being violative of Article II, section 24, of the Constitution of the state of Washington, then the provisions hereof relating to each such item as aforesaid specifically declared invalid or unconstitutional by such court shall remain inoperative unless and until the qualified electors of this state shall approve an amendment to Article II, section 24, of the Constitution which may remove any constitutional restrictions against the legislature enacting such laws." [1971 ex.s. c 280 § 21.]

Boxing and wrestling regulated: Chapter 67.08 RCW.

Devices simulating traffic control signs declared public nuisance: RCW 47.36.180.

Highway obstructions: Chapter 47.32 RCW.

Navigation, obstructing: Chapter 88.28 RCW.

Parimutuel betting on horse races permitted: RCW 67.16.060.

9.66.020 Unequal damage. An act which affects a considerable number of persons in any of the ways specified in RCW 9.66.010 is not less a public nuisance because the

extent of the damage is unequal. [1909 c 249 § 249; Code 1881 § 1236; 1875 p 79 § 2; RRS § 2501.]

9.66.030 Maintaining or permitting nuisance. Every person who shall commit or maintain a public nuisance, for which no special punishment is prescribed; or who shall wilfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and every person who shall let, or permit to be used, any building or boat, or portion thereof, knowing that it is intended to be, or is being used, for committing or maintaining any such nuisance, shall be guilty of a misdemeanor. [1909 c 249 § 250; Code 1881 § 1248; 1875 p 81 § 14; RRS § 2502.]

9.66.040 Abatement of nuisance. Any court or magistrate before whom there may be pending any proceeding for a violation of RCW 9.66.030, shall, in addition to any fine or other punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant: PROVIDED, That if the conviction was had in a district court, the district judge shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein. [1987 c 202 § 140; 1957 c 45 § 4; 1909 c 249 § 251; Code 1881 §§ 1244, 1245; 1875 p 80 §§ 10, 11; RRS § 2503.]

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

Jurisdiction to abate a nuisance: State Constitution Art. 4 § 6 (Amendment 28).

9.66.050 Deposit of unwholesome substance. Every person who shall deposit, leave or keep, on or near a highway or route of public travel, on land or water, any unwholesome substance; or who shall establish, maintain or carry on, upon or near a highway or route of public travel, on land or water, any business, trade or manufacture which is noisome or detrimental to the public health; or who shall deposit or cast into any lake, creek or river, wholly or partly in this state, the offal from or the dead body of any animal, shall be guilty of a gross misdemeanor. [1909 c 249 § 285; RRS § 2537.]

Discharging ballast: RCW 88.28.060.

Disposal of dead animals: Chapter 16.68 RCW.

Water pollution: Chapter 35.88 RCW, RCW 70.54.010 through 70.54.030, chapter 90.48 RCW.

Chapter 9.68

OBSCENITY AND PORNOGRAPHY

Sections

- 9.68.015 Obscene literature, shows, etc.—Exemptions.
9.68.030 Indecent articles, etc.
9.68.050 "Erotic material"—Definitions.
9.68.060 "Erotic material"—Determination by court—Labeling—Penalties.
9.68.070 Prosecution for violation of RCW 9.68.060—Defense.
9.68.080 Unlawful acts.
9.68.090 Civil liability of wholesaler or wholesaler-distributor.
9.68.100 Exceptions to RCW 9.68.050 through 9.68.120.

- 9.68.110 Motion picture operator or projectionist exempt, when.
 9.68.120 Provisions of RCW 9.68.050 through 9.68.120 exclusive.
 9.68.130 "Sexually explicit material"—Defined—Unlawful display.
 9.68.140 Promoting pornography—Class C felony—Penalties.

Injunctions, obscene materials: Chapter 7.42 RCW.

Public indecency: Chapter 9A.88 RCW.

Sufficiency of indictment or information, obscene literature: RCW 10.37.130.

Telephone calls using obscene language: RCW 9.61.230 through 9.61.250.

9.68.015 Obscene literature, shows, etc.—

Exemptions. Nothing in *this act shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1959 c 260 § 2.]

*Reviser's note: "this act" [1959 c 260] consists of RCW 9.68.015 and the amendments to RCW 9.68.010; that section was later repealed by 1982 c 184 § 11.

9.68.030 Indecent articles, etc. Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor. [1971 ex.s. c 185 § 2; 1909 c 249 § 208; RRS § 2460.]

9.68.050 "Erotic material"—Definitions. For the purposes of RCW 9.68.050 through 9.68.120:

(1) "Minor" means any person under the age of eighteen years;

(2) "Erotic material" means printed material, photographs, pictures, motion pictures, sound recordings, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;

(3) "Person" means any individual, corporation, or other organization;

(4) "Dealers", "distributors", and "exhibitors" mean persons engaged in the distribution, sale, or exhibition of printed material, photographs, pictures, motion pictures, or sound recordings. [1992 c 5 § 1; 1969 ex.s. c 256 § 13.]

Severability—1969 ex.s. c 256: "If any provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances, is not affected." [1969 ex.s. c 256 § 21.]

9.68.060 "Erotic material"—Determination by court—Labeling—Penalties. (1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of said motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

(c) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(d) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:

(i) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

(ii) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned not more than one year;

(iii) For all subsequent offenses a felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year. [1992 c 5 § 2; 1969 ex.s. c 256 § 14.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.070 Prosecution for violation of RCW 9.68.060—Defense. In any prosecution for violation of RCW 9.68.060, it shall be a defense that:

(1) If the violation pertains to a motion picture or sound recording, the minor was accompanied by a parent, parent's spouse, or guardian; or

(2) Such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or an apparently official document purporting to establish such minor was over the age of eighteen years; or

(3) Such minor was accompanied by a person who represented himself to be a parent, or the spouse of a parent, or a guardian of such minor, and the defendant in good faith relied upon such representation. [1992 c 5 § 4; 1969 ex.s. c 256 § 15.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.080 Unlawful acts. (1) It shall be unlawful for any minor to misrepresent his true age or his true status as the child, stepchild or ward of a person accompanying him, for the purpose of purchasing or obtaining access to any material described in RCW 9.68.050.

(2) It shall be unlawful for any person accompanying such minor to misrepresent his true status as parent, spouse of a parent or guardian of any minor for the purpose of enabling such minor to purchase or obtain access to material described in RCW 9.68.050. [1969 ex.s. c 256 § 16.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.090 Civil liability of wholesaler or wholesaler-distributor. No retailer, wholesaler, or exhibitor is to be deprived of service from a wholesaler or wholesaler-distributor of books, magazines, motion pictures, sound recordings, or other materials or subjected to loss of his franchise or right to deal or exhibit as a result of his attempts to comply with this statute. Any publisher, distributor, or other person, or combination of such persons, which withdraws or attempts to withdraw a franchise or other right to sell at retail, wholesale or exhibit materials on account of the retailer's, wholesaler's or exhibitor's attempts to comply with RCW 9.68.050 through 9.68.120 shall incur civil liability to such retailer, wholesaler or exhibitor for threefold the actual damages resulting from such withdrawal or attempted withdrawal. [1992 c 5 § 3; 1969 ex.s. c 256 § 17.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.100 Exceptions to RCW 9.68.050 through 9.68.120. Nothing in RCW 9.68.050 through 9.68.120 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1969 ex.s. c 256 § 18.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.110 Motion picture operator or projectionist exempt, when. The provisions of RCW 9.68.050 through 9.68.120 shall not apply to acts done in the scope of his employment by a motion picture operator or projectionist employed by the owner or manager of a theatre or other place for the showing of motion pictures, unless the motion picture operator or projectionist has a financial interest in such theatre or place wherein he is so employed or unless he caused to be performed or exhibited such performance or motion picture without the knowledge and consent of the

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manager or owner of the theatre or other place of showing. [1969 ex.s. c 256 § 19.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.120 Provisions of RCW 9.68.050 through 9.68.120 exclusive. The provisions of RCW 9.68.050 through 9.68.120 shall be exclusive. [1969 ex.s. c 256 § 20.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.130 "Sexually explicit material"—Defined—Unlawful display. (1) A person is guilty of unlawful display of sexually explicit material if he knowingly exhibits such material on a viewing screen so that the sexually explicit material is easily visible from a public thoroughfare, park or playground or from one or more family dwelling units.

(2) "Sexually explicit material" as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

(3) Any person who violates subsection (1) of this section shall be guilty of a misdemeanor. [1975 1st ex.s. c 156 § 1.]

9.68.140 Promoting pornography—Class C felony—Penalties. A person who, for profit-making purposes and with knowledge, sells, exhibits, displays, or produces any lewd matter as defined in RCW 7.48A.010 is guilty of promoting pornography. Promoting pornography is a class C felony and shall bear the punishment and fines prescribed for that class of felony. In imposing the criminal penalty, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the felony. All fines assessed under this chapter shall be paid into the general treasury of the state. [1985 c 235 § 3; 1982 c 184 § 8.]

Severability—1985 c 235: See note following RCW 7.48A.040.

Severability—1982 c 184: See RCW 7.48A.900.

Class C felony—Authorized sentence: RCW 9A.20.020.

Chapter 9.68A

SEXUAL EXPLOITATION OF CHILDREN

(Formerly: Child pornography)

Sections

9.68A.001	Legislative finding.
9.68A.011	Definitions.
9.68A.040	Sexual exploitation of a minor—Elements of crime—Penalty.
9.68A.050	Dealing in depictions of minor engaged in sexually explicit conduct.
9.68A.060	Sending, bringing into state depictions of minor engaged in sexually explicit conduct.
9.68A.070	Possession of depictions of minor engaged in sexually explicit conduct.

- 9.68A.080 Processors of depictions of minor engaged in sexually explicit conduct—Report required.
- 9.68A.090 Communication with minor for immoral purposes.
- 9.68A.100 Patronizing juvenile prostitute.
- 9.68A.110 Certain defenses barred, permitted.
- 9.68A.120 Seizure and forfeiture of property.
- 9.68A.130 Recovery of costs of suit by minor.
- 9.68A.140 Definitions.
- 9.68A.150 Allowing minor on premises of live erotic performance.
- 9.68A.160 Penalty.
- 9.68A.910 Severability—1984 c 262.
- 9.68A.911 Severability—1989 c 32.

9.68A.001 Legislative finding. The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities. [1984 c 262 § 1.]

9.68A.011 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) To "photograph" means to make a print, negative, slide, motion picture, or videotape. A "photograph" means any tangible item produced by photographing.

(2) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(3) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer;

(e) Exhibition of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer;

(f) Defecation or urination for the purpose of sexual stimulation of the viewer; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

(4) "Minor" means any person under eighteen years of age.

(5) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration. [1989 c 32 § 1; 1984 c 262 § 2.]

9.68A.040 Sexual exploitation of a minor—Elements of crime—Penalty. (1) A person is guilty of sexual exploitation of a minor if the person:

(a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;

(b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or

(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(2) Sexual exploitation of a minor is a class B felony punishable under chapter 9A.20 RCW. [1989 c 32 § 2; 1984 c 262 § 3.]

9.68A.050 Dealing in depictions of minor engaged in sexually explicit conduct. A person who:

(1) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or

(2) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct

is guilty of a class C felony punishable under chapter 9A.20 RCW. [1989 c 32 § 3; 1984 c 262 § 4.]

9.68A.060 Sending, bringing into state depictions of minor engaged in sexually explicit conduct. A person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct is guilty of a class C felony punishable under chapter 9A.20 RCW. [1989 c 32 § 4; 1984 c 262 § 5.]

9.68A.070 Possession of depictions of minor engaged in sexually explicit conduct. A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of a class C felony. [1990 c 155 § 1; 1989 c 32 § 5; 1984 c 262 § 6.]

Effective date—1990 c 155 §§ 1, 2: "Sections 1 and 2 of this act shall be effective July 1, 1990." [1990 c 155 § 3.]

9.68A.080 Processors of depictions of minor engaged in sexually explicit conduct—Report required. A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor. [1989 c 32 § 6; 1984 c 262 § 7.]

9.68A.090 Communication with minor for immoral purposes. A person who communicates with a minor for immoral purposes is guilty of a gross misdemeanor, unless that person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or

9A.64 RCW or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW. [1989 c 32 § 7; 1986 c 319 § 2; 1984 c 262 § 8.]

9.68A.100 Patronizing juvenile prostitute. A person is guilty of patronizing a juvenile prostitute if that person engages or agrees or offers to engage in sexual conduct with a minor in return for a fee, and is guilty of a class C felony punishable under chapter 9A.20 RCW. [1989 c 32 § 8; 1984 c 262 § 9.]

9.68A.110 Certain defenses barred, permitted. (1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100. This chapter does not apply to lawful conduct between spouses.

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040 or 9.68A.090, it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, it shall be an affirmative defense that the defendant was a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, the state is not required to establish the identity of the alleged victim. [1992 c 178 § 1; 1989 c 32 § 9; 1986 c 319 § 3; 1984 c 262 § 10.]

Severability—1992 c 178: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 178 § 2.]

9.68A.120 Seizure and forfeiture of property. The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right

to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Fifty percent of the money remaining after payment of these expenses shall be deposited in the criminal justice training account established under *RCW 43.101.210 which shall be appropriated by law to the Washington state criminal justice training commission and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency; or

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law. [1984 c 262 § 11.]

*Reviser's note: RCW 43.101.210 was repealed by 1984 c 258 § 339, effective July 1, 1985.

9.68A.130 Recovery of costs of suit by minor. A minor prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees. [1984 c 262 § 12.]

9.68A.140 Definitions. For the purposes of RCW 9.68A.140 through 9.68A.160:

(1) "Minor" means any person under the age of eighteen years.

(2) "Erotic materials" means live performance:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors; and

(b) Which explicitly depicts or describes patently offensive representations or descriptions of sexually explicit conduct as defined in RCW 9.68A.011; and

(c) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value for minors.

(3) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to, or before an audience of one or more, with or without consideration.

(4) "Person" means any individual, partnership, firm, association, corporation, or other legal entity. [1987 c 396 § 1.]

Severability—1987 c 396: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 396 § 4.]

9.68A.150 Allowing minor on premises of live erotic performance. No person may knowingly allow a minor to be on the premises of a commercial establishment open to the public if there is a live performance containing matter which is erotic material. [1987 c 396 § 2.]

Severability—1987 c 396: See note following RCW 9.68A.140.

9.68A.160 Penalty. Any person who is convicted of violating any provision of RCW 9.68A.150 is guilty of a gross misdemeanor. [1987 c 396 § 3.]

Severability—1987 c 396: See note following RCW 9.68A.140.

9.68A.910 Severability—1984 c 262. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 262 § 15.]

9.68A.911 Severability—1989 c 32. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 32 § 10.]

Chapter 9.69

OBSTRUCTING JUSTICE

Sections

9.69.100 Duty of witness of offense against child or any violent offense—Penalty.

Labor and industries officer, disobeying subpoena to appear before: RCW 43.22.300.

Legislative hearings, failure to obey subpoena or testify: RCW 44.16.120 through 44.16.150.

Obstructing governmental operation: Chapter 9A.76 RCW.

Wills, fraudulently failing to deliver: RCW 11.20.010.

9.69.100 Duty of witness of offense against child or any violent offense—Penalty. (1) A person who witnesses the actual commission of:

(a) A violent offense as defined in RCW 9.94A.030 or preparations for the commission of such an offense;

(b) A sexual offense against a child or an attempt to commit such a sexual offense; or

(c) An assault of a child that appears reasonably likely to cause substantial bodily harm to the child, shall as soon as reasonably possible notify the prosecuting attorney, law enforcement, medical assistance, or other public officials.

(2) This section shall not be construed to affect privileged relationships as provided by law.

(3) The duty to notify a person or agency under this section is met if a person notifies or attempts to provide such notice by telephone or any other means as soon as reasonably possible.

(4) Failure to report as required by subsection (1) of this section is a gross misdemeanor. However, a person is not required to report under this section where that person has a reasonable belief that making such a report would place that person or another family or household member in danger of immediate physical harm. [1987 c 503 § 18; 1985 c 443 § 21; 1970 ex.s. c 49 § 8.]

Severability—Effective date—1987 c 503: See RCW 74.14B.901 and 74.14B.902.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Severability—1970 ex.s. c 49: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 49 § 9.]

Abuse of children, certain adults: Chapter 26.44 RCW.

Chapter 9.72 PERJURY

Sections

9.72.090 Committal of witness—Detention of documents.

Banks and trust companies

false swearing in bank or trust company examinations: RCW 30.04.060.

knowingly subscribing to false statement: RCW 30.12.090.

Elections

absentee voting, falsification of qualifications: RCW 29.36.160.

falsification by voter: Chapter 29.85 RCW.

initiative and referendum petition signer, false statement: RCW 29.79.440.

recall petition signer, false statement: RCW 29.82.170.

Land registration falsification: RCW 65.12.740.

Marriage affidavit falsification: RCW 26.04.210.

Perjury and interference with official proceedings: Chapter 9A.72 RCW.

Public assistance, falsification of application: RCW 74.08.055.

Sufficiency of indictment or information charging perjury: RCW 10.37.140.

Taxation, false property listing: RCW 84.40.120.

9.72.090 Committal of witness—Detention of documents. Whenever it shall appear probable to a judge, magistrate, or other officer lawfully authorized to conduct

any hearing, proceeding or investigation, that a person who has testified before such judge, magistrate, or officer has committed perjury in any testimony so given, or offered any false evidence, he or she may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for such person's appearance to answer such charge. In such case such judge, magistrate, or officer may detain any book, paper, document, record or other instrument produced before him or her or direct it to be delivered to the prosecuting attorney. [1987 c 202 § 141; 1909 c 249 § 107; RRS § 2359.]

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

Chapter 9.73

PRIVACY, VIOLATING RIGHT OF

Sections

- 9.73.010 Divulging telegram.
- 9.73.020 Opening sealed letter.
- 9.73.030 Intercepting, recording or divulging private communication—Consent required—Exceptions.
- 9.73.040 Intercepting private communication—Court order permitting interception—Grounds for issuance—Duration—Renewal.
- 9.73.050 Admissibility of intercepted communication in evidence.
- 9.73.060 Violating right of privacy—Civil action for—Liability for damages.
- 9.73.070 Persons and activities excepted from chapter (as amended by 1991 c 312).
- 9.73.070 Persons and activities excepted from chapter (as amended by 1991 c 329).
- 9.73.080 Intercepting, recording, or divulging private communication—Penalty.
- 9.73.090 Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—Standards—Court authorizations—Admissibility.
- 9.73.095 Intercepting, recording, or divulging inmate telephone calls—Conditions—Notice.
- 9.73.100 Recordings available to defense counsel.
- 9.73.110 Intercepting, recording, or disclosing private communications—Not unlawful for building owner—Conditions.
- 9.73.120 Reports—Required, when, contents.
- 9.73.130 Recording private communications—Authorization—Application for, contents.
- 9.73.140 Recording private communications—Authorization of or application for—Inventory, contents, service—Availability of recording, applications, and orders.
- 9.73.145 Recording inmate telephone communications—Authorization—Limitations.
- 9.73.200 Intercepting, transmitting, or recording conversations concerning controlled substances—Findings.
- 9.73.210 Intercepting, transmitting, or recording conversations concerning controlled substances—Authorization—Monthly report—Admissibility—Destruction of information.
- 9.73.220 Judicial authorizations—Availability of judge required.
- 9.73.230 Intercepting, transmitting, or recording conversations concerning controlled substances—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties.
- 9.73.240 Intercepting, transmitting, or recording conversations concerning controlled substances—Concurrent power of attorney general to investigate and prosecute.

9.73.010 Divulging telegram. Every person who shall wrongfully obtain or attempt to obtain, any knowledge of a telegraphic message, by connivance with the clerk, operator, messenger or other employee of a telegraph company, and every clerk, operator, messenger or other employee of such company who shall wilfully divulge to any but the person

for whom it was intended, any telegraphic message or dispatch intrusted to him for transmission or delivery, or the nature or contents thereof, or shall wilfully refuse, neglect or delay duly to transmit or deliver the same, shall be guilty of a misdemeanor. [1909 c 249 § 410; Code 1881 § 2342; RRS § 2662.]

Intercepting, delaying telegram: RCW 9A.48.070, 9A.48.080.

9.73.020 Opening sealed letter. Every person who shall wilfully open or read, or cause to be opened or read, any sealed message, letter or telegram intended for another person, or publish the whole or any portion of such a message, letter or telegram, knowing it to have been opened or read without authority, shall be guilty of a misdemeanor. [1909 c 249 § 411; RRS § 2663.]

9.73.030 Intercepting, recording or divulging private communication—Consent required—Exceptions.

(1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:

(a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

(b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

(2) Notwithstanding subsection (1) of this section, wire communications or conversations (a) of an emergency nature, such as the reporting of a fire, medical emergency, crime, or disaster, or (b) which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands, or (c) which occur anonymously or repeatedly or at an extremely inconvenient hour, or (d) which relate to communications by a hostage holder or barricaded person as defined in RCW 70.85.100, whether or not conversation ensues, may be recorded with the consent of one party to the conversation.

(3) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.

(4) An employee of any regularly published newspaper, magazine, wire service, radio station, or television station acting in the course of bona fide news gathering duties on a full time or contractual or part time basis, shall be deemed to have consent to record and divulge communications or conversations otherwise prohibited by this chapter if the consent is expressly given or if the recording or transmitting device is readily apparent or obvious to the speakers.

Withdrawal of the consent after the communication has been made shall not prohibit any such employee of a newspaper, magazine, wire service, or radio or television station from divulging the communication or conversation. [1986 c 38 § 1; 1985 c 260 § 2; 1977 ex.s. c 363 § 1; 1967 ex.s. c 93 § 1.]

Reviser's note: This section was amended by 1985 c 260 § 2 and by 1986 c 38 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1967 ex.s. c 93: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 93 § 7.]

9.73.040 Intercepting private communication—Court order permitting interception—Grounds for issuance—Duration—Renewal.

(1) An ex parte order for the interception of any communication or conversation listed in RCW 9.73.030 may be issued by any superior court judge in the state upon verified application of either the state attorney general or any county prosecuting attorney setting forth fully facts and circumstances upon which the application is based and stating that:

(a) There are reasonable grounds to believe that national security is endangered, that a human life is in danger, that arson is about to be committed, or that a riot is about to be committed, and

(b) There are reasonable grounds to believe that evidence will be obtained essential to the protection of national security, the preservation of human life, or the prevention of arson or a riot, and

(c) There are no other means readily available for obtaining such information.

(2) Where statements are solely upon the information and belief of the applicant, the grounds for the belief must be given.

(3) The applicant must state whether any prior application has been made to obtain such communications on the same instrument or for the same person and if such prior application exists the applicant shall disclose the current status thereof.

(4) The application and any order issued under RCW 9.73.030 through 9.73.080 shall identify as fully as possible the particular equipment, lines or location from which the information is to be obtained and the purpose thereof.

(5) The court may examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(6) Orders issued under this section shall be effective for fifteen days, after which period the court which issued the order may upon application of the officer who secured the original order renew or continue the order for an additional period not to exceed fifteen days.

(7) No order issued under this section shall authorize or purport to authorize any activity which would violate any laws of the United States. [1967 ex.s. c 93 § 2.]

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.050 Admissibility of intercepted communication in evidence. Any information obtained in violation of RCW 9.73.030 or pursuant to any order issued under the

provisions of RCW 9.73.040 shall be inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except with the permission of the person whose rights have been violated in an action brought for damages under the provisions of RCW 9.73.030 through 9.73.080, or in a criminal action in which the defendant is charged with a crime, the commission of which would jeopardize national security. [1967 ex.s. c 93 § 3.]

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.060 Violating right of privacy—Civil action for—Liability for damages. Any person who, directly or by means of a detective agency or any other agent, violates the provisions of this chapter shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this statute has injured his business, his person, or his reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured by him on account of violation of the provisions of this chapter, or liquidated damages computed at the rate of one hundred dollars a day for each day of violation, not to exceed one thousand dollars, and a reasonable attorney's fee and other costs of litigation. [1977 ex.s. c 363 § 2; 1967 ex.s. c 93 § 4.]

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.070 Persons and activities excepted from chapter (as amended by 1991 c 312). (1) The provisions of this chapter shall not apply to any activity in connection with services provided by a common carrier pursuant to its tariffs on file with the Washington utilities and transportation commission or the Federal Communication Commission and any activity of any officer, agent or employee of a common carrier who performs any act otherwise prohibited by this law in the construction, maintenance, repair and operations of the common carrier's communications services, facilities, or equipment or incident to the use of such services, facilities or equipment. Common carrier as used in this section means any person engaged as a common carrier or public service company for hire in intrastate, interstate or foreign communication by wire or radio or in intrastate, interstate or foreign radio transmission of energy.

(2) The provisions of this chapter shall not apply to any common carrier automatic number, caller, or location identification service, including an enhanced 911 emergency service, that has been approved by the Washington utilities and transportation commission. [1991 c 312 § 1; 1967 ex.s. c 93 § 5.]

9.73.070 Persons and activities excepted from chapter (as amended by 1991 c 329). ~~((The provisions of))~~ (1) This chapter shall not apply to any activity in connection with services provided by a common carrier pursuant to its tariffs on file with the Washington utilities and transportation commission or the Federal Communication Commission and any activity of any officer, agent or employee of a common carrier who performs any act otherwise prohibited by this law in the construction, maintenance, repair and operations of the common carrier's communications services, facilities, or equipment or incident to the use of such services, facilities or equipment. Common carrier as used in this section means any person engaged as a common carrier or public service company for hire in intrastate, interstate or foreign communication by wire or radio or in intrastate, interstate or foreign radio transmission of energy.

(2) This chapter shall not apply to a 911 or enhanced 911 emergency service as defined in RCW 82.14B.020, for purposes of aiding public health or public safety agencies to respond to calls placed for emergency assistance. [1991 c 329 § 8; 1967 ex.s. c 93 § 5.]

Reviser's note: RCW 9.73.070 was amended twice during the 1991 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.080 Intercepting, recording, or divulging private communication—Penalty. Except as otherwise provided in this chapter, any person who violates RCW 9.73.030 is guilty of a gross misdemeanor. [1989 c 271 § 209; 1967 ex.s. c 93 § 6.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.090 Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—Standards—Court authorizations—Admissibility. (1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, fire, emergency medical service, emergency communication center, and poison center personnel in the following instances:

(a) Recording incoming telephone calls to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;

(b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

(i) The arrested person shall be informed that such recording is being made and the statement so informing him shall be included in the recording;

(ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;

(iii) At the commencement of the recording the arrested person shall be fully informed of his constitutional rights, and such statements informing him shall be included in the recording;

(iv) The recordings shall only be used for valid police or court activities.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under subsection (2) of this section shall be effective for not more than seven days, after which period the issuing authority may renew or continue the authorization for additional periods not to exceed seven days.

(5) If the judge or magistrate determines that there is probable cause to believe that the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmission, recording, or disclosure of communications or conversations under subsection (2) of this section even though the true name of the nonconsenting party, or the particular time and place for the interception, transmission, recording, or disclosure, is not known at the time of the request, if the authorization describes the nonconsenting party and subject matter of the communication or conversation with reasonable certainty under the circumstances. Any such communication or conversation may be intercepted, transmitted, recorded, or disclosed as authorized notwithstanding a change in the time or location of the communication or conversation after the authorization has been obtained or the presence of or participation in the communication or conversation by any additional party not named in the authorization.

Authorizations issued under this subsection shall be effective for not more than fourteen days, after which period the issuing authority may renew or continue the authorization for an additional period not to exceed fourteen days. [1989 c 271 § 205; 1986 c 38 § 2; 1977 ex.s. c 363 § 3; 1970 ex.s. c 48 § 1.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Severability—1970 ex.s. c 48: "If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional." [1970 ex.s. c 48 § 3.]

9.73.095 Intercepting, recording, or divulging inmate telephone calls—Conditions—Notice. (1) RCW 9.73.030 through 9.73.080 shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility. For the purposes of this section, "state correctional facility" means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2) All personal calls made by inmates shall be collect calls only. The calls will be "operator announcement" type calls. The operator shall notify the receiver of the call that

the call is coming from a prison inmate, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an inmate or resident of a state correctional facility as provided for by this section:

(a) Before the implementation of this section, all inmates or residents of a state correctional facility shall be notified in writing that, as of May 7, 1989, their telephone conversations may be intercepted, recorded, and/or divulged.

(b) Unless otherwise provided for in this section, after intercepting or recording a telephone conversation, only the superintendent and his or her designee shall have access to that recording.

(c) The contents of an intercepted and recorded telephone conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(d) All telephone conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an inmate or resident and an attorney. The department shall develop policies and procedures to implement this section. [1989 c 271 § 210.]

Severability—1989 c 271: See note following RCW 9.94A.310.

9.73.100 Recordings available to defense counsel. Video and/or sound recordings obtained by police personnel under the authority of RCW 9.73.090 and 9.73.100 shall be made available for hearing and/or viewing by defense counsel at the request of defense counsel whenever a criminal charge has been filed against the subject of the video and/or sound recordings. [1970 ex.s. c 48 § 2.]

Severability—1970 ex.s. c 48: See note following RCW 9.73.090.

9.73.110 Intercepting, recording, or disclosing private communications—Not unlawful for building owner—Conditions. It shall not be unlawful for the owner or person entitled to use and possession of a building, as defined in RCW 9A.04.110(5), or the agent of such person, to intercept, record, or disclose communications or conversations which occur within such building if the persons engaged in such communication or conversation are engaged in a criminal act at the time of such communication or conversation by virtue of unlawful entry or remaining unlawfully in such building. [1977 ex.s. c 363 § 4.]

9.73.120 Reports—Required, when, contents. (1) Within thirty days after the expiration of an authorization or an extension or renewal thereof issued pursuant to RCW 9.73.090(2) as now or hereafter amended, the issuing or denying judge shall make a report to the administrator for the courts stating that:

- (a) An authorization, extension or renewal was applied for;
- (b) The kind of authorization applied for;
- (c) The authorization was granted as applied for, was modified, or was denied;
- (d) The period of recording authorized by the authorization and the number and duration of any extensions or renewals of the authorization;
- (e) The offense specified in the authorization or extension or renewal of authorization;
- (f) The identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made;
- (g) Whether an arrest resulted from the communication which was the subject of the authorization; and
- (h) The character of the facilities from which or the place where the communications were to be recorded.

(2) In addition to reports required to be made by applicants pursuant to federal law, all judges of the superior court authorized to issue authority pursuant to this chapter shall make annual reports on the operation of this chapter to the administrator for the courts. The reports by the judges shall contain (a) the number of applications made; (b) the number of authorizations issued; (c) the respective periods of such authorizations; (d) the number and duration of any renewals thereof; (e) the crimes in connection with which the conversations were sought; (f) the names of the applicants; and (g) such other and further particulars as the administrator for the courts may require.

The chief justice of the supreme court shall annually report to the governor and the legislature on such aspects of the operation of this chapter as he deems appropriate including any recommendations he may care to make as to legislative changes or improvements to effectuate the purposes of this chapter and to assure and protect individual rights. [1989 c 271 § 207; 1977 ex.s. c 363 § 5.]

Severability—1989 c 271: See note following RCW 9.94A.310.

9.73.130 Recording private communications—Authorization—Application for, contents. Each application for an authorization to record communications or conversations pursuant to RCW 9.73.090 as now or hereafter amended shall be made in writing upon oath or affirmation and shall state:

- (1) The authority of the applicant to make such application;
- (2) The identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to record a communication or conversation is sought and the identity of whoever authorized the application;
- (3) A particular statement of the facts relied upon by the applicant to justify his belief that an authorization should be issued, including:
 - (a) The identity of the particular person, if known, committing the offense and whose communications or conversations are to be recorded;
 - (b) The details as to the particular offense that has been, is being, or is about to be committed;
 - (c) The particular type of communication or conversation to be recorded and a showing that there is probable cause to believe such communication will be communicated

on the wire communication facility involved or at the particular place where the oral communication is to be recorded;

(d) The character and location of the particular wire communication facilities involved or the particular place where the oral communication is to be recorded;

(e) A statement of the period of time for which the recording is required to be maintained, if the character of the investigation is such that the authorization for recording should not automatically terminate when the described type of communication or conversation has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(f) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) Where the application is for the renewal or extension of an authorization, a particular statement of facts showing the results thus far obtained from the recording, or a reasonable explanation of the failure to obtain such results;

(5) A complete statement of the facts concerning all previous applications, known to the individual authorizing and to the individual making the application, made to any court for authorization to record a wire or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each application; and

(6) Such additional testimony or documentary evidence in support of the application as the judge may require. [1977 ex.s. c 363 § 6.]

9.73.140 Recording private communications—Authorization of or application for—Inventory, contents, service—Availability of recording, applications, and orders. Within a reasonable time but not later than thirty days after the termination of the period of the authorization or of extensions or renewals thereof, or the date of the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended, the issuing authority shall cause to be served on the person named in the authorization or application for an authorization, and such other parties to the recorded communications as the judge may in his discretion determine to be in the interest of justice, an inventory which shall include:

(1) Notice of the entry of the authorization or the application for an authorization which has been denied under RCW 9.73.090 as now or hereafter amended;

(2) The date of the entry of the authorization or the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended;

(3) The period of authorized or disapproved recording; and

(4) The fact that during the period wire or oral communications were or were not recorded.

The issuing authority, upon the filing of a motion, may in its discretion make available to such person or his attorney for inspection such portions of the recorded commu-

nications, applications and orders as the court determines to be in the interest of justice. On an ex parte showing of good cause to the court the serving of the inventory required by this section may be postponed or dispensed with. [1977 ex.s. c 363 § 7.]

9.73.145 Recording inmate telephone communications—Authorization—Limitations. (1) RCW 9.73.030 through 9.73.080 shall not apply to employees of the Washington state department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an inmate or resident of a Washington state correctional facility. For the purposes of this section, a "Washington state correctional facility" is defined as any and all facilities that are under the control and authority of the Washington state department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2) All personal calls made by inmates shall be collect calls only. The calls will be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison inmate, and that it will be recorded and may be monitored.

(3) The Washington state department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an inmate or resident of a Washington state correctional facility as provided for by this section:

(a) Before the implementation of this section, all inmates or residents of a Washington state correctional facility shall be notified in writing that, as of July 23, 1989, their telephone conversations may be intercepted, recorded, and/or divulged.

(b) Unless otherwise provided for in this section, after intercepting or recording a telephone conversation, only the superintendent and his or her designee shall have access to that recording.

(c) The contents of an intercepted and recorded telephone conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(d) All telephone conversations that are recorded according to this chapter, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an inmate or resident and an attorney. The department is charged with the responsibility of drafting or developing policies and procedures to implement this statute. [1989 c 31 § 1.]

9.73.200 Intercepting, transmitting, or recording conversations concerning controlled substances—Findings. The legislature finds that the unlawful manufacturing, selling, and distributing of controlled substances is becoming increasingly prevalent and violent. Attempts by law enforcement officers to prevent the manufacture, sale, and distribution of drugs is resulting in numerous life-threatening situations since drug dealers are using sophisti-

cated weapons and modern technological devices to deter the efforts of law enforcement officials to enforce the controlled substance statutes. Dealers of unlawful drugs are employing a wide variety of violent methods to realize the enormous profits of the drug trade.

Therefore, the legislature finds that conversations regarding illegal drug operations should be intercepted, transmitted, and recorded in certain circumstances without prior judicial approval in order to protect the life and safety of law enforcement personnel and to enhance prosecution of drug offenses, and that that interception and transmission can be done without violating the constitutional guarantees of privacy. [1989 c 271 § 201.]

Severability—1989 c 271: See note following RCW 9.94A.310.

9.73.210 Intercepting, transmitting, or recording conversations concerning controlled substances—Authorization—Monthly report—Admissibility—Destruction of information. (1) If a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger, law enforcement personnel may, for the sole purpose of protecting the safety of the consenting party, intercept, transmit, or record a private conversation or communication concerning the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW.

(2) Before any interception, transmission, or recording of a private conversation or communication pursuant to this section, the police commander or officer making the determination required by subsection (1) of this section shall complete a written authorization which shall include (a) the date and time the authorization is given; (b) the persons, including the consenting party, expected to participate in the conversation or communication, to the extent known; (c) the expected date, location, and approximate time of the conversation or communication; and (d) the reasons for believing the consenting party's safety will be in danger.

(3) A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations made under this section, the date and time of each authorization, and whether an interception, transmission, or recording was made with respect to each authorization.

(4) Any information obtained pursuant to this section is inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except:

(a) With the permission of the person whose communication or conversation was intercepted, transmitted, or recorded without his or her knowledge;

(b) In a civil action for personal injury or wrongful death arising out of the same incident, where the cause of action is based upon an act of physical violence against the consenting party; or

(c) In a criminal prosecution, arising out of the same incident for a serious violent offense as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense.

(5) Nothing in this section bars the admission of testimony of a participant in the communication or conversation unaided by information obtained pursuant to this section.

(6) The authorizing agency shall immediately destroy any written, transcribed, or recorded information obtained from an interception, transmission, or recording authorized under this section unless the agency determines there has been a personal injury or death or a serious violent offense which may give rise to a civil action or criminal prosecution in which the information may be admissible under subsection (4) (b) or (c) of this section.

(7) Nothing in this section authorizes the interception, recording, or transmission of a telephonic communication or conversation. [1989 c 271 § 202.]

Severability—1989 c 271: See note following RCW 9.94A.310.

9.73.220 Judicial authorizations—Availability of judge required. In each superior court judicial district in a county with a population of two hundred ten thousand or more there shall be available twenty-four hours a day at least one superior court or district court judge or magistrate designated to receive telephonic requests for authorizations that may be issued pursuant to this chapter. The presiding judge of each such superior court in conjunction with the district court judges in that superior court judicial district shall establish a coordinated schedule of rotation for all of the superior and district court judges and magistrates in the superior court judicial district for purposes of ensuring the availability of at least one judge or magistrate at all times. During the period that each judge or magistrate is designated, he or she shall be equipped with an electronic paging device when not present at his or her usual telephone. It shall be the designated judge's or magistrate's responsibility to ensure that all attempts to reach him or her for purposes of requesting authorization pursuant to this chapter are forwarded to the electronic page number when the judge or magistrate leaves the place where he or she would normally receive such calls. [1991 c 363 § 9; 1989 c 271 § 203.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Severability—1989 c 271: See note following RCW 9.94A.310.

9.73.230 Intercepting, transmitting, or recording conversations concerning controlled substances—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties. (1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

(a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;

(b) Probable cause exists to believe that the conversation or communication involves the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; and

(c) A written report has been completed as required by subsection (2) of this section.

(2) The agency's chief officer or designee authorizing an interception, transmission, or recording under subsection (1) of this section, shall prepare and sign a written report at the time of authorization indicating:

(a) The circumstances that meet the requirements of subsection (1) of this section;

(b) The names of the authorizing and consenting parties, except that in those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged;

(c) The names of the officers authorized to intercept, transmit, and record the conversation or communication;

(d) The identity of the particular person or persons, if known, who may have committed or may commit the offense;

(e) The details of the particular offense or offenses that may have been or may be committed and the expected date, location, and approximate time of the conversation or communication; and

(f) Whether there was an attempt to obtain authorization pursuant to RCW 9.73.090(2) and, if there was such an attempt, the outcome of the attempt.

(3) An authorization under this section is valid in all jurisdictions within Washington state and for the interception of communications from additional persons if the persons are brought into the conversation or transaction by the nonconsenting party or if the nonconsenting party or such additional persons cause or invite the consenting party to enter another jurisdiction.

(4) The recording of any conversation or communication under this section shall be done in such a manner that protects the recording from editing or other alterations.

(5) An authorization made under this section is valid for no more than twenty-four hours from the time it is signed by the authorizing officer, and each authorization shall independently meet all of the requirements of this section. The authorizing officer shall sign the written report required under subsection (2) of this section, certifying the exact date and time of his or her signature. An authorization under this section may be extended not more than twice for an additional consecutive twenty-four hour period based upon the same probable cause regarding the same suspected transaction. Each such extension shall be signed by the authorizing officer.

(6) Within fifteen days after the signing of an authorization that results in any interception, transmission, or recording of a conversation or communication pursuant to this section, the law enforcement agency which made the interception, transmission, or recording shall submit a report including the original authorization under subsection (2) of this section to a judge of a court having jurisdiction which report shall identify (a) the persons, including the consenting party, who participated in the conversation, and (b) the date, location, and approximate time of the conversation.

In those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged.

A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations granted, the date and time of each

authorization, interceptions made, arrests resulting from an interception, and subsequent invalidations.

(7)(a) Within two judicial days of receipt of a report under subsection (6) of this section, the court shall make an *ex parte* review of the authorization, but not of the evidence, and shall make a determination whether the requirements of subsection (1) of this section were met. If the court determines that any of the requirements of subsection (1) of this section were not met, the court shall order that any recording and any copies or transcriptions of the conversation or communication be destroyed. Destruction of recordings, copies, or transcriptions shall be stayed pending any appeal of a finding that the requirements of subsection (1) of this section were not met.

(b) Absent a continuation under (c) of this subsection, six months following a determination under (a) of this subsection that probable cause did not exist, the court shall cause a notice to be mailed to the last known address of any nonconsenting party to the conversation or communication that was the subject of the authorization. The notice shall indicate the date, time, and place of any interception, transmission, or recording made pursuant to the authorization. The notice shall also identify the agency that sought the authorization and shall indicate that a review under (a) of this subsection resulted in a determination that the authorization was made in violation of this section.

(c) An authorizing agency may obtain six-month extensions to the notice requirement of (b) of this subsection in cases of active, ongoing criminal investigations that might be jeopardized by sending the notice.

(8) In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met and the evidence is used in prosecuting an offense listed in subsection (1)(b) of this section; or

(b) The evidence is admitted with the permission of the person whose communication or conversation was intercepted, transmitted, or recorded; or

(c) The evidence is admitted in a prosecution for a "serious violent offense" as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense; or

(d) The evidence is admitted in a civil suit for personal injury or wrongful death arising out of the same incident, in which a party who consented to the interception, transmission, or recording was a victim of a serious violent offense as defined in RCW 9.94A.030.

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

(9) Any determination of invalidity of an authorization under this section shall be reported by the court to the office of the administrator for the courts.

(10) Any person who intentionally intercepts, transmits, or records or who intentionally authorizes the interception, transmission, or recording of a conversation or communica-

tion in violation of this section, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(11) An authorizing agency is liable for twenty-five thousand dollars in exemplary damages, in addition to any other damages authorized by this chapter or by other law, to a person whose conversation or communication was intercepted, transmitted, or recorded pursuant to an authorization under this section if:

(a) In a review under subsection (7) of this section, or in a suppression of evidence proceeding, it has been determined that the authorization was made without the probable cause required by subsection (1)(b) of this section; and

(b) The authorization was also made without a reasonable suspicion that the conversation or communication would involve the unlawful acts identified in subsection (1)(b) of this section. [1989 c 271 § 204.]

Severability—1989 c 271: See note following RCW 9.94A.310.

9.73.240 Intercepting, transmitting, or recording conversations concerning controlled substances—Concurrent power of attorney general to investigate and prosecute. (1) The attorney general shall have concurrent authority and power with the prosecuting attorneys to investigate violations of RCW 9.73.200 through 9.73.230 or RCW 9.73.090 and initiate and conduct prosecutions of any violations upon request of any of the following:

(a) The person who was the nonconsenting party to the intercepted, transmitted, or recorded conversation or communication; or

(b) The county prosecuting attorney of the jurisdiction in which the offense has occurred.

(2) The request shall be communicated in writing to the attorney general. [1989 c 271 § 206.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Chapter 9.81

SUBVERSIVE ACTIVITIES

Sections

9.81.010	Definitions.
9.81.020	Subversive activities made felony—Penalty.
9.81.030	Membership in subversive organization is felony—Penalty.
9.81.040	Disqualification from voting or holding public office.
9.81.050	Dissolution of subversive organizations—Disposition of property.
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9.81.070	Public employment—Determining eligibility—Inquiries—Oath.
9.81.080	Public employment—Inquiries may be dispensed with, when.
9.81.082	Membership in subversive organization described.
9.81.083	Communist party declared a subversive organization.
9.81.090	Public employees—Discharge of subversive persons—Procedure—Hearing—Appeal.
9.81.100	Public office—Candidate must file affidavit.
9.81.110	Misstatements are punishable as perjury—Penalty.
9.81.120	Constitutional rights—Censorship or infringement.

Anarchy and sabotage: Chapter 9.05 RCW.

Treason: Chapter 9.82 RCW.

9.81.010 Definitions. (1) "Organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated,

permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

(2) "Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington, or of any political subdivision of either of them, by revolution, force or violence.

(3) "Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of Washington, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual.

(4) "Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

(5) "Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington, or any political subdivision of either of them by revolution, force, or violence; or who with knowledge that the organization is an organization as described in subsections (2) and (3) hereof, becomes or remains a member of a subversive organization or a foreign subversive organization. [1953 c 142 § 1; 1951 c 254 § 1.]

Short title—1951 c 254: "This act may be cited as the Subversive Activities Act." [1951 c 254 § 20.]

Severability—1951 c 254: "If any provision, phrase, or clause of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions, phrases, or clauses or applications of this act which can be given effect without the invalid provision, phrase, or clause or application, and to this end the provisions, phrases and clauses of this act are declared to be severable." [1951 c 254 § 18.]

9.81.020 Subversive activities made felony—Penalty. It shall be a felony for any person knowingly and wilfully to:

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington or any political subdivision of either of them, by revolution, force or violence; or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the

United States, or of the state of Washington or of any political subdivision of either of them; or

(3) Conspire with one or more persons to commit any such act; or

(4) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(5) Destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person upon a plea of guilty or upon conviction of violating any of the provisions of this section shall be fined not more than ten thousand dollars, or imprisoned for not more than ten years, or both, at the discretion of the court. [1951 c 254 § 2.]

9.81.030 Membership in subversive organization is felony—Penalty. It shall be a felony for any person after June 1, 1951 to become, or after September 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person upon a plea of guilty or upon conviction of violating any of the provisions of this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court. [1951 c 254 § 3.]

9.81.040 Disqualification from voting or holding public office. Any person who shall be convicted or shall plead guilty of violating any of the provisions of RCW 9.81.020 and 9.81.030, in addition to all other penalties therein provided, shall from the date of such conviction be barred from

(1) Holding any office, elective or appointive, or any other position of profit or trust in, or employment by the government of the state of Washington or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(2) Filing or standing for election to any public office in the state of Washington; or

(3) Voting in any election held in this state. [1951 c 254 § 4.]

9.81.050 Dissolution of subversive organizations—Disposition of property. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of Washington and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of Washington a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state

of Washington, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of Washington. [1951 c 254 § 5.]

9.81.060 Public employment—Subversive person ineligible. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government, or in the administration of the business, of this state, or of any county, municipality, or other political subdivision of this state. [1951 c 254 § 11.]

9.81.070 Public employment—Determining eligibility—Inquiries—Oath. Every person and every board, commission, council, department, court or other agency of the state of Washington or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain whether any person is a subversive person. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury. Every such person, board, commission, council, department, court, or other agency shall require every employee or applicant for employment to state under oath whether or not he or she is a member of the Communist party or other subversive organization, and refusal to answer on any grounds shall be cause for immediate termination of such employee's employment or for refusal to accept his or her application for employment. [1955 c 377 § 1; 1951 c 254 § 12.]

Application forms, licenses—Mention of race or religion prohibited: RCW 43.01.100.

Discrimination in employment: Chapter 49.60 RCW.

9.81.080 Public employment—Inquiries may be dispensed with, when. The inquiries prescribed in preceding sections, other than the written statement to be executed by an applicant for employment and the requirement set forth in RCW 9.81.070, relative to membership in the communist party or other subversive organization, shall not be required as a prerequisite to the employment of any persons in any case in which the employing authority may determine, and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of such persons will not be dangerous to the health of the citizens or the security of the governments of the United States, the state of Washington, or any political subdivision thereof. [1955 c 377 § 2; 1951 c 254 § 13.]

9.81.082 Membership in subversive organization described. For the purpose of *this act, membership in a subversive organization shall be membership in any organization after it has been placed on the list of organizations designated by the attorney general of the United States as being subversive pursuant to executive order No. 9835. [1955 c 377 § 3.]

***Reviser's note:** The term "this act" as used in RCW 9.81.082 appeared in 1955 c 377 § 3 which did not contain any language incorporating it as part of 1951 c 254 nor as part of chapter 9.81 RCW.

9.81.083 Communist party declared a subversive organization. The Communist party is a subversive organization within the purview of chapter 9.81 RCW and membership in the Communist party is a subversive activity thereunder. [1955 c 377 § 4.]

9.81.090 Public employees—Discharge of subversive persons—Procedure—Hearing—Appeal. Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter, shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The attorney general and the personnel director, and the civil service commission of any county, city or other political subdivision of this state, shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall have the right of reasonable notice, date, time and place of hearing, opportunity to be heard by himself and witnesses on his behalf, to be represented by counsel, to be confronted by witnesses against him, the right to cross-examination, and such other rights which are in accordance with the procedures prescribed by law for the discharge of such person for other reasons. Every person and every board, commission, council, department, or other agency of the state of Washington or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the classified service in this section referred to, shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter, shall promptly report to the special assistant attorney general in charge of subversive activities the fact of and the circumstances surrounding such discharge. Any person discharged under the provisions of this chapter shall have the right within thirty days thereafter to appeal to the superior court of the county wherein said person may reside or wherein he may have been employed for determination by said court as to whether or not the discharge appealed from was justified under the provisions of this chapter. The court shall regularly hear and determine such appeals and the decision of the superior court may be appealed to the supreme court or the court of appeals of the state of Washington as in civil cases. Any person appealing to the superior court may be entitled to trial by jury if he or she so elects. [1971 c 81 § 44; 1951 c 254 § 15.]

9.81.100 Public office—Candidate must file affidavit. No person shall become a candidate for election under the laws of the state of Washington to any public office whatsoever in this state, unless he or she shall file an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy shall be

received for filing by any election official of any county or subdivision in the state of Washington or by the secretary of state of the state of Washington unless accompanied by the affidavit aforesaid, and there shall not be entered upon any ballot or voting machine at any election the name of any person who has failed or refused to make the affidavit as set forth herein. [1951 c 254 § 16.]

9.81.110 Misstatements are punishable as perjury—Penalty. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee, shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who wilfully makes a material misstatement of fact (1) in any such written statement, or (2) in any affidavit made pursuant to the provisions of this chapter, or (3) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions pursuant to this chapter, or (4) in any written statement by an applicant for appointment or employment or by an employee in any state aid or private institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury, shall be subject to the penalties of perjury, as prescribed in chapter 9.41 RCW. [1951 c 254 § 17.]

9.81.120 Constitutional rights—Censorship or infringement. Nothing in this chapter shall be construed to authorize, require or establish any military or civilian censorship or in any way to limit or infringe upon freedom of the press or freedom of speech or assembly within the meaning and the manner as guaranteed by the Constitution of the United States or of the state of Washington and no regulation shall be promulgated hereunder having that effect. [1951 c 254 § 19.]

Chapter 9.82 TREASON

Sections	
9.82.010	Defined—Penalty.
9.82.020	Levying war.
9.82.030	Misprision of treason.

Anarchy and sabotage: Chapter 9.05 RCW.

Subversive activities: Chapter 9.81 RCW.

9.82.010 Defined—Penalty. Treason against the people of the state consists in—

- (1) Levying war against the people of the state, or
- (2) Adhering to its enemies, or
- (3) Giving them aid and comfort.

Treason is punishable by death.

No person shall be convicted for treason unless upon the testimony of two witnesses to the same overt act or by confession in open court. [1909 c 249 § 65; RRS § 2317.]

Treason defined and evidence required: State Constitution Art. 1 § 27.

9.82.020 Levying war. To constitute levying war against the state an actual act of war must be committed. To conspire to levy war is not enough. When persons arise in insurrection with intent to prevent, in general, by force and intimidation, the execution of a statute of this state, or to force its repeal, they shall be guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war. [1909 c 249 § 66; RRS § 2318.]

9.82.030 Misprision of treason. Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a justice of the supreme court or a judge of either the court of appeals or the superior court, shall be guilty of misprision of treason and punished by a fine of not more than one thousand dollars, or by imprisonment in a state correctional facility for not more than five years or in a county jail for not more than one year. [1992 c 7 § 16; 1971 c 81 § 45; 1909 c 249 § 67; RRS § 2319.]

Chapter 9.86

UNITED STATES AND STATE FLAGS, CRIMES RELATING TO

Sections	
9.86.010	"Flag," etc., defined.
9.86.020	Improper use of flag prohibited.
9.86.030	Desecration of flag.
9.86.040	Application of provisions.
9.86.050	Penalty.

Display of national and state flags: RCW 1.20.015.

Flag exercises in schools: RCW 28A.230.140.

State flag: RCW 1.20.010.

9.86.010 "Flag," etc., defined. The words flag, standard, color, ensign or shield, as used in this chapter, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this state, or a copy, picture or representation thereof. [1919 c 107 § 1; RRS § 2675-1.]

9.86.020 Improper use of flag prohibited. No person shall, in any manner, for exhibition or display:

(1) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or of this state; or

(2) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

(3) Expose to public view for sale, manufacture, or otherwise, or to sell, give, or have in possession for sale, for gift or for use for any purpose, any substance, being an

article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance. [1919 c 107 § 2; 1909 c 249 § 423; 1901 c 154 § 1; RRS § 2675-2.]

9.86.030 Desecration of flag. No person shall knowingly cast contempt upon any flag, standard, color, ensign or shield, as defined in RCW 9.86.010, by publicly mutilating, defacing, defiling, burning, or trampling upon said flag, standard, color, ensign or shield. [1969 ex.s. c 110 § 1; 1919 c 107 § 3; 1909 c 249 § 423; RRS § 2675-3.]

9.86.040 Application of provisions. This chapter shall not apply to any act permitted by the statutes of the United States or of this state, or by the United States army and navy regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement. [1919 c 107 § 4; RRS § 2675-4.]

9.86.050 Penalty. Any violation of this chapter shall be a gross misdemeanor. [1919 c 107 § 5; RRS § 2675-5.]

Chapter 9.91

MISCELLANEOUS CRIMES

Sections

- 9.91.010 Denial of civil rights—Terms defined.
 9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated.
 9.91.025 Unlawful bus conduct.
 9.91.060 Leaving children unattended in parked automobile.
 9.91.090 Fraudulent destruction of insured property.
 9.91.110 Metal buyers—Records of purchases—Penalty.
 9.91.130 Disposal of trash in charity donation receptacle.
 9.91.140 Food coupons.
 9.91.150 Tree spiking.
 9.91.155 Tree spiking—Action for damages.
- Accountancy practice laws, penalty: RCW 18.04.370.*
Aeronautics laws and rules, penalty: RCW 47.68.240.
- Agriculture**
agricultural enabling act, penalties: RCW 15.66.210.
apple advertising laws and rules, penalty: RCW 15.24.200.
eggs and egg products, penalties for violations concerning: RCW 69.25.340.
farm labor contractors, violations, penalty: RCW 19.30.150.
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filled dairy products, penalty: RCW 15.38.050.
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honey bees, poisoning, penalty: RCW 15.60.150.
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marketing act, penalties: RCW 15.66.210.
oleomargarine, penalty: RCW 15.40.050.
peaches, standards of grades and packs, inspections, penalty for violations: RCW 15.17.290.
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- Aircraft and airman licensing violations: RCW 14.16.060.*
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Alcoholic beverages, transfer of identification of age to minor: RCW 66.44.325.

All-terrain vehicles

additional violations, penalty: RCW 46.09.130.
operating violations, penalty: RCW 46.09.120, 46.09.190.

Amateur radio operators, special motor vehicle license plates, violation of act: RCW 46.16.350.

Ambulances and drivers, first aid requirements, penalty: RCW 70.54.060, 70.54.065.

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Antitrust, consumer protection: Chapter 19.86 RCW.

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Auctioneering, county licensing laws, penalty: RCW 36.71.070.

Ballots (see also Elections)

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commission, etc., to officer or employee to procure loan prohibited, penalty: RCW 30.12.110.
companies, commingling trust property, penalty: RCW 30.04.240.
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general penalties for violation of laws concerning: RCW 30.04.310, 30.12.190.
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receiving deposits when insolvent prohibited, penalty: RCW 30.44.120.
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Barbering licensing regulations, penalty: RCW 18.16.210.

Baseball

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Beauty culture licensing laws, penalty: RCW 18.16.210.

Bicycles, bicycle paths, operation of vehicles on prohibited: RCW 35.75.020.

Bids on state purchases, interfering with: RCW 43.19.1939.

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

Boarding homes' licensing act, violations of: Chapter 18.20 RCW.

Bodies (see Human remains)

Boilers or unfired pressure vessels, inspection certificate required, penalty: RCW 70.79.320.

Bonds issued by state, etc., fraud of engraver, penalty: RCW 39.44.101.

Boxing and wrestling, penalties for violations of provisions relating to: RCW 67.08.130, 67.08.140, 67.08.150.

Brands and marks on animals, obliteration, etc., penalty: RCW 16.57.120, 16.57.320, 16.57.360.

Bribery or corruption by public officers: RCW 42.20.010.

Building permit, issuance to person not complying with industrial insurance payroll estimate requirement: RCW 51.12.070.

Buildings, public

doors, safety requirements, penalty: RCW 70.54.070.
earthquake standards for construction, penalty: RCW 70.86.040.

Capitol grounds traffic regulations, penalty for violations: RCW 46.08.170.

Cattle, slaughtering and transportation regulations, penalties: RCW 16.48.320.

Caustic poisons act, penalty for violation: RCW 69.36.060.

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 mausoleums and columbariums, penalty for violation of construction laws: RCW 68.28.060.
 property, penalties for violations concerning: RCW 68.24.130, 68.24.140, 68.24.150, 68.24.190, 68.56.010.
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Cities and towns

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 cities of the second class, powers to prescribe penalties for violation of ordinances: RCW 35.23.440.
 cities of the third class, powers to prescribe penalties for violation of ordinances: RCW 35.24.290.
 city firemen, civil service provisions, penalty for violations: RCW 41.08.210.
 city police, civil service provisions, penalty for violations: RCW 41.12.210.
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 operation of vehicles, etc., on bicycle paths prohibited, penalty: RCW 35.75.020.
 pollution of water supply, penalty: RCW 35.88.040.
 towns, power to prescribe penalties for violation of ordinances: RCW 35.27.370.
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Civil defense, enforcement of orders, rules, and regulations, penalty: RCW 38.52.150.

Civil service for sheriff's office employees, penalty: RCW 41.14.220.

Coal mining code violations, penalties: Chapter 78.40 RCW.

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Collection agency laws, penalty: RCW 19.16.430, 19.16.450.

Colleges

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Commercial sprayers and dusters, violations, penalty: Chapter 17.21 RCW.

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Controlled atmosphere storage, penalty: RCW 15.30.250.

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Counties

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 building codes and fire regulations, penalty for violation: RCW 36.43.040.
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 garbage disposal regulations, penalty for violations: RCW 36.58.020.
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parks, playgrounds, or other recreational facilities, violation of rules and regulations adopted by county commissioners, penalty: RCW 36.68.080.

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County commissioners, penalty for falsifying or failing to make inventory statement: RCW 36.32.220.

County sheriff, penalty for misconduct or nonfeasance: RCW 36.28.140.

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Crop credit association law, general penalty for violation: RCW 31.16.320.

Cruelty to animals, penalties: Chapter 16.52 RCW.

Dental hygienist licensing laws, penalties: RCW 18.29.100.

Dentistry practice laws, penalties: RCW 18.32.390, 18.32.675, 18.32.735, 18.32.745, 18.32.755.

Diking and drainage improvement districts, damaging improvements, penalty: RCW 85.08.690.

Discrimination, interference with human rights commission, penalty: RCW 49.60.310.

Diseased domestic animals, quarantine, penalty: RCW 16.36.110.

Diseases, dangerous, contagious, or infectious, penalty for violations concerning control of: RCW 70.05.120, 70.24.080, 70.54.050.

Disposal of dead animals, violations, penalty: RCW 16.68.180.

Dogs: Chapter 16.08 RCW.

Doors of buildings used by public, safety requirements, penalty: RCW 70.54.070.

Drugs: Chapters 69.41, 69.50 RCW.

Earthquake standards for construction for public buildings, penalty: RCW 70.86.040.

Eggs and egg products, penalties for violations of law or regulations: RCW 69.25.340.

Elections

absentee voting law, penalty for violations: RCW 29.36.160.
 bribery or coercion of voters, penalty: RCW 29.85.060.
 canvassing of votes law, penalty for violations: RCW 29.62.040.
 counterfeiting or unlawful possession of ballots, penalty: RCW 29.85.010.
 destroying or defacing election supplies and notices, etc., penalty: RCW 29.85.110.
 divulging ballot count, penalty: RCW 29.85.225.
 exit polling: RCW 29.51.020.
 fraud as to certificates of nomination, penalty: RCW 29.85.100.
 general penalty for violations: Chapter 29.85 RCW.
 influencing voters to vote or not to vote by unlawful means, penalty: RCW 29.85.070.
 initiative and referendum law, penalties for violations: RCW 29.79.440, 29.79.480, 29.79.490.
 officer tampering with ballots, penalty: RCW 29.85.020.
 printing or distributing official ballots unlawfully, penalty: RCW 29.85.040.
 recall petition law, penalties for violations: RCW 29.82.170, 29.82.210, 29.82.220.
 registration law violations, penalties: RCW 29.07.400, 29.07.410.
 repeating or voting twice, penalties concerning: RCW 29.85.210, 29.85.220.
 solicitation of bribe by voter in primary election, penalty: RCW 29.85.090.
 tampering with or delaying returns, penalty: RCW 29.85.230.
 unqualified voter voting, penalty: RCW 29.85.240.
 violations by officers generally, penalty: RCW 29.85.170.
 voting machines, penalty for tampering with: RCW 29.85.260.
 voting violations, penalty: RCW 29.51.230.

Electrical construction, penalty: RCW 19.29.060.

- Electricians and electrical installation laws, schedule of penalties—Appeal:* RCW 19.28.350.
- Embalmer and funeral director laws, penalty:* RCW 18.39.220.
- Endowment care cemeteries, penalties for violations of laws:* RCW 68.40.085, 68.40.090.
- Engineer and land surveyor laws, penalty:* RCW 18.43.120.
- Escrow agent, uncertificated:* RCW 18.44.140.
- Explosives and devices regulated, penalties:* Chapter 70.74 RCW.
- Facsimile signatures and seals, fraud in use of:* RCW 39.62.040.
- Family abandonment, penalty:* RCW 26.20.030.
- Family nonsupport, penalty:* RCW 26.20.035.
- Farm labor contractors regulations, penalty:* RCW 19.30.150.
- Filing false or forged instruments, penalty:* RCW 40.16.030.
- Fire department vehicles and firemen's private cars lighting and identification, penalty:* RCW 46.37.188.
- Fire protection districts, burning permits, penalty for violation:* RCW 52.12.101, 52.12.105.
- Firearms in vehicle, penalty:* RCW 77.16.250.
- Fires, actions for spreading and kindling:* RCW 4.24.040, 4.24.050.
- Firewood on state lands, permit required to remove, penalty:* RCW 76.20.040.
- Fireworks*
laws or rules, penalty: RCW 70.77.540.
unlawful acts relating to: Chapter 70.77 RCW.
- Flood control districts, interest in contracts, penalty:* RCW 86.09.286.
- Flour, white bread, and rolls, penalty for violation of law regulating:* RCW 69.08.090.
- Food and beverage workers' permit required, penalty:* RCW 69.06.060.
- Food, drugs, and cosmetics, penalties for violations of act:* RCW 69.04.040, 69.04.060, 69.04.070.
- Food fish and shellfish*
commercial licenses and permits required—Exemption: RCW 75.28.010.
false or misleading information and reports, penalty: RCW 75.12.430.
fish guards required on diversion devices, penalties, remedies for failure: RCW 75.20.040.
fisheries code violations, general penalties: RCW 75.10.110.
fishways required over dams, etc., penalties: RCW 75.20.060.
hatchery or cultural facility to be provided if fishways impractical, penalty: RCW 75.20.090.
shellfish taking from state oyster reserves or state tidelands: RCW 75.24.050.
theft of food fish or shellfish—Molestation of fishing gear: RCW 75.12.090.
- Food locker laws, penalty:* RCW 19.32.180.
- Forcible entry and detainer, penalty:* RCW 59.12.230.
- Forest products*
false or forged brands, etc., penalties: RCW 76.36.110, 76.36.120.
log patrols, general penalty: RCW 76.40.130.
- Forest protection:* Chapter 76.04 RCW.
- Fraudulent conveyances:* Chapter 19.40 RCW.
- Gambling, civil action:* RCW 4.24.070.
- Game and game fish*
prohibited acts and penalties: Chapter 77.16 RCW.
trafficking in prohibited: RCW 77.16.040.
- Gas or stink bombs, etc., prohibited, penalty:* RCW 70.74.310.
- Girls' training school (see Maple Lane School)*
- Glass doors, safety standards:* Chapter 70.89 RCW.
- Grain and terminal warehouses, commodity inspections, laws and regulations, penalties for violations:* RCW 22.09.310, 22.09.770, 22.09.560.
- Healing professions, rebating:* RCW 19.68.010.
- Health care services, prohibited acts:* Chapter 48.44 RCW.
- Highways*
closure violations, penalty: RCW 47.48.040.
county or city road funds, illegal use of, penalty: RCW 47.08.110.
limited access facilities, violations concerning, penalty: RCW 47.52.120.
littering with glass, debris, etc., penalty, removal: RCW 46.61.645.
permitting escape of load from vehicle: RCW 46.61.655.
pipe lines, etc., across or on highways, penalties for construction without franchise or permit: RCW 47.44.060.
removal of native flora, etc., penalty: RCW 47.40.080.
traffic control devices violations: Chapter 47.36 RCW.
traffic signs, etc., penalty for defacing, etc.: RCW 46.61.080.
- Highways and toll bridges, general penalty for violations of title:* RCW 47.04.090.
- Honey*
penalty for violation of law regulating: RCW 69.28.180.
prohibited acts: RCW 69.28.080, 69.28.090.
- Horse racing, penalty for violations of laws and regulations:* RCW 67.16.060.
- Hospital licensing required, penalty:* RCW 70.41.170.
- Hotels*
fraud in obtaining accommodations, etc., penalty: RCW 19.48.110.
sanitation and safety requirements, penalty: RCW 70.62.280.
- Human remains, penalties for violations concerning:* Chapter 68.50 RCW.
- Industrial insurance, attorney's fees:* RCW 51.52.120, 51.52.132.
- Initiative and referendum laws, penalties:* RCW 29.79.440, 29.79.480, 29.79.490.
- Insane (see Mentally ill)*
- Insect pest control rules, violations:* RCW 17.24.100.
- Insurance code*
agents, brokers, solicitors and adjusters, license required, penalty: RCW 48.17.060.
agents, solicitors or brokers, reporting and accounting premiums, penalty: RCW 48.17.480.
destruction or injury of property to defraud or prejudice the insurer, penalty: RCW 48.30.220.
domestic insurers
corrupt practices as to votes relative to shareholders meetings, etc., penalty: RCW 48.07.060.
illegal dividends or reductions, penalty: RCW 48.08.040.
impairment of capital, penalty: RCW 48.08.050.
penalty for exhibiting false account, etc.: RCW 48.06.190.
solicitation permit required, penalty: RCW 48.06.030.
false claims or proof, etc., penalty: RCW 48.30.230.
fraud and unfair practices violations: Chapter 48.30 RCW.
general penalty for violations: RCW 48.01.080.
health care services, penalty for violation: RCW 48.44.060.
illegal dealing in premiums, penalty: RCW 48.30.190.
misrepresentation in application for insurance, penalty: RCW 48.30.210.
mutual insurers, impairment of surplus, penalty: RCW 48.09.340.
political contributions, penalty: RCW 48.30.110.
premiums to be specified in the policy, penalty for violation: RCW 48.18.180.
- Insurance, destruction, secretion, abandonment, etc., of property:* RCW 48.30.220.
- Intoxicating liquor (see Liquor control)*
- Ionizing radiation, prohibited acts:* Chapter 70.98 RCW.
- Irrigation and rehabilitation districts, violation of rules:* RCW 87.84.090.
- Judges or justices, addressing persons in unfit, etc., language, penalty:* RCW 42.20.110.
- Labor and industries*
disobeying subpoena to appear before officer, penalty: RCW 43.22.300.
hotel inspections, penalty for falsifying or hindering, etc.: RCW 70.62.280.
misuse of reports of employers, penalty: RCW 43.22.290.
refusal of entry to factory, etc., penalty: RCW 43.22.310.
- Labor disputes, obtaining out-of-state personnel for certain purposes:* RCW 49.44.100 through 49.44.110.
- Labor laws*
blacklisting prohibited, penalty: RCW 49.44.010.
bribery of labor representative, penalties: RCW 49.44.020, 49.44.030.
female and child labor, penalties for violations: RCW 26.28.070, 49.12.175.
hours of labor, penalties for violations: Chapter 49.28 RCW.
minimum wage and hours act violations, penalty: RCW 49.46.100.
obtaining labor by false recommendation, penalty: RCW 49.44.040.

- prohibited practices, penalties for violations: Chapter 49.44 RCW, prosecution, etc., for forming or joining labor union, etc., prohibited: RCW 49.36.030.*
- seasonal labor, fraud by employees to secure advances, penalty: RCW 49.40.030.*
- underground workers safety and health, penalties: RCW 49.24.060, 49.24.380.*
- wage payment and collection, penalties for violations: RCW 49.48.020, 49.48.040, 49.48.060, 49.52.050, 49.52.090.*
- Land title registration, penalties for violations: RCW 65.12.730, 65.12.740, 65.12.750, 65.12.760.*
- Legislative hearings, failure of subpoenaed witness to attend or testify, etc., penalties: RCW 44.16.120 through 44.16.150.*
- Lie detector and similar tests as condition of employment: RCW 49.44.120, 49.44.130.*
- Limited access facilities (see Highways)*
- Liquor control*
- consumption or serving in clubs, penalty: RCW 66.24.481.*
- penalties for violations of laws or regulations: Chapter 66.44 RCW.*
- purchase, attempt, by minor: RCW 66.44.280 through 66.44.292.*
- records of sales confidential, penalty: RCW 66.16.090.*
- transfer of identification card prohibited, penalty: RCW 66.20.200.*
- Littering, depositing glass, debris, etc., on highways, beaches, waters, penalty, removal: RCW 46.61.645.*
- Livestock*
- removal from common range, duty, penalty: RCW 16.24.230.*
- slaughtering, custom slaughterers, prohibited acts: RCW 16.49.454.*
- Log patrols, general penalty for violations: RCW 76.40.130.*
- Logs, transporting without county log tolerance permit: RCW 46.44.047.*
- Maple Lane School, unauthorized entrance to grounds or enticing girls away, etc., penalty: RCW 72.20.065.*
- Marine biological preserve, penalty for violation: RCW 28B.20.320 through 28B.20.324.*
- Marriage*
- certificates, penalty for failure to record: RCW 26.04.110.*
- license requirements, penalty for violations: RCW 26.04.200, 26.04.210, 26.04.230, 26.04.240.*
- Maternity homes licensing, penalty for unlicensed operation: RCW 18.46.120.*
- Mausoleums and columbariums, penalty for violation of laws concerning construction of: RCW 68.28.060.*
- Meat inspection act: Chapter 16.49A RCW.*
- Mentally ill, private establishments for, licensing violations: RCW 71.12.460.*
- Military affairs offenses defined, penalties: Chapter 38.32 RCW, RCW 38.40.040, 38.40.050, 38.40.110, 38.40.120.*
- Milk and milk products used for animal food, prohibited acts: Chapter 15.37 RCW.*
- Mining leases and contracts, disclosure of information obtained through state's right of entry: RCW 79.01.649.*
- Minors*
- child labor prohibited, penalty: RCW 26.28.070 (see also Labor laws).*
- enforcement of support for: RCW 74.20.060.*
- entry to certain places, etc., prohibited, penalty: RCW 26.28.080.*
- juvenile offenders: Chapter 13.04 RCW.*
- procuring or possessing tobacco, penalties: RCW 26.28.080.*
- Motor boat safety requirements: RCW 88.12.090.*
- Motor vehicles: RCW 46.63.020.*
- Municipal corporations*
- approving or paying false claim against: RCW 42.24.110.*
- making false claim against: RCW 42.24.100.*
- Municipal officers, violation of code of ethics, penalty: RCW 42.23.050.*
- Mutual savings banks*
- concealing or destroying evidence, penalty: RCW 32.04.110.*
- falsification of books, etc., penalty: RCW 32.04.100.*
- general penalty when penalty not specifically provided: RCW 32.04.130.*
- specific penalties of RCW 9.24.030, 9.24.040, and 9.24.050 invoked: RCW 32.04.120.*
- transfer of property or assets due to insolvency or in contemplation of insolvency, penalty for violation of regulation: RCW 32.24.080.*
- Narcotic drugs: Chapter 69.50 RCW.*
- Native flora on state lands or on land adjoining highways and parks, penalty for removal, etc.: RCW 47.40.080.*
- Navigation*
- pilotage act: RCW 88.16.120, 88.16.130, 88.16.150.*
- violations generally: Chapter 88.08 RCW.*
- Nuisances, civil remedies: Chapter 7.48 RCW.*
- Nurses, registered nurses, penalty for violations: RCW 18.88.270.*
- Nursing homes, penalty for unlicensed operation: RCW 18.51.150.*
- Occupational motor vehicle operators' licenses, violation of restrictions: RCW 46.20.410.*
- Offering false or forged instruments for filing: RCW 40.16.030.*
- Oil and gas conservation, general penalty for violations of laws or regulations: RCW 78.52.550.*
- Operation of unlicensed camper: RCW 46.16.505.*
- Optometry laws, penalty for violations: RCW 18.53.150.*
- Osteopathy violations, penalties: RCW 18.57.160.*
- Parks and recreation, violations in parks specified, penalty: RCW 43.51.180.*
- Party line telephones, refusal to yield in emergency, penalty: RCW 70.85.020, 70.85.030.*
- Patent medicine peddlers licensing, penalty for unlicensed sales: RCW 18.64.047.*
- Pawnbrokers and second-hand dealers laws, penalties: RCW 19.60.066.*
- Peaches, standards, inspection, penalty for violations: RCW 15.17.290.*
- Peddlers, penalty for selling without license: RCW 36.71.060.*
- Persons infected with disease*
- exposure to others, penalty: RCW 70.54.050.*
- quarantine or removal of, penalties: RCW 70.20.060, 70.20.070.*
- Pesticides, prohibited acts: Chapter 15.58 RCW.*
- Pharmacy licensing laws and regulations, penalties: RCW 18.64.140, 18.64.250.*
- Physical therapy practice regulations, penalties: RCW 18.74.090.*
- Podiatric medicine and surgery, general penalty: RCW 18.22.220.*
- Poisons: Chapters 69.36, 69.40 RCW.*
- Pollution of water (see Water Pollution)*
- Pool tables or billiard tables or bowling alley for hire, license required, penalty: RCW 67.14.060.*
- Port district regulations adopted by city or county, violations, penalty: RCW 53.08.220.*
- Port districts, violations of rules relating to toll tunnels and bridges, penalty: RCW 53.34.190.*
- Psychologists licensing and practice law, violations, penalty: RCW 18.83.180.*
- Public assistance*
- falsification of application, etc., penalty: RCW 74.08.055.*
- fraudulent practices: RCW 74.08.331.*
- records to be confidential, etc., penalty: RCW 74.04.060.*
- Public employment, race or religion not to be included on application forms, etc., penalty: RCW 43.01.110.*
- Public libraries, penalties for injuring property or retaining books: RCW 27.12.330, 27.12.340.*
- Public officers*
- code of ethics: RCW 42.22.070.*
- misconduct, penalties: Chapter 42.20 RCW.*
- Public records, etc., crimes concerning, penalties: Chapter 40.16 RCW.*
- Public service companies*
- auto and transport companies, penalty for violation: RCW 81.68.080.*
- motor freight carriers, penalties for violations: RCW 81.80.230, 81.80.355.*
- passengers for hire, failure to file bond or insurance policy, penalty: RCW 46.72.100.*
- railroads*

- employee requirements, penalties for violations:* RCW 81.40.030, 81.40.050, 81.40.070, 81.40.090, 81.40.100, 81.40.140.
- equipment, penalties for violations:* RCW 81.44.085, 81.44.100, 81.44.105.
- operating requirements, penalties for violations:* RCW 81.48.010, 81.48.020, 81.48.060.
- property damaged, sabotaged or stolen, penalties:* RCW 81.60.070, 81.60.080, 81.60.090.
- rights-of-way and crossings, etc., penalties:* RCW 81.53.210, 81.54.030.
- shippers and passengers, penalties:* RCW 81.56.100, 81.56.120, 81.56.150.
- regulatory fees, penalty:* RCW 81.24.080.
- securities, penalty:* RCW 81.08.120.
- street railways, penalties for violations:* RCW 81.64.110, 81.64.130, 81.64.150, 81.64.170.
- transfers of property, penalty:* RCW 81.12.060.
- violations of laws and regulations, general penalties:* RCW 81.04.380, 81.04.390.
- Public utilities**
- pipeline transporters, safety rules, penalty:* RCW 80.28.210.
- regulatory fees, penalty:* RCW 80.24.050.
- transfers of property, penalty:* RCW 80.12.060.
- violations of laws and regulations, general penalties:* RCW 80.04.380, 80.04.390.
- Public works**
- employment of state residents, penalty:* RCW 39.16.040.
- falsification of records, etc., penalty:* RCW 39.04.110, 39.12.050.
- Purchasing, state, interfering with bids:* RCW 43.19.1939.
- Real estate**
- brokers and salesperson laws, penalty:* RCW 18.85.340.
- mortgages, removal of property from mortgaged premises, penalty:* RCW 61.12.030, 61.12.031.
- Rebating, etc., by practitioners of healing professions, penalty:* RCW 19.68.010.
- Recall petition laws, penalties:* RCW 29.82.170, 29.82.210, 29.82.220.
- Recreational devices, inspection of, penalty:* RCW 70.88.020, 70.88.040.
- Referendum and initiative laws, penalties:* RCW 29.79.440, 29.79.480, 29.79.490.
- Registered nurses, penalty for violations:* RCW 18.88.270.
- Rules of the road:* Chapter 46.61 RCW.
- Savings and loan associations**
- advertising as without license:* RCW 33.08.010.
- concealing facts or destroying evidence, etc., penalty:* RCW 33.36.060.
- false statements concerning financial standings, penalty:* RCW 33.36.050.
- falsification of books, etc., penalty:* RCW 33.36.040.
- making prohibited loans or investments, penalty:* RCW 33.36.010.
- preferential transfer of property due to insolvency, penalty:* RCW 33.36.030.
- purchase at discount prohibited to officers, etc., penalty:* RCW 33.36.020.
- Schools**
- compulsory attendance, penalties:* RCW 28A.225.090.
- disclosing examination questions, penalty:* RCW 28A.635.040.
- disturbing meetings, penalty:* RCW 28A.635.030.
- failure to deliver books, etc., to successor, penalty:* RCW 28A.635.070.
- grafting by school officials, penalty:* RCW 28A.635.050.
- interfering by force or violence with any administrator, faculty member, or student unlawful—Penalty:* RCW 28B.10.570, 28B.10.572, 28B.10.573.
- intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty:* RCW 28B.10.571 through 28B.10.573.
- Securities act violations, penalty:* RCW 21.20.400 through 21.20.420.
- Sexual psychopaths:* Chapter 71.06 RCW.
- Sexually transmitted diseases, penalty for violation of control of:* RCW 70.24.080.
- Sheep disease control, penalty for violation:* RCW 16.44.180.
- Shellfish, sanitary control, penalties for violation of law regulating:* RCW 69.30.140.
- Sheriffs, penalty for misconduct or nonfeasance:* RCW 36.28.140.
- Sheriff's office employees, civil service for, penalty:* RCW 41.14.220.
- Ski lifts and other recreational conveyances:* RCW 70.88.040.
- Slaughtering and transportation of cattle, violation of laws governing:* RCW 16.48.320.
- Snowmobile act**
- additional violations—Penalty:* RCW 46.10.130.
- operating violations, general penalty:* RCW 46.10.090, 46.10.190.
- Solid waste collection, unlawful acts:** Chapter 81.77 RCW.
- Sporting contest, fraud, penalty:** RCW 67.24.010.
- State bonds, fraud by engraver:** RCW 39.44.101.
- State employees' retirement, falsification of statements, etc., penalty:** RCW 41.40.055.
- State land inspectors, fraud in carrying out duties, penalty:** RCW 79.01.072.
- State lands**
- firewood removal, permit required, penalty:* RCW 76.20.040.
- removing flora, etc., penalty:* RCW 47.40.080.
- trespass, etc.:* Chapters 79.01, 79.40 RCW.
- State treasurer, penalty for embezzlement:** RCW 43.08.140.
- Steam boilers, safety requirements, penalty:** RCW 70.54.080.
- Stink or gas bombs prohibited, penalty:** RCW 70.74.310.
- Support of dependent children—Alternative method—1971 act:** Chapter 74.20A RCW.
- Swimming pools, violation of health laws and regulations:** RCW 70.90.205.
- Taxation**
- cigarette tax, penalties:* RCW 82.24.100, 82.24.110.
- general penalties:* RCW 82.32.290.
- mobile home, travel trailer, and camper excise, penalty:* RCW 82.50.090, 82.50.170.
- motor vehicle excise, penalties:* RCW 82.44.090, 82.44.120.
- motor vehicle fuel tax, penalties:* RCW 82.36.330, 82.36.380, 82.36.390, 82.36.400.
- personal property, disclosure of information unlawful:* RCW 84.40.340.
- property taxes**
- listing of property:* RCW 84.40.120.
- removal of property to avoid collection of, penalties:* RCW 84.56.120, 84.56.200.
- retail sales tax, penalties:* RCW 82.08.050, 82.08.120.
- use tax, penalty:* RCW 82.12.040.
- Teachers**
- abuse of a misdemeanor:* RCW 28A.635.010.
- retirement, falsification of statements, etc., penalty:* RCW 41.32.055.
- Telephones, party line, refusal to yield in emergency, penalty:** RCW 70.85.020, 70.85.030.
- Television reception improvement districts, penalty for false statement as to tax exemption:** RCW 36.95.190.
- Tires**
- pneumatic, passenger car, selling or offering for sale if under prescribed standards, penalty:* RCW 46.37.423.
- regrooved, selling or offering for sale if under prescribed standards, penalty:* RCW 46.37.424.
- selling or operating vehicle with tires not meeting standards of state patrol, penalty:* RCW 46.37.425.
- Tobacco, etc., minors procuring or possessing, penalties:** RCW 26.28.080.
- Toll facilities, operation of motor vehicle on, prohibited acts:** RCW 46.61.690.
- Townships, failure of officer to allow a claim against a town without itemizing and verifying, penalty:** RCW 45.52.040.
- Trading stamps and premiums, penalty for violations:** RCW 19.84.040.
- Unclaimed property act, penalties for violations:** RCW 63.29.340, 63.29.350.
- Unemployment compensation, penalties for violations:** Chapter 50.36 RCW.
- Use of lists of registered voters, violations relating to, penalty:** RCW 29.04.100.
- Utility poles, attaching objects to prohibited, penalty:** RCW 70.54.100.
- Veterinarian laws and rules, penalty:** RCW 18.92.230, 18.92.240.
- Vital statistics requirements, penalty for violation:** RCW 70.58.280.

Vouchers, public, false certification, penalty: RCW 42.24.100.

Wages (see Labor laws)

Warehouses, grain and terminal, commodity inspections, penalties for violation: RCW 22.09.310, 22.09.340, 22.09.890.

Warehousing deposits, general penalties: Chapter 22.32 RCW.

Washington Caustic Poison Act of 1929: Chapter 69.36 RCW.

Washington Criminal Code: Title 9A RCW.

Washington fresh fruit sales limitation act, violations: RCW 15.21.060.

Washington state patrol retirement fund, falsification of records, etc., to defraud, penalty: RCW 43.43.320.

Water pollution

control, penalty for violations: RCW 90.48.140.

drinking water pollution, etc.: Chapter 70.54 RCW.

pollution of water supply in cities and towns, penalty: RCW 35.88.040.

Weather modification and control, violation of act: RCW 43.27A.080(6).

Weed districts, prevention of agent's right of entry, penalty: RCW 17.04.280.

Weights and measures law and rules, penalties for violations: RCW 19.94.490 through 19.94.510.

Wheat commission act (1961), prohibited acts: RCW 15.63.220, 15.63.230.

Wills, failing to deliver, penalty: RCW 11.20.010.

Workers' compensation, penalties for violations of regulations concerning: Chapter 51.48 RCW, RCW 51.16.140.

X-rays, use in shoe fitting prohibited: RCW 70.98.170.

9.91.010 Denial of civil rights—Terms defined.

Terms used in this section shall have the following definitions:

(1)(a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed or color.

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited.

(d) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or

facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in *loco parentis* to direct the education and upbringing of a child under his control is hereby affirmed.

(2) Every person who denies to any other person because of race, creed, or color, the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement, shall be guilty of a misdemeanor. [1953 c 87 § 1; 1909 c 249 § 434; RRS § 2686.]

Application forms, licenses—Mention of race or religion prohibited: RCW 43.01.100, 43.01.110.

Interference with board against discrimination: RCW 49.60.310.

9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated. Every person who, being employed upon any railway, as engineer, motorman, gripman, conductor, switch tender, fireman, bridge tender, flagman or signalman, or having charge of stations, starting, regulating or running trains upon a railway, or being employed as captain, engineer or other officer of a vessel propelled by steam, or being the driver of any animal or vehicle upon any public highway, street, or other public place, shall be intoxicated while engaged in the discharge of any such duties, shall be guilty of a gross misdemeanor. [1915 c 165 § 2; 1909 c 249 § 275; RRS § 2527.]

Reviser's note: Caption for 1915 c 165 § 2 reads as follows: "Section 2527 [Rem. & Bal.] Intoxication of employees." See *State v. Crothers*, 118 Wash. 226.

Hunting while intoxicated: RCW 77.16.070.

Operating vehicle under influence of intoxicants or drugs: RCW 46.20.285, 46.52.100, 46.61.502, 46.61.515.

Operating vessel in negligent manner or while under influence of alcohol or drugs: RCW 88.12.100.

Railroads, employees, equipment, operations: Chapters 81.40, 81.44, 81.48 RCW.

Reckless operation of steamboat or engine: RCW 9A.32.060, 9A.32.070.

9.91.025 Unlawful bus conduct. (1) A person is guilty of unlawful bus conduct if while on or in a municipal transit vehicle as defined by RCW 46.04.355 or in or at a municipal transit station and with knowledge that such conduct is prohibited, he or she:

(a) Except while in or at a municipal transit station, smokes or carries a lighted or smoldering pipe, cigar, or cigarette; or

(b) Discards litter other than in designated receptacles; or

(c) Plays any radio, recorder, or other sound-producing equipment except that nothing herein shall prohibit the use of such equipment when connected to earphones that limit the sound to individual listeners or the use of a communication device by an employee of the owner or operator of the municipal transit vehicle or municipal transit station; or

(d) Spits or expectorates; or

(e) Carries any flammable liquid, explosive, acid, or other article or material likely to cause harm to others except that nothing herein shall prevent a person from carrying a cigarette, cigar, or pipe lighter or carrying a firearm or ammunition in a way that is not otherwise prohibited by law; or

(f) Intentionally disturbs others by engaging in loud or unruly behavior.

(2) For the purposes of this section, "municipal transit station" means all facilities, structures, lands, interest in lands, air rights over lands, and rights of way of all kinds that are owned, leased, held, or used by a public agency for the purpose of providing public transportation services.

(3) Unlawful bus conduct is a misdemeanor. [1992 c 77 § 1; 1984 c 167 § 1.]

9.91.060 Leaving children unattended in parked automobile. Every person having the care and custody, whether temporary or permanent, of minor children under the age of twelve years, who shall leave such children in a parked automobile unattended by an adult while such person enters a tavern or other premises where vinous [,] spirituous [,] or malt liquors are dispensed for consumption on the premises shall be guilty of a gross misdemeanor. [1951 c 270 § 17.]

Leaving children unattended in standing vehicle with motor running: RCW 46.61.685.

9.91.090 Fraudulent destruction of insured property. Every person who, with intent to defraud or prejudice the insurer thereof, shall willfully injure or destroy any property that is insured at the time against loss or damage by casualty other than fire, shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1992 c 7 § 17; 1981 c 203 § 4; 1909 c 249 § 384; RRS § 2636. Formerly codified as RCW 9.45.110.]

Insurance code, willful destruction or injury of property: RCW 48.30.220.

9.91.110 Metal buyers—Records of purchases—Penalty. (1) It shall be unlawful for any person, firm or corporation engaged in the business of buying or otherwise obtaining new, used or secondhand metals to purchase or otherwise obtain such metals unless a permanent record of

the purchase of such metals is maintained: PROVIDED, That no such record need be kept of purchases made by or from a manufacturer, remanufacturer or distributor appointed by a manufacturer of such metals.

For the purpose of this section the term "metals" shall mean copper, copper wire, copper cable, copper pipe, copper sheets and tubing, copper bus, aluminum wire, brass pipe, lead, electrolytic nickel and zinc.

(2) The permanent record required by subsection (1) of this section shall contain the following:

(a) a general description of all property purchased;

(b) the type and quantity or weight;

(c) the name, address, driver's license number, and signature of the seller or the person making delivery; and,

(d) a description of any motor vehicle and the license number thereof used in the delivery of such metals.

The information so recorded shall be retained by the purchaser for a period of not less than one year.

(3) Any violation of this section is punishable, upon conviction, by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. [1971 ex.s. c 302 § 18.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

9.91.130 Disposal of trash in charity donation receptacle. (1) It is unlawful for any person to throw, drop, deposit, discard, or otherwise dispose of any trash, including, but not limited to items that have deteriorated to the extent that they are no longer of monetary value or of use for the purpose they were intended; garbage, including any organic matter; or litter, in or around a receptacle provided by a charitable organization, as defined in RCW 19.09.020(2), for the donation of clothing, property, or other thing of monetary value to be used for the charitable purposes of such organization.

(2) Charitable organizations must post a clearly visible notice on the donation receptacles warning of the existence and content of this section and the penalties for violation of its provisions, as well as a general identification of the items which are appropriate to be deposited in the receptacle.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor, and the fine for such violation shall be not less than fifty dollars for each offense.

(4) Nothing in this section shall preclude a charitable organization which maintains the receptacle from pursuing a civil action and seeking whatever damages were sustained by reason of the violation of the provisions of this section. For a second or subsequent violation of this section, such person shall be liable for treble the amount of damages done by the person, but in no event less than two hundred dollars, and such damages may be recovered in a civil action before any district court judge. [1987 c 385 § 1.]

Severability—1987 c 385: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 385 § 2.]

9.91.140 Food coupons. (1) A person who sells food coupons obtained through the program established under RCW 74.04.500, or food purchased therewith, is guilty of a gross misdemeanor under RCW 9A.20.021 if the value of

the coupons or food transferred exceeds one hundred dollars, and is guilty of a misdemeanor under RCW 9A.20.021 if the value of the coupons or food transferred is one hundred dollars or less.

(2) A person who purchases, or who otherwise acquires and sells, or who traffics in, food coupons issued to another person through the program established under RCW 74.04.500, is guilty of a class C felony under RCW 9A.20.021 if the face value of the coupons exceeds one hundred dollars, and is guilty of a gross misdemeanor under RCW 9A.20.021 if the face value of the coupons is one hundred dollars or less.

(3) A person who, in violation of 7 U.S.C. Sec. 2024(c), obtains and presents food coupons for redemption or causes such coupons to be presented for redemption through the program established under RCW 74.04.500 is guilty of a class C felony under RCW 9A.20.021. [1988 c 62 § 1.]

9.91.150 Tree spiking. (1) Any person who maliciously drives or places in any tree, forest material, forest debris, or other wood material any iron, steel, ceramic, or other substance sufficiently hard to injure saws or wood processing or manufacturing equipment, for the purpose of hindering logging or timber harvesting activities, is guilty of a class C felony under chapter 9A.20 RCW.

(2) Any person who, with the intent to use it in a violation of subsection (1) of this section, possesses any iron, steel, ceramic, or other substance sufficiently hard to injure saws or wood processing or manufacturing equipment is guilty of a gross misdemeanor under chapter 9A.20 RCW.

(3) As used in this section the terms "forest debris" and "forest material" have the same meanings as under RCW 76.04.005. [1988 c 224 § 1.]

9.91.155 Tree spiking—Action for damages. Any person who is damaged by any act prohibited in RCW 9.91.150 may bring a civil action to recover damages sustained, including a reasonable attorney's fee. A party seeking civil damages under this section may recover upon proof of a violation of the provisions of RCW 9.91.150 by a preponderance of the evidence. [1988 c 224 § 2.]

Chapter 9.92 PUNISHMENT

Sections	
9.92.005	Penalty assessments in addition to fine or bail forfeiture— Crime victims compensation account.
9.92.010	Punishment of felony when not fixed by statute.
9.92.020	Punishment of gross misdemeanor when not fixed by statute.
9.92.030	Punishment of misdemeanor when not fixed by statute.
9.92.040	Punishment for contempt.
9.92.060	Suspending sentences.
9.92.062	Suspended sentence—Termination date—Application.
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9.92.066	Termination of suspended sentence—Restoration of civil rights.
9.92.070	Payment of fine and costs in installments.
9.92.080	Sentence on two or more convictions or counts.
9.92.090	Habitual criminals.
9.92.100	Prevention of procreation.
9.92.110	Convicts protected—Forfeitures abolished.
9.92.120	Conviction of public officer forfeits trust.

9.92.130	City jail prisoners may be compelled to work.
9.92.140	County jail prisoners may be compelled to work.
9.92.151	Early release for good behavior.
9.92.200	Chapter not to affect dispositions under juvenile justice act.
9.92.900	RCW 9.92.050 through 9.92.090 inapplicable to felonies committed on or after July 1, 1984.

Court to fix maximum sentence: RCW 9.95.010.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

Juvenile offenders—Commitment: Chapter 13.04 RCW.

9.92.005 Penalty assessments in addition to fine or bail forfeiture—Crime victims compensation account. See RCW 7.68.035.

9.92.010 Punishment of felony when not fixed by statute. Every person convicted of a felony for which no punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by confinement or fine which shall not exceed confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such confinement and fine. [1982 1st ex.s. c 47 § 5; 1909 c 249 § 13; RRS § 2265.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Classification of crimes: Chapter 9A.20 RCW.

9.92.020 Punishment of gross misdemeanor when not fixed by statute. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine. [1982 1st ex.s. c 47 § 6; 1909 c 249 § 15; RRS § 2267.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.92.030 Punishment of misdemeanor when not fixed by statute. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars or both such imprisonment and fine. [1982 1st ex.s. c 47 § 7; 1909 c 249 § 14; Code 1881 § 785; RRS § 2266.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.92.040 Punishment for contempt. A criminal act which at the same time constitutes contempt of court, and has been punished as such, may also be punished as a crime, but in such case the punishment for contempt may be considered in mitigation. [1909 c 249 § 21; RRS § 2273.]

Contempt: Chapter 7.21 RCW.

9.92.060 Suspending sentences. Whenever any person shall be convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, carnal knowledge of a female child under the age of ten years, or rape, the court may in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by such court, and that the sentenced person be placed under the charge of a parole or peace officer during the term of such suspension, upon such terms as the court may determine: PROVIDED, That as a condition to suspension of sentence, the court shall require the payment of the penalty assessment required by RCW 7.68.035: PROVIDED FURTHER, That as a condition to suspension of sentence, the court may require the convicted person to make such monetary payments, on such terms as the court deems appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, (3) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required, and (4) to contribute to a county or interlocal drug fund. In no case shall a sentence be suspended under the provisions of this section unless the person if sentenced to confinement in a penal institution be placed under the charge of a parole officer, who is a duly appointed and acting officer of the institution to which the person is sentenced: PROVIDED, That persons convicted in district court may be placed under supervision of a probation officer employed for that purpose. If restitution to the victim has been ordered under subsection (2) of this section, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence. [1987 c 202 § 142; 1982 1st ex.s. c 47 § 8; 1982 1st ex.s. c 8 § 4; 1979 c 29 § 1; 1967 c 200 § 7; 1957 c 227 § 1; 1949 c 76 § 1; 1921 c 69 § 1; 1909 c 249 § 28; 1905 c 24 § 1; Rem. Supp. 1949 § 2280.]

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

Applicability—1984 c 209: See RCW 9.92.900.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Intent—Reports—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Severability—1967 c 200: See note following RCW 9.45.122.

Probation: RCW 9.95.200 through 9.95.250.

Probation and parole services, provision by counties: RCW 36.01.070.

Restitution

alternative to fine: RCW 9A.20.030.

condition of probation: RCW 9.95.210.

disposition when victim not found or dead: RCW 7.68.290.

9.92.062 Suspended sentence—Termination date—Application. In all cases prior to August 9, 1971 wherein the execution of sentence has been suspended pursuant to RCW 9.92.060, such person may apply to the court by which he was convicted and sentenced to establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. [1971 ex.s. c 188 § 1.]

Applicability—1984 c 209: See RCW 9.92.900.

9.92.064 Suspended sentence—Termination date, establishment—Modification of terms. In the case of a person granted a suspended sentence under the provisions of RCW 9.92.060, the court shall establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. Prior to the entry of an order formally terminating a suspended sentence the court may modify the terms and conditions of the suspension or extend the period of the suspended sentence. [1982 1st ex.s. c 47 § 9; 1971 ex.s. c 188 § 2.]

Applicability—1984 c 209: See RCW 9.92.900.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.92.066 Termination of suspended sentence—Restoration of civil rights. Upon termination of any suspended sentence under RCW 9.92.060 or 9.95.210, such person may apply to the court for restoration of his civil rights. Thereupon the court may in its discretion enter an order directing that such defendant shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. [1971 ex.s. c 188 § 3.]

Applicability—1984 c 209: See RCW 9.92.900.

9.92.070 Payment of fine and costs in installments. Hereafter whenever any judge of any superior court or a district or municipal judge shall sentence any person to pay any fine and costs, the judge may, in the judge's discretion, provide that such fine and costs may be paid in certain designated installments, or within certain designated period or periods; and if such fine and costs shall be paid by the defendant in accordance with such order no commitment or imprisonment of the defendant shall be made for failure to pay such fine or costs. PROVIDED, that the provisions of this section shall not apply to any sentence given for the violation of any of the liquor laws of this state. [1987 c 3 § 4; 1923 c 15 § 1; RRS § 2280-1.]

Severability—1987 c 3: See note following RCW 3.46.020.

Applicability—1984 c 209: See RCW 9.92.900.

Collection and disposition of fines and costs: Chapter 10.82 RCW.

Payment of fine and costs in installments: RCW 10.01.170.

9.92.080 Sentence on two or more convictions or counts. (1) Whenever a person while under sentence of felony shall commit another felony and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms: PROVIDED,

That any person granted probation pursuant to the provisions of RCW 9.95.210 and/or 9.92.060 shall not be considered to be under sentence of a felony for the purposes of this subsection.

(2) Whenever a person is convicted of two or more offenses which arise from a single act or omission, the sentences imposed therefor shall run concurrently, unless the court, in pronouncing sentence, expressly orders the service of said sentences to be consecutive.

(3) In all other cases, whenever a person is convicted of two or more offenses arising from separate and distinct acts or omissions, and not otherwise governed by the provisions of subsections (1) and (2) of this section, the sentences imposed therefor shall run consecutively, unless the court, in pronouncing the second or other subsequent sentences, expressly orders concurrent service thereof.

(4) The sentencing court may require the secretary of corrections, or his designee, to provide information to the court concerning the existence of all prior judgments against the defendant, the terms of imprisonment imposed, and the status thereof. [1981 c 136 § 35; 1971 ex.s. c 295 § 1; 1925 ex.s. c 109 § 2; 1909 c 249 § 33; RRS § 2285.]

Applicability—1984 c 209: See RCW 9.92.900.

Effective date—1981 c 136: See RCW 72.09.900.

9.92.090 Habitual criminals. Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been twice convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in a state correctional facility for not less than ten years.

Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been four times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in a state correctional facility for life. [1992 c 7 § 18; 1909 c 249 § 34; 1903 c 86 §§ 1, 2; RRS § 2286.]

Applicability—1984 c 209: See RCW 9.92.900.

9.92.100 Prevention of procreation. Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation. [1909 c 249 § 35; RRS § 2287.]

9.92.110 Convicts protected—Forfeitures abolished. Every person sentenced to imprisonment in any penal institution shall be under the protection of the law, and any unauthorized injury to his person shall be punished in the same manner as if he were not so convicted or sentenced. A conviction of crime shall not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures in the nature of deodands, or in case of suicide or where a person flees from justice, are abolished. [1909 c 249 § 36; RRS § 2288.]

Inheritance rights of slayers: Chapter 11.84 RCW.

9.92.120 Conviction of public officer forfeits trust. The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his office, and shall disqualify him from ever afterward holding any public office in this state. [1909 c 249 § 37; RRS § 2289.]

Forfeiture or impeachment, rights preserved: RCW 42.04.040.

Misconduct of public officers: Chapter 42.20 RCW.

Vacancy of public office, causes: RCW 42.12.010.

9.92.130 City jail prisoners may be compelled to work. When a person has been sentenced by any municipal or district judge in this state to a term of imprisonment in a city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' labor upon the streets, public buildings, and grounds of such city. [1987 c 202 § 144; Code 1881 § 2075; RRS § 10189.]

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

9.92.140 County jail prisoners may be compelled to work. When a person has been sentenced by a district judge or a judge of the superior court to a term of imprisonment in the county jail, whether in default of payment of a fine, or costs or otherwise; such person may be compelled to work eight hours, each day of such term, in and about the county buildings, public roads, streets and grounds: PROVIDED, This section and RCW 9.92.130 shall not apply to persons committed in default of bail. [1987 c 202 § 145; Code 1881 § 2076; 1867 p 56 § 24; 1858 p 10 § 1; RRS § 10190.]

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

Employment of prisoners: RCW 36.28.100.

Working out fine: Chapter 10.82 RCW.

9.92.151 Early release for good behavior. The sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the

case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence. [1990 c 3 § 201; 1989 c 248 § 1.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Application—1989 c 248: "This act applies only to sentences imposed for crimes committed on or after July 1, 1989." [1989 c 248 § 5.] For codification of "this act" [1989 c 248], see Codification Tables, Volume 0.

9.92.200 Chapter not to affect dispositions under juvenile justice act. No provision of this chapter shall authorize a court to suspend or defer the imposition or the execution of a disposition under chapter 13.40 RCW, as now law or hereafter amended. [1981 c 299 § 21.]

9.92.900 RCW *9.92.050 through 9.92.090 inapplicable to felonies committed on or after July 1, 1984. The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW *9.92.050, 9.92.060, 9.92.062, 9.92.064, 9.92.066, 9.92.070, 9.92.080, and 9.92.090. [1984 c 209 § 2; 1981 c 137 § 31.]

***Reviser's note:** RCW 9.92.050 was repealed by 1992 c 7 § 64.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Severability—1981 c 137: See RCW 9.94A.910.

Chapter 9.94

PRISONERS—STATE PENAL INSTITUTIONS

Sections

- 9.94.010 Prison riot—Defined.
- 9.94.020 Prison riot—Penalty.
- 9.94.030 Holding person hostage—Interference with officer's duties.
- 9.94.040 Weapons—Possession, etc., by prisoner prohibited—Penalty.
- 9.94.041 Narcotic drugs, controlled substances—Possession, etc., by prisoners—Penalty.
- 9.94.043 Deadly weapons—Possession on premises by person not a prisoner—Penalty.
- 9.94.045 Narcotic drugs or controlled substances—Possession by person not a prisoner—Penalty.
- 9.94.047 Posting of perimeter of premises of institutions covered by RCW 9.94.040 through 9.94.049.
- 9.94.049 "State correctional institution" defined for purposes of RCW 9.94.043 and 9.94.045.
- 9.94.050 Correctional employees.

Convict-made goods, restriction on sale of: Chapter 72.60 RCW.

Obstructing governmental operation: Chapter 9A.76 RCW.

State institutions: Title 72 RCW.

9.94.010 Prison riot—Defined. Whenever two or more inmates of a state penal institution assemble for any purpose, and act in such a manner as to disturb the good order of such institution and contrary to the commands of the officers of such institution, by the use of force or violence, or the threat thereof, and whether acting in concert or not, they shall be guilty of prison riot. [1955 c 241 § 1.]

9.94.020 Prison riot—Penalty. Every inmate of a state correctional facility who is guilty of prison riot or of voluntarily participating therein by being present at, or by

instigating, aiding or abetting the same, shall be punished by imprisonment in a state correctional facility for not less than one year nor more than ten years, which shall be in addition to the sentence being served. [1992 c 7 § 19; 1955 c 241 § 2.]

9.94.030 Holding person hostage—Interference with officer's duties. Whenever any inmate of a state correctional facility shall hold, or participate in holding, any person as a hostage, by force or violence, or the threat thereof, or shall prevent, or participate in preventing an officer of such institution from carrying out his or her duties, by force or violence, or the threat thereof, he or she shall be guilty of a felony and upon conviction shall be punished by imprisonment in a state correctional facility for not less than one year nor more than ten years. [1992 c 7 § 20; 1957 c 112 § 1; 1955 c 241 § 3.]

Interfering with public officer: Chapter 9A.76 RCW.

Kidnapping: Chapter 9A.40 RCW.

9.94.040 Weapons—Possession, etc., by prisoner prohibited—Penalty. Every person serving a sentence in any penal institution of this state who, without authorization pursuant to law, while in such penal institution or while being conveyed to or from such penal institution, or while at any penal institution farm or forestry camp of such institution, or while being conveyed to or from any such place, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another, is guilty of a class B felony. The sentence imposed under this section shall be in addition to any sentence being served. [1979 c 121 § 1; 1977 ex.s. c 43 § 1; 1975-'76 2nd ex.s. c 38 § 18. Prior: 1955 c 241 § 4.]

Severability—1979 c 121: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 121 § 8.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9.94.041 Narcotic drugs, controlled substances—Possession, etc., by prisoners—Penalty. Every person serving a sentence in any penal institution of this state who, without authorization, while in such penal institution or while being conveyed to or from such penal institution, or while at any penal institution farm or forestry camp of such institution, or while being conveyed to or from any such place, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any narcotic drug or controlled substance as defined in chapter 69.50 RCW is guilty of a class C felony. The sentence imposed under this section shall be in addition to any sentence being served. [1979 c 121 § 2.]

9.94.043 Deadly weapons—Possession on premises by person not a prisoner—Penalty. A person, other than a person serving a sentence in a penal institution of this state, is guilty of possession of contraband on the premises of a state correctional institution in the first degree if, without authorization to do so, the person knowingly possesses or has under his or her control a deadly weapon on or in the buildings or adjacent grounds subject to the care, control, or supervision of a state correctional institution. Deadly weapon is used as defined in RCW 9A.04.110: PROVIDED, That such correctional buildings, grounds, or property are properly posted pursuant to RCW 9.94.047, and such person has knowingly entered thereon: PROVIDED FURTHER, That the provisions of this section do not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the correctional institution premises, proceeds directly along an access road to the administration building and promptly checks his or her firearm(s) with the appropriate authorities. The person may reclaim his or her firearm(s) upon leaving, but he or she must immediately and directly depart from the premises.

Possession of contraband on the premises of a state correctional institution in the first degree is a class B felony. [1979 c 121 § 3.]

9.94.045 Narcotic drugs or controlled substances—Possession by person not a prisoner—Penalty. A person, other than a person serving a sentence in a penal institution of this state, is guilty of possession of contraband on the premises of a state correctional institution in the second degree if, without authorization to do so, the person knowingly possesses or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, on or in the buildings, grounds, or any other real property subject to the care, control, or supervision of a state correctional institution.

Possession of contraband on the premises of a state correctional institution in the second degree is a class C felony. [1979 c 121 § 4.]

9.94.047 Posting of perimeter of premises of institutions covered by RCW 9.94.040 through 9.94.049. The perimeter of the premises of correctional institutions covered by RCW 9.94.040 through 9.94.049 shall be posted at reasonable intervals to alert the public as to the existence of RCW 9.94.040 through 9.94.049. [1979 c 121 § 5.]

9.94.049 "State correctional institution" defined for purposes of RCW 9.94.043 and 9.94.045. For the purposes of RCW 9.94.043 and 9.94.045, "state correctional institution" means all state correctional facilities under the supervision of the secretary of the department of corrections used solely for the purpose of confinement of convicted felons. [1992 c 7 § 21; 1985 c 350 § 3; 1979 c 121 § 6.]

9.94.050 Correctional employees. Any correctional employee, while acting in the supervision and transportation of prisoners, and in the apprehension of prisoners who have escaped, shall have the powers and duties of a peace officer. [1992 c 7 § 22; 1955 c 241 § 5.]

Chapter 9.94A

SENTENCING REFORM ACT OF 1981

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RECOMMENDED SENTENCING GUIDELINES

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9.94A.010 Purpose. The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to add a new chapter to Title 9 RCW designed to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself; and
- (6) Make frugal use of the state's resources. [1981 c 137 § 1.]

Report on Sentencing Reform Act of 1981: "The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs." [1983 c 163 § 6.]

9.94A.020 Short title. This chapter may be known and cited as the sentencing reform act of 1981. [1981 c 137 § 2.]

9.94A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.
- (2) "Commission" means the sentencing guidelines commission.
- (3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.
- (4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls

placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit [of] any

controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(33) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(34) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall be performed on public property or on private property owned or operated by nonprofit entities, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (29) of this section are not eligible for the work crew program.

(35) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participa-

tion in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

(36) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (i) Successfully completing twenty-one days in a work release program, (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon: (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution. [1992 c 145 § 6; 1992 c 75 § 1. Prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; prior: 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

Reviser's note: This section was amended by 1992 c 75 § 1 and by 1992 c 145 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1991 c 348: See note following RCW 46.61.520.

Effective date—Application—1990 c 3 §§ 601-605: See note following RCW 9.94A.127.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Purpose—1989 c 252: "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

Prospective application—1989 c 252: "Except for sections 18, 22, 23, and 24 of this act, this act applies prospectively only and not retrospectively. It applies only to offenses committed on or after the effective date of this act." [1989 c 252 § 27.]

Effective dates—1989 c 252: "(1) Sections 1 through 17, 19 through 21, 25, 26, and 28 of this act shall take effect July 1, 1990 unless otherwise directed by law.

(2) Sections 18, 22, 23, and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 252 § 30.]

Severability—1989 c 252: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 252 § 31.]

The above four annotations apply to 1989 c 252. For codification of that act, see Codification Tables, Volume 0.

Application—1988 c 157: "This act applies to crimes committed after July 1, 1988." [1988 c 157 § 7.]

Effective date—1988 c 153: "This act shall take effect July 1, 1988." [1988 c 153 § 16.]

Implementation—1988 c 153: "The department of corrections shall report to the legislature on its plans for implementation of this act prior to January 10, 1989. The report shall address: (1) The classification system used to determine the supervision level; and (2) the contact standards for monitoring offenders. This section shall expire February 1, 1989." [1988 c 153 § 14.]

Application of increased sanctions—1988 c 153: "Increased sanctions authorized by this act are applicable only to those persons committing offenses after July 1, 1988." [1988 c 153 § 15.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1983 c 163: See note following RCW 9.94A.120.

9.94A.040 Sentencing guidelines commission—Established—Powers and duties. (1) A sentencing guidelines commission is established as an agency of state government.

(2) The commission shall, following a public hearing or hearings:

(a) Devise a series of recommended standard sentence ranges for all felony offenses and a system for determining which range of punishment applies to each offender based on the extent and nature of the offender's criminal history, if any;

(b) Devise recommended prosecuting standards in respect to charging of offenses and plea agreements; and

(c) Devise recommended standards to govern whether sentences are to be served consecutively or concurrently.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) In devising the standard sentence ranges of total and partial confinement under this section, the commission is subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.020.

(5) In carrying out its duties under subsection (2) of this section, the commission shall give consideration to the existing guidelines adopted by the association of superior court judges and the Washington association of prosecuting attorneys and the experience gained through use of those guidelines. The commission shall emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender.

(6) This commission shall conduct a study to determine the capacity of correctional facilities and programs which are or will be available. While the commission need not consider such capacity in arriving at its recommendations, the commission shall project whether the implementation of its recommendations would result in exceeding such capacity. If the commission finds that this result would probably occur, then the commission shall prepare an additional list of standard sentences which shall be consistent with such capacity.

(7) The commission may recommend to the legislature revisions or modifications to the standard sentence ranges and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity.

(8) The commission shall study the existing criminal code and from time to time make recommendations to the legislature for modification.

(9) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW, as now existing or hereafter amended. [1986 c 257 § 18; 1982 c 192 § 2; 1981 c 137 § 4.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

9.94A.050 Sentencing guidelines commission—Research staff—Data, information, assistance—Bylaws—Salary of executive officer. The commission shall appoint a research staff of sufficient size and with sufficient resources to accomplish its duties. The commission may request

from the office of financial management, the *board of prison terms and paroles, administrator for the courts, the department of corrections, and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the commission. The commission shall adopt its own bylaws.

The salary for a full-time executive officer, if any, shall be fixed by the governor pursuant to RCW 43.03.040. [1982 c 192 § 3; 1981 c 137 § 5.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.94A.060 Sentencing guidelines commission—Membership—Appointments—Terms of office—Expenses and compensation. (1) The commission consists of fifteen voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, subject to confirmation by the senate.

(2) The voting membership consists of the following:

(a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;

(b) The director of financial management, as an ex officio member;

(c) Until July 1, 1992, the chair of the *indeterminate sentencing review board, as an ex officio member, and thereafter the chair of the clemency and pardons board, as an ex officio member;

(d) Two prosecuting attorneys;

(e) Two attorneys with particular expertise in defense work;

(f) Four persons who are superior court judges;

(g) One person who is the chief law enforcement officer of a county or city;

(h) Three members of the public who are not and have never been prosecutors, attorneys, judges, or law enforcement officers.

In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting attorney members, of the Washington state bar association in respect to the attorney members, of the association of superior court judges in respect to the members who are judges, and of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer.

(3) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing four of the initial members for terms of one year, four for terms of two years, and four for terms of three years.

(4) The speaker of the house of representatives and the president of the senate may each appoint two nonvoting members to the commission, one from each of the two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(5) The members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed by their respective houses as provided under RCW 44.04.120, as now existing or hereafter amended. Members shall be compensated in accordance with RCW 43.03.250. [1988 c 157 § 2; 1984 c 287 § 10; 1981 c 137 § 6.]

***Reviser's note:** The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

Application—1988 c 157: See note following RCW 9.94A.030.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

9.94A.070 Standard sentence ranges—Revisions or modifications—Submission to legislature. Revisions or modifications of standard sentence ranges or other standards, together with any additional list of standard sentence ranges, shall be submitted to the legislature at least every two years. [1986 c 257 § 19; 1981 c 137 § 7.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

9.94A.080 Plea agreements—Discussions—Contents of agreements. The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

- (1) Move for dismissal of other charges or counts;
- (2) Recommend a particular sentence within the sentence range applicable to the offense or offenses to which the offender pled guilty;
- (3) Recommend a particular sentence outside of the sentence range;
- (4) Agree to file a particular charge or count;
- (5) Agree not to file other charges or counts; or
- (6) Make any other promise to the defendant, except that in no instance may the prosecutor agree not to allege prior convictions.

The court shall not participate in any discussions under this section. [1981 c 137 § 8.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.090 Plea agreements—Statement to court as to nature and reasons for agreement—Court approval or disapproval—Sentencing judge not bound. (1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to RCW 9.94A.080, they shall at the time of the defendant's plea state to the court, on the record, the nature of the agreement and the reasons for the agreement. The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards. If the court determines it is not consistent with the interests of justice and with the prosecuting standards, the court shall, on the record, inform the defendant and the prosecutor that they are not bound by the agreement and that the defendant may withdraw the

defendant's plea of guilty, if one has been made, and enter a plea of not guilty.

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea. [1984 c 209 § 4; 1981 c 137 § 9.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.100 Plea agreements—Criminal history. The prosecuting attorney and the defendant shall each provide the court with their understanding of what the defendant's criminal history is prior to a plea of guilty pursuant to a plea agreement. All disputed issues as to criminal history shall be decided at the sentencing hearing. [1981 c 137 § 10.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.110 Sentencing hearing—Time period for holding—Presentence reports—Victim impact statement and criminal history—Arguments—Record. Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing. The court shall order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. The court shall consider the presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys. [1988 c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.120 Sentences. When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum five-year term except for the purpose of commitment to an inpatient treatment facility. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sexual offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eight years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community supervision for the length of the suspended sentence or three years, whichever is greater; and

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence

conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;
 (II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
 (III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community supervision, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community supervision.

(v) The court may revoke the suspended sentence at any time during the period of community supervision and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(vi) Except as provided in (a)(vii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(vii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (7) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan

comply with this subsection (7) and the rules adopted by the department of health.

For purposes of this subsection, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(b) When an offender is convicted of any felony sex offense committed before July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of social and health services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

If the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

If the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;
 (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
 (iii) Report as directed to the court and a community corrections officer;

(iv) Undergo available outpatient treatment.

If the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

After June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a

treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his community supervision, the court may order the offender to serve out the balance of his community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (c) does not apply to any crime committed after July 1, 1990.

(d) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(8)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections

for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances;

(v) The offender shall pay supervision fees as determined by the department of corrections; and

(vi) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol; or

(v) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(9) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(10) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total

amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(12) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow explicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(13) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(14) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(15) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(16) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the

offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(17) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(18) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(19) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations. [1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5. Prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12.]

Reviser's note: This section was amended by 1992 c 45 § 5, 1992 c 75 § 2, and by 1992 c 145 § 7, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Application—1992 c 45: See notes following RCW 9.94A.151.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Effective date—Implementation—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Applicability—1988 c 143 §§ 21-24: "Increased sanctions authorized by sections 21 through 24 of this act are applicable only to those persons committing offenses after March 21, 1988." [1988 c 143 § 25.] Sections 21, 23, and 24 were amendments to RCW 9.94A.120, 9.94A.383, and 9.94A.400, respectively. Section 22, an amendment to RCW 9.94A.170, was vetoed by the governor.

Effective date—1987 c 402: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 402 § 3.]

Effective date—1986 c 301 § 4: "Section 4 of this act shall take effect July 1, 1987." [1986 c 301 § 8.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1983 c 163: "Sections 1 through 5 of this act shall take effect on July 1, 1984." [1983 c 163 § 7.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.123 Legislative finding and intent—Commitment of felony sexual offenders after July 1, 1987. The legislature finds that the sexual offender treat-

ment programs at western and eastern state hospitals, while not proven to be totally effective, may be of some benefit in positively affecting the behavior of certain sexual offenders. Given the significance of the problems of sexual assault and sexual abuse of children, it is therefore appropriate to review and revise these treatment efforts.

At the same time, concerns regarding the lack of adequate security at the existing programs must be satisfactorily addressed. In an effort to promote public safety, it is the intent of the legislature to transfer the responsibility for felony sexual offenders from the department of social and health services to the department of corrections.

Therefore, no person committing a felony sexual offense on or after July 1, 1987, may be committed under RCW 9.94A.120(7)(b) to the department of social and health services at eastern state hospital or western state hospital. Any person committed to the department of social and health services under RCW 9.94A.120(7)(b) for an offense committed before July 1, 1987, and still in the custody of the department of social and health services on June 30, 1993, shall be transferred to the custody of the department of corrections. Any person eligible for evaluation or treatment under RCW 9.94A.120(7)(b) shall be committed to the department of corrections. [1987 c 402 § 2; 1986 c 301 § 1.]

Effective date—1987 c 402: See note following RCW 9.94A.120.

9.94A.125 **Deadly weapon special verdict—**

Definition. In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas. [1983 c 163 § 3.]

Effective date—1983 c 163: See note following RCW 9.94A.120.

9.94A.127 **Sexual motivation special allegation—**

Procedures. (1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case other than sex offenses as defined in RCW 9.94A.030(29) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would

justify a finding of sexual motivation by a reasonable and objective fact-finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030(29) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [1990 c 3 § 601.]

Effective date—Application—1990 c 3 §§ 601-605: "(1) Sections 601 through 605 of this act, for purposes of sentencing adult or juvenile offenders, shall take effect July 1, 1990, and shall apply to crimes or offenses committed on or after July 1, 1990.

(2) For purposes of defining a "sexually violent offense" pursuant to section 1002(4) of this act, sections 601 through 605 of this act shall take effect July 1, 1990, and shall apply to crimes committed on, before, or after July 1, 1990." [1990 c 3 § 606.] "Sections 601 through 605 of this act" consist of the enactment of RCW 9.94A.127 and 13.40.135 and the 1990 c 3 amendments to RCW 9.94A.030, 9.94A.390, and 13.40.150. Section 1002 of this act consists of the enactment of RCW 71.09.020.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9.94A.130 Power to defer or suspend sentences abolished—Exceptions. The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.120(7)(a), the special sexual offender sentencing alternative, whose sentence may be suspended. [1984 c 209 § 7; 1981 c 137 § 13.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.135 Offender work crews. Participation in a work crew is conditioned upon the offender's acceptance into the program, abstinence from alcohol and controlled substances as demonstrated by urinalysis and breathalyzer monitoring, with the cost of monitoring to be paid by the offender, unless indigent; and upon compliance with the rules of the program, which rules shall include the requirements that the offender work to the best of his or her abilities and that he or she provide the program with accurate, verified residence information. Work crew may be imposed simultaneously with electronic home detention.

Where work crew is imposed as part of a sentence of nine months or more, the offender must serve a minimum of thirty days of total confinement before being eligible for work crew.

An offender who has successfully completed four weeks of work crew at thirty-five hours per week shall thereafter

receive credit toward the work crew sentence for hours worked at approved, verified employment. Such employment credit may be earned for up to twenty-four hours actual employment per week provided, however, that every such offender shall continue active participation in work crews projects according to a schedule approved by a work crew supervisor until the work crew sentence has been served.

The hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training.

The civic improvement tasks performed by offenders on work crew shall be unskilled labor for the benefit of the community as determined by the head of the county executive branch or his or her designee. Civic improvement tasks shall not be done on private property unless it is owned or operated by a nonprofit entity, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. In case any dispute arises as to a civic improvement task having more than minimum negative impact on existing private industries or labor force in the county where their service or labor is performed, the matter shall be referred by an interested party, as defined in RCW 39.12.010(4), for arbitration to the director of the department of labor and industries of the state.

Whenever an offender receives credit against a work crew sentence for hours of approved, verified employment, the offender shall pay to the department administering the program the monthly assessment of an amount not less than ten dollars per month nor more than fifty dollars per month. This assessment shall be considered payment of the costs of providing the work crew program to an offender. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(1) The offender has diligently attempted but has been unable to obtain employment that provided the offender sufficient income to make such payment.

(2) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(3) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(4) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship.

(5) Other extenuating circumstances as determined by the court. [1991 c 181 § 2.]

9.94A.140 Restitution. (1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may

have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(4) This section does not limit civil remedies or defenses available to the victim or defendant. [1989 c 252 § 5; 1987 c 281 § 3; 1982 c 192 § 5; 1981 c 137 § 14.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Effective date—1987 c 281: See note following RCW 7.68.020.

9.94A.142 Restitution—Offenses committed after July 1, 1985. (1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the

restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(4) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or defendant.

(5) This section shall apply to offenses committed after July 1, 1985. [1989 c 252 § 6; 1987 c 281 § 4; 1985 c 443 § 10.]

~~Purpose—Prospective application—Effective dates—Severability—1989 c 252:~~ See notes following RCW 9.94A.030.

~~Effective date—1987 c 281:~~ See note following RCW 7.68.020.

~~Severability—Effective date—1985 c 443:~~ See notes following RCW 7.69.010.

9.94A.145 Legal financial obligations. (1) Whenever a person is convicted of a felony, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount. Upon receipt of an offender's monthly payment, after restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department of corrections.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be immediately issued. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) All legal financial obligations that are ordered as a result of a conviction for a felony, may also be enforced in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. These obligations may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period is longer. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any

other remedies available to the party or entity to collect the legal financial obligation.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to truthfully and honestly respond to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring any and all documents as requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. Also, during the period of supervision, the offender may be required at the request of the department to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to truthfully and honestly respond to all questions concerning earning capabilities and the location and nature of all property or financial assets. Also, the offender is required to bring any and all documents as requested by the department in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department shall for any period of supervision be authorized to collect the legal financial obligation from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purposes of disbursements. The department is authorized to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.2001.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties as provided in RCW 9.94A.200 for noncompliance.

(11) The county clerk shall provide the department with individualized monthly billings for each offender with an unsatisfied legal financial obligation and shall provide the department with notice of payments by such offenders no less frequently than weekly. [1991 c 93 § 2; 1989 c 252 § 3.]

Retroactive application—Captions not law—1991 c 93: See notes following RCW 9.94A.200005.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.150 Leaving correctional facility or release before expiration of sentence prohibited—Exceptions. No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department, may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned early release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department of corrections, the county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned early release time. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case shall the aggregate earned early release time exceed one-third of the total sentence;

(2) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned early release time pursuant to subsection (1) of this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(5) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing him or herself in the community;

(6) The governor may pardon any offender;

(7) The department of corrections may release an offender from confinement any time within ten days before a release date calculated under this section; and

(8) An offender may leave a correctional facility prior to completion of his sentence if the sentence has been reduced as provided in RCW 9.94A.160. [1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2. Prior: 1988 c 153 § 3;

1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Application—1989 c 248: See note following RCW 9.92.151.

Effective date—Implementation—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.151 Sex offenders—Release from total confinement—Notification of prosecutor. (1)(a) When it appears that a person who has been convicted of a sexually violent offense may meet the criteria of a sexually violent predator as defined in RCW 71.09.020(1), the agency with jurisdiction over the person shall refer the person in writing to the prosecuting attorney of the county where that person was convicted, three months prior to the anticipated release from total confinement.

(b) The agency shall inform the prosecutor of the following:

(i) The person's name, identifying factors, anticipated future residence, and offense history; and

(ii) Documentation of institutional adjustment and any treatment received.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency with jurisdiction, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services. [1992 c 45 § 1; 1990 c 3 § 122.]

Severability—1992 c 45: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 45 § 8.]

Application—1992 c 45: "This act applies to sex offenses committed on, before, or after March 26, 1992." [1992 c 45 § 10.] "This act" consisted of the 1992 c 45 amendment of RCW 9.94A.120, 9.94A.151, 9.94A.155, 13.40.160, 71.09.030, and 71.09.090 and the enactment of RCW 71.09.025.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9.94A.152 Sex offenders—Release of information—Immunity. The department, its employees, and officials, shall be immune from liability for release of information regarding sex offenders that complies with RCW 4.24.550. [1990 c 3 § 123.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9.94A.153 Sex offenders—Release of information. In addition to any other information required to be released under other provisions of this chapter, the department may, pursuant to RCW 4.24.550, release information concerning convicted sex offenders confined to the department of corrections. [1990 c 3 § 124.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9.94A.154 Drug offenders—Notice of release or escape. (1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community placement, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

(b) Any person specified in writing by the prosecuting attorney.

Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department of corrections shall send the notices required by this section to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401 (a)(1)(i) or (b)(1)(i). [1991 c 147 § 1.]

9.94A.155 Prisoner escape, release, or furlough—Notification procedures. (1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community placement, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense; and

(c) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(3) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(6) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, parents, siblings and children.

(7) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [1992 c 186 § 7; 1992 c 45 § 2; 1990 c 3 § 121; 1989 c 30 § 1; 1985 c 346 § 1.]

Reviser's note: This section was amended by 1992 c 45 § 2 and by 1992 c 186 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1992 c 186: See note following RCW 9A.46.110.

Severability—Application—1992 c 45: See notes following RCW 9.94A.151.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9.94A.156 Prisoner escape, release, or furlough—Homicide, violent, and sex offenses—Rights of victims and witnesses. The department of corrections shall provide the victims and next of kin in the case of a homicide and witnesses involved in violent offense cases or sex offenses as defined by RCW 9.94A.030 where a judgment and sentence was entered after October 1, 1983, a statement of the rights of victims and witnesses to request and receive notification under RCW 9.94A.155 and 9.94A.157. [1989 c 30 § 2; 1985 c 346 § 2.]

9.94A.157 Prisoner escape, release, or furlough—Requests for notification. Requests for notification under RCW 9.94A.155 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department of corrections. [1985 c 346 § 3.]

9.94A.158 Prisoner escape, release, or furlough—Notification as additional requirement. The notification requirements of RCW 9.94A.155 are in addition to any requirements in RCW 43.43.745 or other law. [1985 c 346 § 4.]

9.94A.159 Prisoner escape, release, or furlough—Consequences of failure to notify. Civil liability shall not result from failure to provide notice required under RCW 9.94A.155 through 9.94A.158, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence. [1985 c 346 § 7.]

9.94A.160 Emergency due to inmate population exceeding correctional facility capacity. If the governor finds that an emergency exists in that the population of a state residential correctional facility exceeds its reasonable, maximum capacity, then the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after

the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

(2) If the emergency occurs prior to July 1, 1988, call the *board of prison terms and paroles into an emergency meeting for the purpose of evaluating its guidelines and procedures for release of prisoners under its jurisdiction. The board shall adopt guidelines for the reduction of inmate population to be used in the event the governor calls the board into an emergency meeting under this section. The board shall not, under this subsection, reduce the prison term of an inmate serving a mandatory minimum term under RCW 9.95.040, an inmate confined for treason, an inmate confined for any violent offense as defined by RCW 9.94A.030, or an inmate who has been found to be a sexual psychopath under chapter 71.06 RCW. In establishing these guidelines, the board shall give priority to sentence reductions for inmates confined for nonviolent offenses, inmates who are within six months of a scheduled parole, and inmates with the best records of conduct during confinement. The board shall consider the public safety, the detrimental effect of overcrowding upon inmate rehabilitation, and the best allocation of limited correctional facility resources. Guidelines adopted under this subsection shall be submitted to the senate institutions and house of representatives social and health services committees for their review. This subsection does not require the board to reduce inmate population to or below any certain number. The board may also take any other action authorized by law to modify the terms of prisoners under its jurisdiction;

(3) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1984 c 246 § 1; 1983 c 163 § 4; 1981 c 137 § 16.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Severability—1984 c 246: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 246 § 12.]

Effective date—1983 c 163: See note following RCW 9.94A.120.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.165 Emergency in county jails population exceeding capacity. If the governor finds that an emergency exists in that the populations of county jails exceed their reasonable, maximum capacity in a significant manner as a result of increases in the sentenced felon population due to implementation of chapter 9.94A RCW, the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.05 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after

the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment. The commission shall also analyze how alternatives to total confinement are being provided and used and may recommend other emergency measures that may relieve the overcrowding.

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1984 c 209 § 9.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.170 Tolling of term of confinement. (1) A term of confinement, including community custody, ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented him or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

(2) A term of supervision, including postrelease supervision ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3) Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.207 or 9.94A.195 and is later found not to have violated a condition or requirement of supervision, time spent in confinement due to such detention shall not toll to period of supervision.

(4) For confinement sentences, the date for the tolling of the sentence shall be established by the entity responsible for the confinement. For sentences involving supervision, the date for the tolling of the sentence shall be established by the court, based on reports from the entity responsible for the supervision. [1988 c 153 § 9; 1981 c 137 § 17.]

Effective date—Implementation—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.175 Postrelease supervision—Violations—Expenses. If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94A.200. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for

offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction. [1988 c 153 § 8.]

Effective date—Implementation—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

9.94A.180 Term of partial confinement, work release, home detention. (1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030(23) and 9.94A.135. The offender shall be required as a condition of partial confinement to report to the facility at designated times. An offender may be required to comply with crime-related prohibitions during the period of partial confinement.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the state department of corrections. [1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.190 Terms of more than one year or less than one year—Where served—Reimbursement of costs.

(1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided for in subsection (3) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the defendant or a member of the defendant's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided for in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department of corrections for the

purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.400. [1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.195 Violation of condition or requirement of sentence—Arrest by community corrections officer—Confinement in county jail. If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, an offender may be required to submit to a search and seizure of the offender's person, residence, automobile, or other personal property. A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court, pursuant to a written order. [1984 c 209 § 11.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.200 Noncompliance with condition or requirement of sentence—Procedure—Penalty. (1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community service obligation to total or partial confinement, or (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community service hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community service. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court; and

(c) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community service obligations.

(3) Nothing in this section prohibits the filing of escape charges if appropriate. [1989 c 252 § 7. Prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20.]

~~Purpose—Prospective application—Effective dates—Severability—1989 c 252:~~ See notes following RCW 9.94A.030.

~~Effective date—Implementation—Application of increased sanctions—1988 c 153:~~ See notes following RCW 9.94A.030.

~~Effective dates—1984 c 209:~~ See note following RCW 9.92.150.

~~Effective date—1981 c 137:~~ See RCW 9.94A.905.

9.94A.200005 "Earnings," "disposable earnings," and "obligee" defined. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type. Earnings shall specifically include all gain derived from capital, from labor, or from both, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. The term "obligee" means the department, party, or entity to whom the legal financial obligation is owed, or the department, party, or entity to whom the right to receive or collect support has been assigned. [1991 c 93 § 1.]

Retroactive application—1991 c 93: "The provisions of this act are retroactive and apply to any actions commenced but not final before May 9, 1991." [1991 c 93 §15.]

Captions not law—1991 c 93: "Captions as used in this act constitute no part of the law." [1991 c 93 § 12.]

9.94A.200010 Legal financial obligation—Notice of payroll deduction—Issuance and content. (1) The department may issue a notice of payroll deduction in a criminal action if:

(a) The court at sentencing orders its immediate issuance; or

(b) The offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month, provided:

(i) The judgment and sentence or subsequent order to pay contains a statement that a notice of payroll deduction may be issued without further notice to the offender; or

(ii) The department has served a notice on the offender stating such requirements and authorization. Service of such notice shall be made by personal service or any form of mail requiring a return receipt.

(2) The notice of payroll deduction is to be in writing and include:

(a) The name, social security number, and identifying court case number of the offender/employee;

(b) The amount to be deducted from the offender/employee's disposable earnings each month, or alternative amounts and frequencies as may be necessary to facilitate processing of the payroll deduction by the employer;

(c) A statement that the total amount withheld on all payroll deduction notices for payment of court-ordered legal financial obligations combined shall not exceed twenty-five percent of the offender/employee's disposable earnings; and

(d) The address to which the payments are to be mailed or delivered.

(3) An informational copy of the notice of payroll deduction shall be mailed to the offender's last known address by regular mail or shall be personally served.

(4) Neither the department nor any agents of the department shall be held liable for actions taken under RCW 9.94A.145 and 9.94A.200005 through 9.94A.200050. [1991 c 93 § 3.]

~~Retroactive application—Captions not law—1991 c 93:~~ See notes following RCW 9.94A.200005.

9.94A.200015 Legal financial obligations—Payroll deductions—Maximum amounts withheld, apportionment. (1) The total amount to be withheld from the offender/employee's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the offender.

(2) If the offender is subject to two or more notices of payroll deduction for payment of a court-ordered legal financial obligation from different obligees, the employer or entity shall, if the nonexempt portion of the offender's earnings is not sufficient to respond fully to all notices of payroll deduction, apportion the offender's nonexempt disposable earnings between or among the various obligees equally. [1991 c 93 § 4.]

~~Retroactive application—Captions not law—1991 c 93:~~ See notes following RCW 9.94A.200005.

9.94A.200020 Legal financial obligations—Notice of payroll deduction—Employer or entity rights and responsibilities. (1) An employer or entity upon whom a notice of payroll deduction is served, shall make an answer to the department within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the offender is employed by or receives earnings from the employer or entity, whether the employer or entity anticipates paying earnings, and the amount of earnings. If the offender is no longer employed, or receiving earnings

from the employer or entity, the answer shall state the present employer or entity's name and address, if known.

(2) Service of a notice of payroll deduction upon an employer or entity requires an employer or entity to immediately make a mandatory payroll deduction from the offender/employee's unpaid disposable earnings. The employer or entity shall thereafter at each pay period deduct the amount stated in the notice divided by the number of pay periods per month. The employer or entity must remit the proper amounts to the appropriate clerk of the court on each date the offender/employee is due to be paid.

(3) The employer or entity may combine amounts withheld from the earnings of more than one employee in a single payment to the clerk of the court, listing separately the amount of the payment that is attributable to each individual employee.

(4) The employer or entity may deduct a processing fee from the remainder of the employee's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 9.94A.200050. The processing fee may not exceed:

(a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and

(b) One dollar for each subsequent disbursement made under the notice of payroll deduction.

(5) The notice of payroll deduction shall remain in effect until released by the department or the court enters an order terminating the notice.

(6) An employer shall be liable to the obligee for the amount of court-ordered legal financial obligation moneys that should have been withheld from the offender/employee's earnings, if the employer:

(a) Fails or refuses, after being served with a notice of payroll deduction, to deduct and promptly remit from unpaid earnings the amounts of money required in the notice; or

(b) Fails or refuses to submit an answer to the notice of payroll deduction after being served. In such cases, liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, reasonable attorney fees, and staff costs as part of the award.

(7) No employer who complies with a notice of payroll deduction under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discipline or discharge an employee or refuse to hire a person by reason of an action authorized in this chapter. If an employer disciplines or discharges an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual. [1991 c 93 § 5.]

Retroactive application—Captions not law—1991 c 93: See notes following RCW 9.94A.200005.

9.94A.200025 Motion to quash, modify, or terminate payroll deduction—Grounds for relief. (1) The

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offender subject to a payroll deduction under this chapter, may file a motion in superior court to quash, modify, or terminate the payroll deduction. The court may grant relief if:

(a) It is demonstrated that the payroll deduction causes extreme hardship or substantial injustice; or

(b) In cases where the court did not immediately order the issuance of a notice of payroll deduction at sentencing, that a court-ordered legal financial obligation payment was not more than thirty days past due in an amount equal to or greater than the amount payable for one month.

(2) Satisfactions by the offender of all past-due payments subsequent to the issuance of the notice of payroll deduction is not grounds to quash, modify, or terminate the notice of payroll deduction. If a notice of payroll deduction has been in operation for twelve consecutive months and the offender's payment towards a court-ordered legal financial obligation is current, upon motion of the offender, the court may order the department to terminate the payroll deduction, unless the department can show good cause as to why the notice of payroll deduction should remain in effect. [1991 c 93 § 6.]

Retroactive application—Captions not law—1991 c 93: See notes following RCW 9.94A.200005.

9.94A.200030 Legal financial obligations—Order to withhold and deliver—Issuance and contents. (1) The department may issue to any person or entity an order to withhold and deliver property of any kind, including but not restricted to, earnings that are due, owing, or belonging to the offender, if the department has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

(a) Include the amount of the court-ordered legal financial obligation;

(b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and

(c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or

within two days thereafter. The copy of the order shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver. [1991 c 93 § 7.]

Retroactive application—Captions not law—1991 c 93: See notes following RCW 9.94A.200005.

9.94A.200035 Legal financial obligations—Order to withhold and deliver—Duties and rights of person or entity served. (1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the order; and

(b) Provide further and additional answers when requested by the department.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under RCW 9.94A.200050. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have been withheld, whichever amount is less, together with

costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding. [1991 c 93 § 8.]

Retroactive application—Captions not law—1991 c 93: See notes following RCW 9.94A.200005.

9.94A.200040 Legal financial obligations—Financial institutions—Service on main office or branch, effect—Collection actions against community bank account, court hearing. An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of RCW 9.94A.145 and 9.94A.200005 through 9.94A.200050, if the department initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department contesting the withholding of his or her interest in the account or funds. The department shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department is authorized to proceed with the collection action. [1991 c 93 § 9.]

Retroactive application—Captions not law—1991 c 93: See notes following RCW 9.94A.200005.

9.94A.200045 Legal financial obligations—Notice of debt—Service or mailing—Contents—Action on, when.

(1) The department may issue a notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return

receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

(6) The department shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender. [1991 c 93 § 10.]

Retroactive application—Captions not law—1991 c 93: See notes following RCW 9.94A.200005.

9.94A.200050 Legal financial obligations—Exemption from notice of payroll deduction or order to withhold and deliver. Whenever a notice of payroll deduction or order to withhold and deliver is served upon a person or entity asserting a court-ordered legal financial obligation debt against earnings and there is in the possession of the person or entity any of the earnings, RCW 6.27.150 shall not apply, but seventy-five percent of the disposable earnings shall be exempt and may be disbursed to the offender whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there is due the offender earnings for one week or for a longer period. The notice of payroll deduction or order to withhold and deliver shall continue to operate and require said person or entity to withhold the nonexempt portion of earnings, at each succeeding earnings disbursement interval until the entire amount of the court-ordered legal financial obligation debt has been withheld. [1991 c 93 § 11.]

Retroactive application—Captions not law—1991 c 93: See notes following RCW 9.94A.200005.

9.94A.2001 Legal financial obligations—Wage assignments—Petition or motion. A petition or motion seeking a mandatory wage assignment in a criminal action may be filed by the department or any obligee if the offender is more than thirty days past due in monthly payments in an amount equal to or greater than the amount payable for one month. The petition or motion shall include a sworn statement by the secretary or designee, or if filed solely by

an obligee, by such obligee, stating the facts authorizing the issuance of the wage assignment order, including: (1) That the offender, stating his or her name and last known residence, is more than thirty days past due in payments in an amount equal to or greater than the amount payable for one month; (2) a description of the terms of the judgment and sentence and/or payment order requiring payment of a court-ordered legal financial obligation, the total amount remaining unpaid, and the amount past due; (3) the name and address of the offender's employer; (4) that notice by personal service, or any form of mail requiring a return receipt, has been provided to the offender at least fifteen days prior to the filing of a mandatory wage assignment, unless the judgment and sentence or the order for payment states that the department or obligee may seek a mandatory wage assignment without notice to the defendant. A copy of the judgment and sentence or payment order shall be attached to the petition or motion seeking the wage assignment. [1989 c 252 § 9.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.2002 Legal financial obligations—Wage assignments—Answer. Upon receipt of a petition or motion seeking a mandatory wage assignment that complies with RCW 9.94A.2001, the court shall issue a wage assignment order as provided in RCW 9.94A.2004 and including the information required in RCW 9.94A.2001, directed to the employer, and commanding the employer to answer the order on the forms served with the order that comply with RCW 9.94A.2006 within twenty days after service of the order upon the employer. [1989 c 252 § 10.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.2003 Legal financial obligations—Wage assignments—Amounts to be withheld. (1) The wage assignment order in RCW 9.94A.2002 shall include: (a) The maximum amount or current amount owed on a court-ordered legal financial obligation, if any, to be withheld from the defendant's earnings each month, or from each earnings disbursement; and (b) the total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any.

(2) The total amount to be withheld from the defendant's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the defendant. If the amounts to be paid toward the arrearage are specified in the payment order, then the maximum amount to be withheld is the sum of the current amount owed and the amount ordered to be paid toward the arrearage, or twenty-five percent of the disposable earnings of the defendant, whichever is less.

(3) If the defendant is subject to two or more attachments for payment of a court-ordered legal financial obligation on account of different obligees, the employer shall, if the nonexempt portion of the defendant's earnings is not sufficient to respond fully to all the attachments, apportion the defendant's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the defendant's nonexempt

disposable earnings upon notice to all interested parties. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute. [1989 c 252 § 11.]

~~Purpose—Prospective application—Effective dates—Severability—1989 c 252:~~ See notes following RCW 9.94A.030.

9.94A.2004 Legal financial obligations—Wage assignments—Rules. The department shall develop a form and adopt rules for the wage assignment order. [1989 c 252 § 12.]

~~Purpose—Prospective application—Effective dates—Severability—1989 c 252:~~ See notes following RCW 9.94A.030.

9.94A.2005 Legal financial obligations—Wage assignments—Employer responsibilities. (1) An employer upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the offender is employed by or receives earnings from the employer, whether the employer will honor the wage assignment order, and whether there are multiple attachments against the offender.

(2) If the employer possesses any earnings due and owing to the offender, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The employer shall deliver the withheld earnings to the clerk of the court pursuant to the wage assignment order. The employer shall make the first delivery no sooner than twenty days after receipt of the wage assignment order.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings of the offender until notified that the wage assignment has been modified or terminated. The employer shall promptly notify the clerk of the court who entered the order when the employee is no longer employed.

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if the remainder is exempt under RCW 9.94A.2003. The processing fee may not exceed: (a) Ten dollars for the first disbursement made by the employer to the clerk of the court; and (b) one dollar for each subsequent disbursement made under the wage assignment order.

(5) An employer who fails to withhold earnings as required by a wage assignment order issued under this chapter may be held liable for the amounts disbursed to the offender in violation of the wage assignment order, and may be found by the court to be in contempt of court and may be punished as provided by law.

(6) No employer who complies with a wage assignment order issued under this chapter may be liable to the employee for wrongful withholding.

(7) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment order issued and executed under this chapter. A person who violates this subsection may be found by the court to be in contempt of court and may be punished as provided by law.

(8) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible. [1989 c 252 § 13.]

~~Purpose—Prospective application—Effective dates—Severability—1989 c 252:~~ See notes following RCW 9.94A.030.

9.94A.2006 Legal financial obligations—Wage assignments—Form and rules. The department shall develop a form and adopt rules for the wage assignment answer, and instructions for employers for preparing such answer. [1989 c 252 § 14.]

~~Purpose—Prospective application—Effective dates—Severability—1989 c 252:~~ See notes following RCW 9.94A.030.

9.94A.2007 Legal financial obligations—Wage assignments—Service. (1) Service of the wage assignment order on the employer is invalid unless it is served with five answer forms in substantial conformance with RCW 9.94A.2006, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the obligee's attorney, the petitioner, the department, and the obligor. The petitioner shall also include an extra copy of the wage assignment order for the employer to deliver to the obligor. Service on the employer shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the wage assignment order on the employer, the petitioner shall mail or cause to be mailed by certified mail a copy of the wage assignment order to the obligor at the obligor's last known post office address; or, in the alternative, a copy of the wage assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the employer. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection provides, or if any irregularity appears with respect to the mailing of service, the superior court, in its discretion, may quash the wage assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the defendant has suffered substantial injury due to the failure to mail or serve the copy. [1989 c 252 § 15.]

~~Purpose—Prospective application—Effective dates—Severability—1989 c 252:~~ See notes following RCW 9.94A.030.

9.94A.2008 Legal financial obligations—Wage assignments—Hearing—Scope of relief. In a hearing to quash, modify, or terminate the wage assignment order, the court may grant relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice. Satisfaction by the defendant of all past-due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order. If a wage assignment order has been in operation for twelve consecutive months and the obligor's payment towards a court-ordered legal financial obligation is current, the court may terminate the order upon motion of the obligor unless the obligee or the department can show good cause as to why the wage assignment order should remain in effect. The department shall notify the employer of any modification or termination of the wage assignment order. [1989 c 252 § 16.]

~~Purpose—Prospective application—Effective dates—Severability—~~
1989 c 252: See notes following RCW 9.94A.030.

9.94A.2009 Legal financial obligations—Wage assignments—Recovery of costs, attorneys' fees. In any action to enforce legal financial obligations under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorneys' fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question. [1989 c 252 § 17.]

~~Purpose—Prospective application—Effective dates—Severability—~~
1989 c 252: See notes following RCW 9.94A.030.

9.94A.201 Legal financial obligations—Wage assignments—Sentences imposed before July 1, 1989. For those individuals who, as a condition and term of their sentence imposed on or before July 1, 1989, have had financial obligations imposed, and who are not in compliance with the court order requiring payment of that legal financial obligation, no action shall be brought before the court from July 1, 1989, through and including December 31, 1989, to impose a penalty for their failure to pay. All individuals who, after December 31, 1989, have not taken the opportunity to bring their legal financial obligation current, shall be proceeded against pursuant to RCW 9.94A.200. [1989 c 252 § 18.]

~~Purpose—Prospective application—Effective dates—Severability—~~
1989 c 252: See notes following RCW 9.94A.030.

9.94A.205 Community custody—Violations. If an inmate violates any condition or requirement of community custody, the department may transfer the inmate to a more restrictive confinement status to serve the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation. If an inmate is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as inmate disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and sanctions. [1988 c 153 § 4.]

~~Effective date—Implementation—Application of increased sanctions—~~1988 c 153: See notes following RCW 9.94A.030.

9.94A.207 Community placement violators—Arrest, detention, financial responsibility. (1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement has violated a condition of community placement, may suspend the person's community placement status and arrest or cause the arrest and detention in total confinement

of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement status. A violation of a condition of community placement shall be deemed a violation of the sentence for purposes of RCW 9.94A.195. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.195.

(2) Inmates, as defined in RCW 72.09.020, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections. The community custody inmate shall be removed from the local correctional facility not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification that the inmate is available for movement to a state correctional institution. However, if good cause is shown, the department may negotiate with local correctional authorities for an additional period of detention. [1988 c 153 § 5.]

~~Effective date—Implementation—Application of increased sanctions—~~1988 c 153: See notes following RCW 9.94A.030.

9.94A.210 Which sentences appealable—Procedure—Grounds for reversal—Written opinions. (1) A sentence within the standard range for the offense shall not be appealed. For purposes of this section, a sentence imposed on a first offender under RCW 9.94A.120(5) shall also be deemed to be within the standard range for the offense and shall not be appealed.

(2) A sentence outside the sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing judge are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing judges and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual

knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted. [1989 c 214 § 1; 1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.220 Discharge upon completion of sentence—Certificate of discharge—Counseling after discharge. When an offender has completed the requirements of the sentence, the secretary of the department or his designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge. The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [1984 c 209 § 14; 1981 c 137 § 22.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.230 Vacation of offender's record of conviction. (1) Every offender who has been discharged under RCW 9.94A.220 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.220; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.220; and (f) the offense was a class C felony and less than five years have passed since the date the applicant was discharged under RCW 9.94A.220.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the

offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. [1987 c 486 § 7; 1981 c 137 § 23.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.250 Clemency and pardons board—Membership—Terms—Chairman—Bylaws—Travel expenses—Staff. (1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chairman from among its members and shall adopt bylaws governing the operation of the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The attorney general shall provide a staff as needed for the operation of the board. [1981 c 137 § 25.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.260 Clemency and pardons board—Petitions for review and commutation of sentences and pardons—Restoration of civil rights. The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor.

The board shall receive petitions from individuals or organizations for the restoration of civil rights lost by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to the elective rights to vote and to engage in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor. [1989 c 214 § 2; 1981 c 137 § 26.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.270 Offender supervision assessments. (1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the terms of supervision and which shall be considered as payment or part payment of the cost

of providing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments that shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982. [1991 c 104 § 1; 1989 c 252 § 8; 1984 c 209 § 15; 1982 c 207 § 2.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.310 Table 1—Sentencing grid.

(1) TABLE 1
Sentencing Grid

SERIOUSNESS SCORE	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XV	Life Sentence without Parole/Death Penalty									
XIV	23y4m 240- 320	24y4m 250- 333	25y4m 261- 347	26y4m 271- 361	27y4m 281- 374	28y4m 291- 388	30y4m 312- 416	32y10m 338- 450	36y 370- 493	40y 411- 548
XIII	12y 123- 164	13y 134- 178	14y 144- 192	15y 154- 205	16y 165- 219	17y 175- 233	19y 195- 260	21y 216- 288	25y 257- 342	29y 298- 397
XII	9y 93- 123	9y11m 102- 136	10y9m 111- 147	11y8m 120- 160	12y6m 129- 171	13y5m 138- 184	15y9m 162- 216	17y3m 178- 236	20y3m 209- 277	23y3m 240- 318
XI	7y6m 78- 102	8y4m 86- 114	9y2m 95- 125	9y11m 102- 136	10y9m 111- 147	11y7m 120- 158	14y2m 146- 194	15y5m 159- 211	17y11m 185- 245	20y5m 210- 280

X	5y 51- 68	5y6m 57- 75	6y 62- 82	6y6m 67- 89	7y 72- 96	7y6m 77- 102	9y6m 98- 130	10y6m 108- 144	12y6m 129- 171	14y6m 149- 198
IX	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	5y 51- 68	5y6m 57- 75	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144	12y6m 129- 171
VIII	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144
VII	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116
VI	13m 12+- 14	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y6m 46- 61	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102
V	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2ym 22- 29	3y2m 33- 43	4y 41- 54	5y 51- 68	6y 62- 82	7y 72- 96
IV	6m 3- 9	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y2m 53- 70	6y2m 63- 84
III	2m 1- 3	5m 3- 8	8m 4- 12	11m 9- 12	14m 12+- 16	20m 17- 22	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y 51- 68
II	0-90 Days	4m 2- 6	6m 3- 9	8m 4- 12	13m 12+- 14	16m 16- 18	20m 17- 22	2y2m 29- 29	3y2m 33- 43	4y2m 43- 57
I	0-60 Days	0-90 Days	3m 2- 5	4m 2- 6	5m 3- 8	8m 4- 12	13m 12+- 14	16m 14- 18	20m 17- 22	2y2m 22- 29

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.

(3) The following additional times shall be added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon as defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice was armed with a deadly weapon and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following times shall be added to the presumptive range determined under subsection (2) of this section:

(a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

(b) 18 months for Burglary 1 (RCW 9A.52.020)

(c) 12 months for Assault 2 (*RCW 9A.36.020 or 9A.36.021), Assault of a Child 2 (RCW 9A.36.130), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW 9A.56.080), or any drug offense.

(4) The following additional times shall be added to the presumptive sentence if the offender or an accomplice

committed the offense while in a county jail or state correctional facility as that term is defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility as that term is defined in this chapter, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following times shall be added to the presumptive sentence range determined under subsection (2) of this section:

- (a) Eighteen months for offenses committed under RCW 69.50.401(a)(1)(i) or 69.50.410;
- (b) Fifteen months for offenses committed under RCW 69.50.401(a)(1)(ii), (iii), and (iv);
- (c) Twelve months for offenses committed under RCW 69.50.401(d).

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(5) An additional twenty-four months shall be added to the presumptive sentence for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435. [1992 c 145 § 9; 1991 c 32 § 2; 1990 c 3 § 701. Prior: 1989 c 271 § 101; 1989 c 124 § 1; 1988 c 218 § 1; 1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2.]

***Reviser's note:** RCW 9A.36.020 was repealed by 1986 c 257 § 9, effective July 1, 1988. For later enactment, see RCW 9A.36.021.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Application—1989 c 271 §§ 101-111: "Sections 101-111 of this act apply to crimes committed on or after July 1, 1989." [1989 c 271 § 114.]

Severability—1989 c 271: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 271 § 606.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.320 Table 2—Crimes included within each seriousness level.

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- XV Aggravated Murder 1 (RCW 10.95.020)
- XIV Murder 1 (RCW 9A.32.030)
Homicide by abuse (RCW 9A.32.055)
- XIII Murder 2 (RCW 9A.32.050)
- XII Assault 1 (RCW 9A.36.011)
Assault of a Child 1 (RCW 9A.36.120)
- XI Rape 1 (RCW 9A.44.040)
Rape of a Child 1 (RCW 9A.44.073)

- X Kidnapping 1 (RCW 9A.40.020)
Rape 2 (RCW 9A.44.050)
Rape of a Child 2 (RCW 9A.44.076)
Child Molestation 1 (RCW 9A.44.083)
Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1))
Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 (RCW 69.50.406)
Leading Organized Crime (RCW 9A.82.060(1)(a))
- IX Assault of a Child 2 (RCW 9A.36.130)
Robbery 1 (RCW 9A.56.200)
Manslaughter 1 (RCW 9A.32.060)
Explosive devices prohibited (RCW 70.74.180)
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Endangering life and property by explosives with threat to human being (RCW 70.74.270)
Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
Controlled Substance Homicide (RCW 69.50.415)
Sexual Exploitation (RCW 9.68A.040)
Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- VIII Arson 1 (RCW 9A.48.020)
Promoting Prostitution 1 (RCW 9A.88.070)
Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
Vehicular Homicide, by being under the influence of intoxicating liquor or any drug or by the operation of any vehicle in a reckless manner (RCW 46.61.520)

- VII Burglary 1 (RCW 9A.52.020)
 Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
 Introducing Contraband 1 (RCW 9A.76.140)
 Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
 Child Molestation 2 (RCW 9A.44.086)
 Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
 Involving a minor in drug dealing (RCW 69.50.401(f))
- VI Bribery (RCW 9A.68.010)
 Manslaughter 2 (RCW 9A.32.070)
 Rape of a Child 3 (RCW 9A.44.079)
 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
 Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
 Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
 Incest 1 (RCW 9A.64.020(1))
 Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) (RCW 69.50.401(a)(1)(i))
 Intimidating a Judge (RCW 9A.72.160)
 Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- V Criminal Mistreatment 1 (RCW 9A.42.020)
 Rape 3 (RCW 9A.44.060)
 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
 Child Molestation 3 (RCW 9A.44.089)
 Kidnapping 2 (RCW 9A.40.030)
 Extortion 1 (RCW 9A.56.120)
 Incest 2 (RCW 9A.64.020(2))
 Perjury 1 (RCW 9A.72.020)
 Extortionate Extension of Credit (RCW 9A.82.020)
 Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
 Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- IV Residential Burglary (RCW 9A.52.025)
 Theft of Livestock 1 (RCW 9A.56.080)
 Robbery 2 (RCW 9A.56.210)
 Assault 2 (RCW 9A.36.021)
 Escape 1 (RCW 9A.76.110)
 Arson 2 (RCW 9A.48.030)
 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
 Malicious Harassment (RCW 9A.36.080)
 Threats to Bomb (RCW 9.61.160)
 Willful Failure to Return from Furlough (RCW 72.66.060)
 Hit and Run — Injury Accident (RCW 46.52.020(4))
 Vehicular Assault (RCW 46.61.522)
 Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana or methamphetamines) (RCW 69.50.401(a)(1)(ii) through (iv))
 Influencing Outcome of Sporting Event (RCW 9A.82.070)
 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
 Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal mistreatment 2 (RCW 9A.42.030)
 Extortion 2 (RCW 9A.56.130)
 Unlawful Imprisonment (RCW 9A.40.040)
 Assault 3 (RCW 9A.36.031)
 Assault of a Child 3 (RCW 9A.36.140)
 Custodial Assault (RCW 9A.36.100)
 Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
 Harassment (RCW 9A.46.020)
 Promoting Prostitution 2 (RCW 9A.88.080)
 Willful Failure to Return from Work Release (RCW 72.65.070)
 Burglary 2 (RCW 9A.52.030)

- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- II** Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Reckless Endangerment 1 (RCW 9A.36.045)
- Escape from Community Custody (RCW 72.09.310)
- I** Theft 2 (RCW 9A.56.040)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine) (RCW 69.50.401(d))
- [1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702. Prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3.]
- Reviser's note:** This section was amended by 1992 c 75 § 3 and by 1992 c 145 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).
- Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.
- Effective date—1989 2nd ex.s. c 1:** See note following RCW 9A.52.025.
- Finding—Intent—1989 c 271 §§ 102, 109, and 110:** See note following RCW 9A.36.050.
- Application—1989 c 271 §§ 101-111:** See note following RCW 9.94A.310.
- Severability—1989 c 271:** See note following RCW 9.94A.310.
- Application—1989 c 99:** "This act applies to crimes committed after July 1, 1989." [1989 c 99 § 2.]
- Effective date—1989 c 99:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 99 § 3.]
- Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.
- Effective date—Application—1987 c 224:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987. It shall apply to crimes committed on or after July 1, 1987." [1987 c 224 § 2.]
- Severability—1986 c 257:** See note following RCW 9A.56.010.
- Effective date—1986 c 257 §§ 17-35:** See note following RCW 9.94A.030.
- Effective dates—1984 c 209:** See note following RCW 9.94A.030.

RECOMMENDED SENTENCING GUIDELINES

9.94A.340 Equal application. The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant. [1983 c 115 § 5.]

9.94A.350 Offense seriousness level. The offense seriousness level is determined by the offense of conviction. [1990 c 3 § 703; 1983 c 115 § 6.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9.94A.360 Offender score. The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Except as provided in subsection (4) of this section, class A and sex prior felony convictions shall always be included in the offender score. Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without being convicted of any felonies. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without being convicted of any felonies. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without being convicted of any serious traffic or felony traffic offenses. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.

(4) Always include juvenile convictions for sex offenses. Include other class A juvenile felonies only if the offender was 15 or older at the time the juvenile offense was committed. Include other class B and C juvenile felony convictions only if the offender was 15 or older at the time the juvenile offense was committed and the offender was less than 23 at the time the offense for which he or she is being sentenced was committed.

(5) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(6) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(a) Prior adult offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall

(1992 Ed.)

determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall be counted as one offense or as separate offenses, and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used;

(b) Juvenile prior convictions entered or sentenced on the same date shall count as one offense, the offense that yields the highest offender score, except for juvenile prior convictions for violent offenses with separate victims, which shall count as separate offenses; and

(c) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(7) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense.

(8) If the present conviction is for a nonviolent offense and not covered by subsection (12) or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(9) If the present conviction is for a violent offense and not covered in subsection (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Murder 1 or 2, Assault 1, Assault of a Child 1, Kidnaping 1, Homicide by Abuse, or Rape 1, count three points for prior adult and juvenile convictions for crimes in these categories, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(11) If the present conviction is for Burglary 1, count prior convictions as in subsection (9) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(12) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense or serious traffic offense, count one point for each adult and 1/2 point for each juvenile prior conviction.

(13) If the present conviction is for a drug offense count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (9) of this section if the current drug offense is violent, or as in subsection (8) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, Willful Failure to

Return from Work Release, RCW 72.65.070, or Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (8) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (8) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for an offense committed while the offender was under community placement, add one point. [1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103. Prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7.]

Reviser's note: This section was amended by 1992 c 75 § 4 and by 1992 c 145 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

Application—1988 c 157: See note following RCW 9.94A.030.

Effective date—Implementation—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.370 Presumptive sentence. (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings or for those offenses enumerated in RCW 9.94A.310(4) that were committed in a state correctional facility or county jail shall be added to the entire presumptive sentence range. The court may impose any sentence within the range that it deems appropriate. All presumptive sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the

hearing by a preponderance of the evidence. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the presumptive sentence range except upon stipulation or when specifically provided for in *RCW 9.94A.390(2) (c), (d), and (e). [1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8.]

***Reviser's note:** RCW 9.94A.390 was amended by 1990 c 3 § 603, and the previous subsection (2)(e) was renumbered as subsection (2)(f).

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.380 Alternatives to total confinement.

Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement: (1) One day of partial confinement may be substituted for one day of total confinement; (2) in addition, for offenders convicted of nonviolent offenses only, eight hours of community service may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community service hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department.

For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used. [1988 c 157 § 4; 1988 c 155 § 3; 1984 c 209 § 21; 1983 c 115 § 9.]

Reviser's note: This section was amended by 1988 c 155 § 3 and by 1988 c 157 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—1988 c 157: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.383 Community supervision. On all sentences of confinement for one year or less, the court may impose up to one year of community supervision. An offender shall be on community supervision as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community supervision shall toll. [1988 c 143 § 23; 1984 c 209 § 22.]

Applicability—1988 c 143 §§ 21-24: See note following RCW 9.94A.120.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.386 Fines. On all sentences under this chapter the court may impose fines according to the following ranges:

Class A felonies	\$0 - 50,000
Class B felonies	\$0 - 20,000
Class C felonies	\$0 - 10,000

[1984 c 209 § 23.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.390 Departures from the guidelines. If the sentencing court finds that an exceptional sentence outside the standard range should be imposed in accordance with RCW 9.94A.120(2), the sentence is subject to review only as provided for in RCW 9.94A.210(4).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(1) Mitigating Circumstances

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law, was significantly impaired (voluntary use of drugs or alcohol is excluded).

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(c) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(d) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so; or

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or

(iii) The current offense involved the manufacture of controlled substances for use by other parties; or

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or

(v) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional); or

(e) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127;

(f) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time; or

(g) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010. [1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10.]

Effective date—Application—1990 c 3 §§ 601 through 605: See note following RCW 9.94A.127.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17 through 35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.400 Consecutive or concurrent sentences.

(1)(a) Except as provided in (b) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and 9.94A.390(2)(f) or any other provision of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place,

and involve the same victim. This definition does not apply in cases involving vehicular assault or vehicular homicide if the victims occupied the same vehicle. However, the sentencing judge may consider multiple victims in such instances as an aggravating circumstance under RCW 9.94A.390.

(b) Whenever a person is convicted of two or more serious violent offenses, as defined in RCW 9.94A.030, arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of zero. The sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(2) Whenever a person while under sentence of felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) However, in the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community service, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.120(2), if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months. [1990 c 3 § 704. Prior: 1988 c 157 § 5; 1988 c 143 § 24; 1987 c 456 § 5; 1986 c 257 § 28; 1984 c 209 § 25; 1983 c 115 § 11.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Application—1988 c 157: See note following RCW 9.94A.030.

Applicability—1988 c 143 §§ 21-24: See note following RCW 9.94A.120.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.410 Anticipatory offenses. For persons convicted of the anticipatory offenses of criminal attempt,

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solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent.

In calculating an offender score, count each prior conviction as if the present conviction were for the completed offense. When these convictions are used as criminal history, score them the same as a completed crime. [1986 c 257 § 29; 1984 c 209 § 26; 1983 c 115 § 12.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.420 Presumptive ranges that exceed the statutory maximum. If the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence. [1983 c 115 § 13.]

RECOMMENDED PROSECUTING STANDARDS FOR CHARGING AND PLEA DISPOSITIONS

9.94A.430 Introduction. These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state. [1983 c 115 § 14.]

9.94A.440 Evidentiary sufficiency. (1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) **Contrary to Legislative Intent** - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) **Antiquated Statute** - It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years; and

(ii) Most members of society act as if it were no longer in existence; and

(iii) It serves no deterrent or protective purpose in today's society; and

(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) **De Minimus Violation** - It may be proper to decline to charge where the violation of law is only technical or

insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the

most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.120(7).

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

- Aggravated Murder
- 1st Degree Murder
- 2nd Degree Murder
- 1st Degree Kidnaping
- 1st Degree Assault
- 1st Degree Assault of a Child
- 1st Degree Rape
- 1st Degree Robbery
- 1st Degree Rape of a Child
- 1st Degree Arson
- 2nd Degree Kidnaping
- 2nd Degree Assault
- 2nd Degree Assault of a Child
- 2nd Degree Rape
- 2nd Degree Robbery
- 1st Degree Burglary
- 1st Degree Manslaughter
- 2nd Degree Manslaughter
- 1st Degree Extortion
- Indecent Liberties
- Incest
- 2nd Degree Rape of a Child
- Vehicular Homicide
- Vehicular Assault
- 3rd Degree Rape
- 3rd Degree Rape of a Child
- 1st Degree Child Molestation
- 2nd Degree Child Molestation
- 3rd Degree Child Molestation
- 2nd Degree Extortion
- 1st Degree Promoting Prostitution
- Intimidating a Juror
- Communication with a Minor
- Intimidating a Witness
- Intimidating a Public Servant
- Bomb Threat (if against person)
- 3rd Degree Assault
- 3rd Degree Assault of a Child
- Unlawful Imprisonment
- Promoting a Suicide Attempt
- Riot (if against person)

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson
 1st Degree Escape
 2nd Degree Burglary
 1st Degree Theft
 1st Degree Perjury
 1st Degree Introducing Contraband
 1st Degree Possession of Stolen Property
 Bribery
 Bribing a Witness
 Bribe received by a Witness
 Bomb Threat (if against property)
 1st Degree Malicious Mischief
 2nd Degree Theft
 2nd Degree Escape
 2nd Degree Introducing Contraband
 2nd Degree Possession of Stolen Property
 2nd Degree Malicious Mischief
 1st Degree Reckless Burning
 Taking a Motor Vehicle without Authorization
 Forgery
 2nd Degree Perjury
 2nd Degree Promoting Prostitution
 Tampering with a Witness
 Trading in Public Office
 Trading in Special Influence
 Receiving/Granting Unlawful Compensation
 Bigamy
 Eluding a Pursuing Police Vehicle
 Willful Failure to Return from Furlough
 Escape from Community Custody
 Riot (if against property)
 Thefts of Livestock

ALL OTHER UNCLASSIFIED FELONIES**Selection of Charges/Degree of Charge**

(1) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(a) Will significantly enhance the strength of the state's case at trial; or

(b) Will result in restitution to all victims.

(2) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(a) Charging a higher degree;

(b) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

GUIDELINES/COMMENTARY:**Police Investigation**

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made.

In ordinary circumstances the investigation should include the following:

(1) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(2) The completion of necessary laboratory tests; and

(3) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(1) Probable cause exists to believe the suspect is guilty; and

(2) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(3) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(1) Polygraph testing;

(2) Hypnosis;

(3) Electronic surveillance;

(4) Use of informants.

Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached. [1992 c 145 § 11; 1992 c 75 § 5; 1989 c 332 § 2; 1988 c 145 § 13; 1986 c 257 § 30; 1983 c 115 § 15.]

Reviser's note: This section was amended by 1992 c 75 § 5 and by 1992 c 145 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

9.94A.450 Plea dispositions. STANDARD: (1) Except as provided in subsection (2) of this section, a defendant will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(2) In certain circumstances, a plea agreement with a defendant in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

- (a) Evidentiary problems which make conviction on the original charges doubtful;
- (b) The defendant's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;
- (c) A request by the victim when it is not the result of pressure from the defendant;
- (d) The discovery of facts which mitigate the seriousness of the defendant's conduct;
- (e) The correction of errors in the initial charging decision;
- (f) The defendant's history with respect to criminal activity;
- (g) The nature and seriousness of the offense or offenses charged;
- (h) The probable effect on witnesses. [1983 c 115 § 16.]

9.94A.460 Sentence recommendations. STANDARD:

The prosecutor may reach an agreement regarding sentence recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement. [1983 c 115 § 17.]

9.94A.905 Effective date of RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, 9.94A.250, 9.94A.260—Sentences apply to felonies committed after June 30, 1984. RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, and 9.94A.250 and 9.94A.260 shall take effect on July 1, 1984. The sentences required under this chapter shall be prescribed in each sentence which occurs for a felony committed after June 30, 1984. [1981 c 137 § 28.]

9.94A.910 Severability—1981 c 137. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 137 § 41.]

Chapter 9.95

INDETERMINATE SENTENCES

(Formerly: Prison terms, paroles, and probation)

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- 9.95.001 Board of prison terms and paroles redesignated as indeterminate sentence review board.
- 9.95.0011 Indeterminate sentence review board—Report—Recommendation of governor.
- 9.95.003 Appointment of board members—Qualifications—Salaries and travel expenses—Employees.
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- 9.95.007 Transaction of board's business in panels—Action by full board.
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- 9.95.360 Assistance for parolees, work release, and discharged prisoners—Community services revolving fund—Composition—Disbursements—Deposits—Security by depository.
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- 9.95.900 RCW 9.95.003 through 9.95.052, 9.95.070 through 9.95.265, 9.95.350, 9.95.360 inapplicable to felonies committed on or after July 1, 1984.

Commitments: Chapter 10.70 RCW.

Counties may provide probation and parole services: RCW 36.01.070.

Form of sentence to penitentiary: RCW 10.64.060.

Leaves of absence for inmates: RCW 72.01.370, 72.01.380.

Probation and parole, transfer of certain powers, duties: Chapter 72.04A RCW.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

Western interstate corrections compact, board members may hold hearings: RCW 72.70.040.

9.95.001 Board of prison terms and paroles redesignated as indeterminate sentence review board. On July 1, 1986, the board of prison terms and paroles shall be redesignated the indeterminate sentence review board. The newly designated board shall retain the same membership and staff as the previously designated board of prison terms and paroles. References to "the board" or "board of prison terms and paroles" contained in this chapter, chapters 7.68, 9.95, 9.96, 71.06, and 72.04A RCW, and RCW 9A.44.045 and 72.68.031 are deemed to refer to the indeterminate sentence review board. [1986 c 224 § 2; (i) 1935 c 114 § 1; RRS § 10249-1. (ii) 1947 c 47 § 1; Rem. Supp. 1947 § 10249-1a. Formerly RCW 43.67.010.]

Effective date—1986 c 224: "Sections 1 through 13 of this act shall take effect July 1, 1986." [1986 c 224 § 16.]

Severability—1986 c 224: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 224 § 17.]

9.95.0011 Indeterminate sentence review board—Report—Recommendation of governor. (1) The *indeterminate sentencing review board shall cease to exist on June

30, 1998. Prior to June 30, 1998, the board shall review each inmate convicted of crimes committed before July 1, 1984, and prepare a report. This report shall include a recommendation regarding the offender's suitability for parole, appropriate parole conditions, and, for those persons committed under a mandatory life sentence, duration of confinement.

(2) The governor, through the office of financial management, shall recommend to the legislature alternatives for carrying out the duties of the board. In developing recommendations, the office of financial management shall consult with the indeterminate sentence review board, Washington association of prosecuting attorneys, Washington defender association, department of corrections, and administrator for the courts. Recommendations shall include a detailed fiscal analysis and recommended formulas and procedures for the reimbursement of costs to local governments if necessary. Recommendations shall be presented to the 1997 legislature. [1989 c 259 § 4; 1986 c 224 § 12.]

***Reviser's note:** The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.003 Appointment of board members—Qualifications—Salaries and travel expenses—Employees.

The board shall consist of a chairman and six other members, each of whom shall be appointed by the governor with the consent of the senate. Each member shall hold office for a term of five years, and until his or her successor is appointed and qualified. The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board shall be filled by appointment by the governor with the consent of the senate. In the event of the inability of any member to act, the governor shall appoint some competent person to act in his stead during the continuance of such inability. The members shall not be removable during their respective terms except for cause determined by the superior court of Thurston county. The governor in appointing the members shall designate one of them to serve as chairman at the governor's pleasure.

The members of the board and its officers and employees shall not engage in any other business or profession or hold any other public office; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board shall each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

The board may employ, and fix, with the approval of the governor, the compensation of and prescribe the duties of a secretary and such officers, employees, and assistants as may be necessary, and provide necessary quarters, supplies, and equipment. [1986 c 224 § 3; 1975-'76 2nd ex.s. c 34 § 8; 1969 c 98 § 9; 1959 c 32 § 1; 1955 c 340 § 9. Prior:

1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.020.]

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.005 Board meetings—Quarters at institutions.

The board shall meet at the penitentiary and the reformatory at such times as may be necessary for a full and complete study of the cases of all convicted persons whose durations of confinement are to be determined by it or whose applications for parole come before it. Other times and places of meetings may also be fixed by the board.

The superintendents of the different institutions shall provide suitable quarters for the board and assistants while in the discharge of their duties. [1986 c 224 § 4; 1959 c 32 § 2; 1955 c 340 § 10. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.030.]

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.007 Transaction of board's business in panels—Action by full board. The board may meet and transact business in panels. Each board panel shall consist of at least two members of the board. In all matters concerning the internal affairs of the board and policy-making decisions, a majority of the full board must concur in such matters. The chairman of the board with the consent of a majority of the board may designate any two members to exercise all the powers and duties of the board in connection with any hearing before the board. If the two members so designated cannot unanimously agree as to the disposition of the hearing assigned to them, such hearing shall be reheard by the full board. All actions of the full board shall be by concurrence of a majority of the board members. [1986 c 224 § 5; 1975-'76 2nd ex.s. c 63 § 1; 1959 c 32 § 3. Formerly RCW 43.67.035.]

Effective date—Severability—1986 c 224: See notes following 9.95.001.

9.95.009 Board of prison terms and paroles—Existence ceases July 1, 1986—Reductions in membership—Continuation of functions. (1) On July 1, 1986, the board of prison terms and paroles shall be redesignated as the indeterminate sentence review board. The board's membership shall be reduced as follows: On July 1, 1986, and on July 1st of each year until 1998, the number of board members shall be reduced in a manner commensurate with the board's remaining workload as determined by the office of financial management based upon its population forecast for the indeterminate sentencing system and in conjunction with the budget process. To meet the statutory obligations of the indeterminate sentence review board, the number of board members shall not be reduced to fewer than three members, although the office of financial management may designate some or all members as part-time members and specify the extent to which they shall be less than full-time members. Any reduction shall take place by the expiration,

on that date, of the term or terms having the least time left to serve.

(2) After July 1, 1984, the board shall continue its functions with respect to persons convicted of crimes committed prior to July 1, 1984, and committed to the department of corrections. When making decisions on duration of confinement, including those relating to persons committed under a mandatory life sentence, and parole release under RCW 9.95.100 and 9.95.110, the board shall consider the purposes, standards, and sentencing ranges adopted pursuant to RCW 9.94A.040 and the minimum term recommendations of the sentencing judge and prosecuting attorney, and shall attempt to make decisions reasonably consistent with those ranges, standards, purposes, and recommendations: PROVIDED, That the board and its successors shall give adequate written reasons whenever a minimum term or parole release decision is made which is outside the sentencing ranges adopted pursuant to RCW 9.94A.040. In making such decisions, the board and its successors shall consider the different charging and disposition practices under the indeterminate sentencing system.

(3) Notwithstanding the provisions of subsection (2) of this section, the indeterminate sentence review board shall give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole. [1990 c 3 § 707; 1989 c 259 § 1; 1986 c 224 § 6; 1985 c 279 § 1; 1982 c 192 § 8; 1981 c 137 § 24.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

Severability—1981 c 137: See RCW 9.94A.910.

9.95.010 Court to fix maximum sentence. When a person is convicted of any felony, except treason, murder in the first degree, or carnal knowledge of a child under ten years, and a new trial is not granted, the court shall sentence such person to the penitentiary, or, if the law allows and the court sees fit to exercise such discretion, to the reformatory, and shall fix the maximum term of such person's sentence only.

The maximum term to be fixed by the court shall be the maximum provided by law for the crime of which such person was convicted, if the law provides for a maximum term. If the law does not provide a maximum term for the crime of which such person was convicted the court shall fix such maximum term, which may be for any number of years up to and including life imprisonment but in any case where the maximum term is fixed by the court it shall be fixed at not less than twenty years. [1955 c 133 § 2. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Punishment: Chapter 9.92 RCW.

9.95.011 Minimum terms. When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall

not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges adopted under RCW 9.94A.040, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, or 9.95.125. [1986 c 224 § 7.]

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.013 Application of sentencing reform act to board decision. The board shall apply all of the statutory requirements of RCW 9.95.009(2), requiring decisions of the board to be reasonably consistent with the ranges, standards, and purposes of the sentencing reform act, chapter 9.94A RCW, and the minimum term recommendations of the sentencing judge and the prosecuting attorney, to every person who, on July 23, 1989, is incarcerated and has been adjudged under the provisions of RCW 9.92.090. [1989 c 259 § 5.]

9.95.015 Finding of fact or special verdict establishing defendant armed with deadly weapon. In every criminal case wherein conviction would require the board to determine the duration of confinement, or the court to make such determination for persons committed after July 1, 1986, for crimes committed before July 1, 1984, and wherein there has been an allegation and evidence establishing that the accused was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused was armed with a deadly weapon, as defined by RCW 9.95.040, at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the defendant was armed with a deadly weapon, as defined in RCW 9.95.040, at the time of the commission of the crime. [1986 c 224 § 8; 1961 c 138 § 1.]

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.017 Criteria for confinement and parole. The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release. These proposed criteria shall be submitted for consideration by the 1987 legislature. [1986 c 224 § 11.]

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.020 Duties of superintendents of penal institutions. If the sentence of a person so convicted is not suspended by the court, the superintendent of the penitentiary or the superintendent of the reformatory shall receive such person, if committed to his institution, and imprison him until released under the provisions of this chapter or through the action of the governor. [1955 c 133 § 3. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

9.95.028 Statement of prosecuting attorney provided to department, when. It is the intent of the legislature to expedite the inmate classification process of the department of corrections. The statement of the prosecuting attorney regarding a convicted criminal defendant should be prepared and made available to the department at the time the convicted person is placed in the custody of the department. [1984 c 114 § 1.]

9.95.030 Facts to be furnished board of prison terms and paroles. At the time the convicted person is transported to the custody of the department of corrections, the *board of prison terms and paroles shall obtain from the sentencing judge and the prosecuting attorney, a statement of all the facts concerning the convicted person's crime and any other information of which they may be possessed relative to him, and the sentencing judge and the prosecuting attorney shall furnish the board of prison terms and paroles with such information. The sentencing judge and prosecuting attorney shall indicate to the *board of prison terms and paroles, for its guidance, what, in their judgment, should be the duration of the convicted person's imprisonment. [1984 c 114 § 2; 1955 c 133 § 4. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.95.031 Statement of prosecuting attorney. Whenever any person shall be convicted of a crime and who shall be sentenced to imprisonment or confinement in a state correctional facility, it shall be the duty of the prosecuting attorney who prosecuted such convicted person to make a statement of the facts respecting the crime for which the prisoner was tried and convicted, and include in such statement all information that the prosecuting attorney can give in regard to the career of the prisoner before the commission of the crime for which the prisoner was convicted and sentenced, stating to the best of the prosecuting attorney's knowledge whether the prisoner was industrious and of good character, and all other facts and circumstances that may tend to throw any light upon the question as to

whether such prisoner is capable of again becoming a good citizen. [1992 c 7 § 23; 1929 c 158 § 1; RRS § 10254.]

Reviser's note: This section and RCW 9.95.032 antedate the 1935 act (1935 c 114) that created the board of prison terms and paroles. They were not expressly repealed thereby, although part of section 2 of the 1935 act (RCW 9.95.030) contains similar provisions. The effect of 1935 c 114 (as amended) upon other unrepealed prior laws is discussed in *Lindsey v. Superior Court*, 33 Wn. (2d) 94 at pp 99-100.

9.95.032 Statement of prosecuting attorney—Delivery of statement. Such statement shall be signed by the prosecuting attorney and approved by the judge by whom the judgment was rendered and shall be delivered to the sheriff, traveling guard, department of corrections personnel, or other officer executing the sentence, and a copy of such statement shall be furnished to the defendant or his attorney. Such officer shall deliver the statement, at the time of the prisoner's commitment, to the superintendent of the institution to which such prisoner has been sentenced and committed. The superintendent shall make such statement available for use by the *board of prison terms and paroles. [1984 c 114 § 3; 1929 c 158 § 2; RRS § 10255.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.95.040 Board to fix duration of confinement—Minimum terms prescribed for certain cases. The board shall fix the duration of confinement for persons committed by the court before July 1, 1986, for crimes committed before July 1, 1984. Within six months after the admission of the convicted person to a state correctional facility, the board shall fix the duration of confinement. The term of imprisonment so fixed shall not exceed the maximum provided by law for the offense of which the person was convicted or the maximum fixed by the court where the law does not provide for a maximum term.

The following limitations are placed on the board or the court for persons committed to a state correctional facility on or after July 1, 1986, for crimes committed before July 1, 1984, with regard to fixing the duration of confinement in certain cases, notwithstanding any provisions of law specifying a lesser sentence:

(1) For a person not previously convicted of a felony but armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than five years.

(2) For a person previously convicted of a felony either in this state or elsewhere and who was armed with a deadly weapon at the time of the commission of the offense, the duration of confinement shall not be fixed at less than seven and one-half years.

The words "deadly weapon," as used in this section include, but are not limited to, any instrument known as a blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

(3) For a person convicted of being an habitual criminal within the meaning of the statute which provides for manda-

tory life imprisonment for such habitual criminals, the duration of confinement shall not be fixed at less than fifteen years. The board shall retain jurisdiction over such convicted person throughout the person's natural life unless the governor by appropriate executive action orders otherwise.

(4) Any person convicted of embezzling funds from any institution of public deposit of which the person was an officer or stockholder, the duration of confinement shall be fixed at not less than five years.

Except when an inmate of a state correctional facility has been convicted of murder in the first or second degree, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least two-thirds of the board members concur in such action: PROVIDED, That any inmate who has a mandatory minimum term and is paroled prior to the expiration of such term according to the provisions of this chapter shall not receive a conditional release from supervision while on parole until after the mandatory minimum term has expired. [1992 c 7 § 24; 1986 c 224 § 9; 1975-'76 2nd ex.s. c 63 § 2; 1961 c 138 § 2; 1955 c 133 § 5. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.052 Redetermination and refixing of minimum term of confinement. At any time after the board (or the court after July 1, 1986) has determined the minimum term of confinement of any person subject to confinement in a state correctional institution, the board may request the superintendent of such correctional institution to conduct a full review of such person's prospects for rehabilitation and report to the board the facts of such review and the resulting findings. Upon the basis of such report and such other information and investigation that the board deems appropriate, the board may redetermine and refix such convicted person's minimum term of confinement whether the term was set by the board or the court.

The board shall not reduce a person's minimum term of confinement unless the board has received from the department of corrections all institutional conduct reports relating to the person. [1986 c 224 § 10; 1983 c 196 § 1; 1972 ex.s. c 67 § 1.]

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.055 Reduction of sentences during war emergency. The indeterminate sentence review board is hereby granted authority, in the event of a declaration by the governor that a war emergency exists, including a general mobilization, and for the duration thereof only, to reduce downward the minimum term, as set by the board, of any inmate under the jurisdiction of the board confined in a state correctional facility, who will be accepted by and inducted into the armed services: PROVIDED, That a reduction downward shall not be made under this section for those inmates who are confined for treason, murder in the first degree or carnal knowledge of a female child under ten years: AND PROVIDED FURTHER, That no such inmate shall be released under this section who is found to be a

sexual psychopath under the provisions of and as defined by chapter 71.12 RCW. [1992 c 7 § 25; 1951 c 239 § 1.]

9.95.060 When sentence begins to run. When a convicted person seeks appellate review of his or her conviction and is at liberty on bond pending the determination of the proceeding by the supreme court or the court of appeals, credit on his or her sentence will begin from the date such convicted person is returned to custody. The date of return to custody shall be certified to the department of corrections, the Washington state *board of prison terms and paroles, and the prosecuting attorney of the county in which such convicted person was convicted and sentenced, by the sheriff of such county. If such convicted person does not seek review of the conviction, but is at liberty for a period of time subsequent to the signing of the judgment and sentence, or becomes a fugitive, credit on his sentence will begin from the date such convicted person is returned to custody. The date of return to custody shall be certified as provided in this section. In all other cases, credit on a sentence will begin from the date the judgment and sentence is signed by the court. [1988 c 202 § 15; 1981 c 136 § 36; 1979 c 141 § 1; 1971 c 81 § 46; 1967 c 200 § 10; 1955 c 133 § 7. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. § 10249-2, part.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Severability—1988 c 202: See note following RCW 2.24.050.

Effective date—1981 c 136: See RCW 72.09.900.

9.95.062 Stay of judgment—When prohibited—Credit for jail time pending appeal. (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:

(a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or

(b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or

(c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations under the judgment or has not posted an adequate performance bond to assure payment.

(2) In case the defendant has been convicted of a felony, and has been unable to obtain release pending the appeal by posting an appeal bond, cash, adequate security, release on personal recognizance, or any other conditions imposed by the court, the time the defendant has been imprisoned pending the appeal shall be deducted from the term for which the defendant was sentenced, if the judgment is affirmed. [1989 c 276 § 1; 1969 ex.s. c 4 § 1; 1969 c 103 § 1; 1955 c 42 § 2. Prior: 1893 c 61 § 30; RRS § 1745. Formerly RCW 10.73.030, part.]

Severability—1989 c 276: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 276 § 6.]

9.95.063 Conviction upon new trial—Former imprisonment deductible. If a defendant who has been imprisoned during the pendency of any post-trial proceeding in any state or federal court shall be again convicted upon a new trial resulting from any such proceeding, the period of his former imprisonment shall be deducted by the superior court from the period of imprisonment to be fixed on the last verdict of conviction. [1971 ex.s. c 86 § 1; 1971 c 81 § 47; 1955 c 42 § 4. Prior: 1893 c 61 § 34; RRS § 1750. Formerly RCW 10.73.070, part.]

9.95.064 Conditions of release. In order to minimize the trauma to the victim, the court may attach conditions on release of a defendant under RCW 9.95.062 regarding the whereabouts of the defendant, contact with the victim, or other conditions. [1989 c 276 § 4.]

Severability—1989 c 276: See note following RCW 9.95.062.

9.95.070 Time credit reductions for good behavior. Every prisoner who has a favorable record of conduct at the penitentiary or the reformatory, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him to the satisfaction of the superintendent of the penitentiary or reformatory, and in whose behalf the superintendent of the penitentiary or reformatory files a report certifying that his conduct and work have been meritorious and recommending allowance of time credits to him, shall upon, but not until, the adoption of such recommendation by the *board of prison terms and paroles, be allowed time credit reductions from the term of imprisonment fixed by the *board of prison terms and paroles. [1955 c 133 § 8. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.95.080 Revocation and redetermination of minimum for infractions. In case any convicted person under the jurisdiction of the indeterminate sentence review board undergoing sentence in a state correctional facility commits any infractions of the rules and regulations of the institution, the board may revoke any order theretofore made determining the length of time such convicted person shall be imprisoned, including the forfeiture of all or a portion of credits earned or to be earned, pursuant to the provisions of RCW 9.95.110, and make a new order determining the length of time the person shall serve, not exceeding the maximum penalty provided by law for the crime for which the person was convicted, or the maximum fixed by the court. Such revocation and redetermination shall not be had except upon a hearing before the indeterminate sentence review board. At such hearing the convicted person shall be present and entitled to be heard and may present evidence and witnesses in his or her behalf. [1992 c 7 § 26; 1972 ex.s. c 68 § 1; 1961 c 106 § 1; 1955 c 133 § 9. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

9.95.090 Labor may be required under rules and regulations. The *board of prison terms and paroles shall

require of every able bodied convicted person imprisoned in the penitentiary or the reformatory as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the institution in which he is confined. [1955 c 133 § 10. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. § 10249-2, part.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Labor by prisoners: Chapter 72.64 RCW.

9.95.100 Prisoner released on serving maximum term. Any convicted person undergoing sentence in the penitentiary or the reformatory, not sooner released under the provisions of this chapter, shall, in accordance with the provisions of law, be discharged from custody on serving the maximum punishment provided by law for the offense of which such person was convicted, or the maximum term fixed by the court where the law does not provide for a maximum term. The board shall not, however, until his maximum term expires, release a prisoner, unless in its opinion his rehabilitation has been complete and he is a fit subject for release. [1955 c 133 § 11. Prior: (i) 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part. (ii) 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.110 Parole of prisoners. The *board of prison terms and paroles may permit a convicted person to leave the buildings and enclosures of the penitentiary or the reformatory on parole, after such convicted person has served the period of confinement fixed for him by the board, less time credits for good behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his sentence as fixed by the board.

The *board of prison terms and paroles may establish rules and regulations under which a convicted person may be allowed to leave the confines of the penitentiary or the reformatory on parole, and may return such person to the confines of the institution from which he was paroled, at its discretion. [1955 c 133 § 12. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.95.115 Parole of life term prisoners—Crimes committed before July 1, 1984. The indeterminate sentence review board is hereby granted authority to parole any person sentenced to the custody of the department of corrections, under a mandatory life sentence for a crime committed prior to July 1, 1984, except those persons sentenced to life without the possibility of parole. No such person shall be granted parole unless the person has been continuously confined therein for a period of twenty consecutive years less earned good time: PROVIDED, That no such person shall be released under parole who is found to be a sexual psychopath under the provisions of and as defined by chapter 71.06 RCW. [1989 c 259 § 3; 1951 c 238 § 1.]

9.95.116 Duration of confinement—Mandatory life sentences—Crimes committed before July 1, 1984. (1) The board shall fix the duration of confinement for persons committed to the custody of the department of corrections under a mandatory life sentence for a crime or crimes committed before July 1, 1984. However, no duration of confinement shall be fixed for those persons committed under a life sentence without the possibility of parole.

The duration of confinement for persons covered by this section shall be fixed no later than July 1, 1992, or within six months after the admission or readmission of the convicted person to the custody of the department of corrections, whichever is later.

(2) Prior to fixing a duration of confinement under this section, the board shall request from the sentencing judge and the prosecuting attorney an updated statement in accordance with RCW 9.95.030. In addition to the report and recommendations of the prosecuting attorney and sentencing judge, the board shall also consider any victim impact statement submitted by a victim, survivor, or a representative, and any statement submitted by an investigative law enforcement officer. The board shall provide the convicted person with copies of any new statement and an opportunity to comment thereon prior to fixing the duration of confinement. [1989 c 259 § 2.]

9.95.117 Parolees subject to supervision of department of corrections—Progress reports. See RCW 72.04A.080.

9.95.119 Plans and recommendations for conditions of supervision of parolees. See RCW 72.04A.070.

9.95.120 Suspension, revision of parole—Powers and duties of probation officers—Hearing—Retaking of parole violator—Reinstatement. Whenever the *board of prison terms and paroles or a probation and parole officer of this state has reason to believe a convicted person has breached a condition of his parole or violated the law of any state where he may then be or the rules and regulations of the *board of prison terms and paroles, any probation and parole officer of this state may arrest or cause the arrest and detention and suspension of parole of such convicted person pending a determination by the board whether the parole of such convicted person shall be revoked. All facts and circumstances surrounding the violation by such convicted person shall be reported to the *board of prison terms and paroles by the probation and parole officer, with recommendations. The *board of prison terms and paroles, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state probation and parole officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board to perform its functions under this section. On the basis of the report by the probation and parole officer, or at any time upon its own discretion, the board may revise or modify the conditions of parole or order the suspension of parole by the issuance of a written order bearing its seal which order shall be sufficient warrant for all peace officers to take into

custody any convicted person who may be on parole and retain such person in their custody until arrangements can be made by the *board of prison terms and paroles for his return to a state correctional institution for convicted felons. Any such revision or modification of the conditions of parole or the order suspending parole shall be personally served upon the parolee.

Any parolee arrested and detained in physical custody by the authority of a state probation and parole officer, or upon the written order of the *board of prison terms and paroles, shall not be released from custody on bail or personal recognizance, except upon approval of the *board of prison terms and paroles and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole.

All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

Whenever a paroled prisoner is accused of a violation of his parole, other than the commission of, and conviction for, a felony or misdemeanor under the laws of this state or the laws of any state where he may then be, he shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he is served with charges of the violation of conditions of his parole after his arrest and detention. The hearing shall be held before one or more members of the parole board at a place or places, within this state, reasonably near the site of the alleged violation or violations of parole.

In the event that the *board of prison terms and paroles suspends a parole by reason of an alleged parole violation or in the event that a parole is suspended pending the disposition of a new criminal charge, the *board of prison terms and paroles shall have the power to nullify the order of suspension and reinstate the individual to parole under previous conditions or any new conditions that the *board of prison terms and paroles may determine advisable. Before the *board of prison terms and paroles shall nullify an order of suspension and reinstate a parole they shall have determined that the best interests of society and the individual shall best be served by such reinstatement rather than a return to a penal institution. [1981 c 136 § 37; 1979 c 141 § 2; 1969 c 98 § 2; 1961 c 106 § 2; 1955 c 133 § 13. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1969 c 98: "If any provision of this act, or its application to any person or circumstance is invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 98 § 10.]

Effective date—1969 c 98: "This act shall take effect on July 1, 1969." [1969 c 98 § 11.]

Violations of parole or probation—Revision of parole conditions—Rearrest—Detention: RCW 72.04A.090.

9.95.121 On-site parole revocation hearing—Procedure when waived. Within fifteen days from the date of notice to the department of corrections of the arrest and

detention of the alleged parole violator, he shall be personally served by a state probation and parole officer with a copy of the factual allegations of the violation of the conditions of parole, and, at the same time shall be advised of his right to an on-site parole revocation hearing and of his rights and privileges as provided in RCW 9.95.120 through 9.95.126. The alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights may waive the on-site parole revocation hearing as provided in RCW 9.95.120, and admit one or more of the alleged violations of the conditions of parole. If the board accepts the waiver it shall either, (1) reinstate the parolee on parole under the same or modified conditions, or (2) revoke the parole of the parolee and enter an order of parole revocation and return to state custody. A determination of a new minimum sentence shall be made within thirty days of return to state custody which shall not exceed the maximum sentence as provided by law for the crime of which the parolee was originally convicted or the maximum fixed by the court.

If the waiver made by the parolee is rejected by the board it shall hold an on-site parole revocation hearing under the provisions of RCW 9.95.120 through 9.95.126. [1981 c 136 § 38; 1979 c 141 § 3; 1969 c 98 § 3.]

Reviser's note: The term "this 1969 amendatory act" has been changed to RCW 9.95.120 through 9.95.126. Technically the term also includes RCW 9.95.003 and 72.04A.090 and the effective date and severability sections footnoted after RCW 9.95.120.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.122 On-site parole revocation hearing—Representation for alleged parole violators—Compensation. At any on-site parole revocation hearing the alleged parole violator shall be entitled to be represented by an attorney of his own choosing and at his own expense, except, upon the presentation of satisfactory evidence of indigency and the request for the appointment of an attorney by the alleged parole violator, the board may cause the appointment of an attorney to represent the alleged parole violator to be paid for at state expense, and, in addition, the board may assume all or such other expenses in the presentation of evidence on behalf of the alleged parole violator as it may have authorized: PROVIDED, That funds are available for the payment of attorneys' fees and expenses. Attorneys for the representation of alleged parole violators in on-site hearings shall be appointed by the superior courts for the counties wherein the on-site parole revocation hearing is to be held and such attorneys shall be compensated in such manner and in such amount as shall be fixed in a schedule of fees adopted by rule of the *board of prison terms and paroles. [1969 c 98 § 4.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.123 On-site parole revocation hearing—Conduct—Witnesses—Subpoenas, enforcement. In conducting on-site parole revocation hearings, the *board of

prison terms and paroles shall have the authority to administer oaths and affirmations, examine witnesses, receive evidence and issue subpoenas for the compulsory attendance of witnesses and the production of evidence for presentation at such hearings. Subpoenas issued by the board shall be effective throughout the state. Witnesses in attendance at any on-site parole revocation hearing shall be paid the same fees and allowances, in the same manner and under the same conditions as provided for witnesses in the courts of the state in accordance with chapter 2.40 RCW as now or hereafter amended. If any person fails or refuses to obey a subpoena issued by the board, or obeys the subpoena but refuses to testify concerning any matter under examination at the hearing, the *board of prison terms and paroles may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena: PROVIDED, That an offer to pay statutory fees and mileage has been made to the witness at the time of the service of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the board. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order, the witness shall be dealt with as for contempt of court. [1969 c 98 § 5.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.124 On-site parole revocation hearing—Attorney general's recommendations—Rules governing procedure. At all on-site parole revocation hearings the probation and parole officers of the department of corrections, having made the allegations of the violations of the conditions of parole, may be represented by the attorney general. The attorney general may make independent recommendations to the board about whether the violations constitute sufficient cause for the revocation of the parole and the return of the parolee to a state correctional institution for convicted felons. The hearings shall be open to the public unless the board for specifically stated reasons closes the hearing in whole or in part. The hearings shall be recorded either manually or by a mechanical recording device. An alleged parole violator may be requested to testify and any such testimony shall not be used against him in any criminal prosecution. The *board of prison terms and paroles shall adopt rules governing the formal and informal procedures authorized by this chapter and make rules of practice before the board in on-site parole revocation

hearings, together with forms and instructions. [1983 c 196 § 2; 1981 c 136 § 39; 1979 c 141 § 4; 1969 c 98 § 6.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.125 On-site parole revocation hearing—Board's decision—Reinstatement or revocation of parole. After the on-site parole revocation hearing has been concluded, the members of the board having heard the matter shall enter their decision of record within ten days, and make findings and conclusions upon the allegations of the violations of the conditions of parole. If the member, or members having heard the matter, should conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of the evidence, or, those which have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions of parole. If the member or members having heard the matter should conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and constitute sufficient cause for the revocation of parole, then such member or members shall enter an order of parole revocation and return the parole violator to state custody. Within thirty days of the return of such parole violator to a state correctional institution for convicted felons the *board of prison terms and paroles shall enter an order determining a new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court. [1969 c 98 § 7.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.126 On-site parole revocation hearing—Cooperation in providing facilities for hearings. All officers and employees of the state, counties, cities and political subdivisions of this state shall cooperate with the *board of prison terms and paroles in making available suitable facilities for conducting parole revocation hearings. [1969 c 98 § 8.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.130 When parole revoked prisoner deemed escapee until return to custody. From and after the suspension, cancellation, or revocation of the parole of any convicted person and until his return to custody he shall be deemed an escapee and a fugitive from justice and no part of the time during which he is an escapee and fugitive from justice shall be a part of his term. [1955 c 133 § 14. Prior:

1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.140 Record of parolees—Privacy—Sexual offender information release—Immunity from liability—Cooperation by officials and employees. The indeterminate sentence review board shall cause a complete record to be kept of every prisoner under the jurisdiction of the board released on parole. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about each such prisoner. The board may make rules as to the privacy of such records and their use by others than the board and its staff. In determining the rules regarding dissemination of information regarding convicted sex offenders under the board's jurisdiction, the board shall consider the provisions of section 116, chapter 3, Laws of 1990 and RCW 4.24.550 and shall be immune from liability for the release of information concerning sex offenders as provided in RCW 4.24.550.

The superintendents of state correctional facilities and all officers and employees thereof and all other public officials shall at all times cooperate with the board and furnish to the board, its officers, and employees such information as may be necessary to enable it to perform its functions, and such superintendents and other employees shall at all times give the members of the board, its officers, and employees free access to all prisoners confined in the state correctional facilities. [1992 c 7 § 27; 1990 c 3 § 126; 1955 c 133 § 15. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Index, part beadings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Washington state patrol, identification, child abuse, vulnerable adult abuse, and criminal history section: RCW 43.43.700 through 43.43.765.

9.95.145 Sex offenders—Release of information. In addition to any other information required to be released under this chapter, the indeterminate sentence review board may, pursuant to RCW 4.24.550, release information concerning inmates under the jurisdiction of the indeterminate sentence review board who are convicted of sex offenses as defined in RCW 9.94A.030. [1990 c 3 § 127.]

Index, part beadings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9.95.150 Rules and regulations. The *board of prison terms and paroles shall make all necessary rules and regulations to carry out the provisions of this chapter not inconsistent therewith, and may provide the forms of all documents necessary therefor. [1955 c 133 § 16. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.95.160 Governor's powers not affected—Revocation of paroles granted by board. This chapter shall not limit or circumscribe the powers of the governor to commute the sentence of, or grant a pardon to, any convicted

person, and the governor may cancel or revoke the parole granted to any convicted person by the *board of prison terms and paroles. The written order of the governor canceling or revoking such parole shall have the same force and effect and be executed in like manner as an order of the *board of prison terms and paroles. [1955 c 133 § 17. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.95.170 Board to inform itself as to each convict—Department of corrections to make records available to board. To assist it in fixing the duration of a convicted person's term of confinement, and in fixing the condition for release from custody on parole, it shall not only be the duty of the *board of prison terms and paroles to thoroughly inform itself as to the facts of such convicted person's crime but also to inform itself as thoroughly as possible as to such convict as a personality. The department of corrections and the institutions under its control shall make available to the *board of prison terms and paroles on request its case investigations, any file or other record, in order to assist the board in developing information for carrying out the purpose of this section. [1981 c 136 § 40; 1979 c 141 § 5; 1967 c 134 § 13; 1935 c 114 § 3; RRS § 10249-3.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

9.95.190 Application of RCW 9.95.010 through 9.95.170 to inmates previously committed. The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall apply to all convicted persons serving time in a state correctional facility, to the end that at all times the same provisions relating to sentences, imprisonments, and paroles of prisoners shall apply to all inmates thereof. [1992 c 7 § 28; 1983 c 3 § 10; 1955 c 133 § 18. Prior: (i) 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part. (ii) 1947 c 92 § 2, part; Rem. Supp. 1947 § 10249-2a, part.]

9.95.195 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected. See RCW 9.96.050.

9.95.200 Probation by court—Investigation by secretary of corrections. After conviction by plea or verdict of guilty of any crime, the court upon application or its own motion, may summarily grant or deny probation, or at a subsequent time fixed may hear and determine, in the presence of the defendant, the matter of probation of the defendant, and the conditions of such probation, if granted. The court may, in its discretion, prior to the hearing on the granting of probation, refer the matter to the secretary of corrections or such officers as the secretary may designate for investigation and report to the court at a specified time, upon the circumstances surrounding the crime and concerning the defendant, his prior record, and his family surroundings and environment. [1981 c 136 § 41; 1979 c 141 § 6;

1967 c 134 § 15; 1957 c 227 § 3. Prior: 1949 c 59 § 1; 1939 c 125 § 1, part; 1935 c 114 § 5; Rem. Supp. 1949 § 10249-5a.]

Rules of court: ER 410.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1939 c 125: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this act as a whole, or of any section, provision or part thereof not adjudged invalid or unconstitutional." [1939 c 125 § 3 p 356.]

Suspending sentences: RCW 9.92.060.

9.95.210 Conditions of probation. In granting probation, the court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

In the order granting probation and as a condition thereof, the court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the court shall require the payment of the penalty assessment required by RCW 7.68.035. The court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, (3) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required, (4) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation, and (5) to contribute to a county or interlocal drug fund, and may require bonds for the faithful observance of any and all conditions imposed in the probation. The court shall order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow implicitly the instructions of the secretary. If the probationer has been ordered to make restitution, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the

court is located. [1992 c 86 § 1; 1987 c 202 § 146; 1984 c 46 § 1; 1983 c 156 § 4; 1982 1st ex.s. c 47 § 10; 1982 1st ex.s. c 8 § 5; 1981 c 136 § 42; 1980 c 19 § 1. Prior: 1979 c 141 § 7; 1979 c 29 § 2; 1969 c 29 § 1; 1967 c 200 § 8; 1967 c 134 § 16; 1957 c 227 § 4; prior: 1949 c 77 § 1; 1939 c 125 § 1, part; Rem. Supp. 1949 § 10249-5b.]

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

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Intent—Reports—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1939 c 125: See note following RCW 9.95.200.

Restitution

alternative to fine: RCW 9A.20.030.

condition to suspending sentence: RCW 9.92.060.

disposition when victim not found or dead: RCW 7.68.290.

Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.

Violations of probation conditions, rearrest, detention: RCW 72.04A.090.

9.95.215 Counties may provide probation and parole services. See RCW 36.01.070.

9.95.220 Violation of probation—Rearrest—Imprisonment. Whenever the state parole officer or other officer under whose supervision the probationer has been placed shall have reason to believe such probationer is violating the terms of his probation, or engaging in criminal practices, or is abandoned to improper associates, or living a vicious life, he shall cause the probationer to be brought before the court wherein the probation was granted. For this purpose any peace officer or state parole officer may rearrest any such person without warrant or other process. The court may thereupon in its discretion without notice revoke and terminate such probation. In the event the judgment has been pronounced by the court and the execution thereof suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory as the case may be. If the judgment has not been pronounced, the court shall pronounce judgment after such revocation of probation and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory, in accordance with the sentence imposed. [1957 c 227 § 5. Prior: 1939 c 125 § 1, part; RRS § 10249-5c.]

Severability—1939 c 125: See note following RCW 9.95.200.

9.95.230 Court revocation or termination of probation. The court shall have authority at any time prior to the entry of an order terminating probation to (1) revoke, modify, or change its order of suspension of imposition or execution of sentence; (2) it may at any time, when the ends of justice will be subserved thereby, and when the reformation of the probationer shall warrant it, terminate the period of probation, and discharge the person so held. [1982 1st ex.s. c 47 § 11; 1957 c 227 § 6. Prior: 1939 c 125 § 1, part; RRS § 10249-5d.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Severability—1939 c 125: See note following RCW 9.95.200.

9.95.240 Dismissal of information or indictment after probation completed. Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he has been convicted be permitted in the discretion of the court to withdraw his plea of guilty and enter a plea of not guilty, or if he has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. The probationer shall be informed of this right in his probation papers: PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed. [1957 c 227 § 7. Prior: 1939 c 125 § 1, part; RRS § 10249-5e.]

Severability—1939 c 125: See note following RCW 9.95.200.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

State lottery commission—Denial, suspension, and revocation of licenses—Other provisions not applicable: RCW 67.70.090.

9.95.250 Probation and parole officers. In order to carry out the provisions of this chapter 9.95 RCW the parole officers working under the supervision of the secretary of corrections shall be known as probation and parole officers. [1981 c 136 § 43; 1979 c 141 § 8; 1967 c 134 § 17; 1957 c 227 § 8. Prior: 1939 c 125 § 1, part; RRS § 10249-5f.]

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1939 c 125: See note following RCW 9.95.200.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

9.95.260 Board to pass on representations made in applications for pardons and restoration of civil rights—Department of corrections to assist board—Supervise conditionally pardoned persons. It shall be the duty of the *board of prison terms and paroles, when requested by the governor, to pass on the representations made in support of applications for pardons for convicted persons and to make recommendations thereon to the governor.

It will be the duty of the secretary of corrections to exercise supervision over such convicted persons as have been conditionally pardoned by the governor, to the end that such persons shall faithfully comply with the conditions of such pardons. The *board of prison terms and paroles shall also pass on any representations made in support of applications for restoration of civil rights of convicted persons, and make recommendations to the governor. The department of corrections shall prepare materials and make investigations requested by the *board of prison terms and paroles in order to assist the board in passing on the representations made in support of applications for pardon or for the restoration of civil rights. [1981 c 136 § 44; 1979 c 141 § 9; 1967 c 134 § 14; 1935 c 114 § 7; RRS § 10249-7.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

9.95.265 Report to governor and legislature. The *board of prison terms and paroles shall transmit to the governor and to the legislature, as often as the governor may require it, a report of its work, in which shall be given such information as may be relevant. [1977 c 75 § 5; 1955 c 340 § 11. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.040.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.95.267 Transfer of certain powers and duties of board to secretary of corrections. See RCW 72.04A.050.

9.95.270 Compacts for out-of-state supervision of parolees or probationers—Uniform act. The governor of this state is hereby authorized to execute a compact on behalf of the state of Washington with any of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the congress of the United States of America, granted by an act entitled "An Act granting the consent of congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state, party to this compact, (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: PROVIDED, HOWEVER, That if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states, party hereto. [1937 c 92 § 1; RRS § 10249-11.]

Severability—1937 c 92: "If any section, sentence, subdivision or clause of this act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act." [1937 c 92 § 2 p 382.] This applies to RCW 9.95.270.

Short title—1937 c 92: "This act may be cited as the Uniform Act for Out-of-State Supervision." [1937 c 92 § 3 p 382.] This applies to RCW 9.95.270.

Interstate compact on juveniles: Chapter 13.24 RCW.

9.95.280 Return of parole violators from without state—Deputizing out-of-state officers. The *board of prison terms and paroles is hereby authorized and empowered to deputize any person (regularly employed by another state) to act as an officer and agent of this state in effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state. In any matter relating to the return of such a person, any agent so deputized shall have all the powers of a police officer of this state. [1955 c 183 § 1.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.95.290 Return of parole violators from without state—Deputization procedure. Any deputization pursuant to this statute shall be in writing and any person authorized to act as an agent of this state pursuant hereto shall carry formal evidence of his deputization and shall produce the same upon demand. [1955 c 183 § 2.]

9.95.300 Return of parole violators from without state—Contracts to share costs. The *board of prison terms and paroles is hereby authorized to enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state. [1955 c 183 § 3.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.95.310 Assistance for parolees, work release, and discharged prisoners—Declaration of purpose. The purpose of RCW 9.95.310 through 9.95.370 is to provide necessary assistance, other than assistance which is authorized to be provided under the vocational rehabilitation laws, Title 28A RCW, under the public assistance laws, Title 74 RCW or the department of employment security or other state agency, for parolees, inmates assigned to work/training release facilities, discharged prisoners and persons convicted of a felony and granted probation in need and whose capacity to earn a living under these circumstances is impaired; and to help such persons attain self-care and/or self-support for rehabilitation and restoration to independence as useful citizens as rapidly as possible thereby reducing the number of returnees to the institutions of this state to the benefit of such person and society as a whole. [1986 c 125 § 1; 1971 ex.s. c 31 § 1; 1961 c 217 § 2.]

9.95.320 Assistance for parolees, work release, and discharged prisoners—Secretary or designee may provide subsistence—Terms and conditions. The secretary of corrections or his or her designee may provide to any parolee, inmate assigned to a work/training release facility, discharged prisoner and persons convicted of a felony and granted probation in need and without necessary means, from any funds legally available therefor, such reasonable sums as he deems necessary for the subsistence of such person and his family until such person has become gainfully employed. Such aid may be made under such terms and conditions, and through local parole or probation officers if necessary, as the secretary of corrections or his designee may require and shall be supplementary to any moneys which may be provided under public assistance or from any other source. [1986 c 125 § 2; 1981 c 136 § 45; 1971 ex.s. c 31 § 2; 1961 c 217 § 3.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.330 Assistance for parolees, work release, and discharged prisoners—Department may accept gifts and make expenditures. The department of corrections may accept any devise, bequest, gift, grant, or contribution made for the purposes of RCW 9.95.310 through 9.95.370 and the secretary of corrections or his designee may make expenditures, or approve expenditures by local parole or probation officers, therefrom for the purposes of RCW 9.95.310 through 9.95.370 in accordance with the rules of the department of corrections. [1981 c 136 § 46; 1971 ex.s. c 31 § 3; 1961 c 217 § 4.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.340 Assistance for parolees, work release, and discharged prisoners—Use of funds belonging to absconders, repayment by benefited prisoner or parolee—Repayment of funds to prisoners and parolees. Any funds in the hands of the department of corrections, or which may come into its hands, which belong to discharged prisoners, inmates assigned to work/training release facilities, parolees or persons convicted of a felony and granted probation who absconded, or whose whereabouts are unknown, shall be deposited in the community services revolving fund. Said funds shall be used to defray the expenses of clothing and other necessities and for transporting discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation who are without means to secure the same. All payments disbursed from these funds shall be repaid, whenever possible, by discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation for whose benefit they are made. Whenever any money belonging to such persons is so paid into the revolving fund, it shall be repaid to them in accordance with law if a claim therefor is filed with the department of corrections within five years of deposit into said fund and upon a clear showing of a legal right of such claimant to such money. [1986 c 125 § 3; 1981 c 136 § 47; 1971 ex.s. c 31 § 4; 1961 c 217 § 5.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.350 Assistance for parolees, work release, and discharged prisoners—Accounting, use, disposition of funds or property which is for prisoner or parolee. All money or other property paid or delivered to a probation or parole officer or employee of the department of corrections by or for the benefit of any discharged prisoner, inmate assigned to a work/training release facility, parolee or persons convicted of a felony and granted probation shall be immediately transmitted to the department of corrections and it shall enter the same upon its books to his credit. Such money or other property shall be used only under the direction of the department of corrections.

If such person absconds, the money shall be deposited in the revolving fund created by RCW 9.95.360, and any other property, if not called for within one year, shall be sold by the department of corrections and the proceeds credited to the revolving fund.

If any person, files a claim within five years after the deposit or crediting of such funds, and satisfies the depart-

ment of corrections that he is entitled thereto, the department may make a finding to that effect and may make payment to the claimant in the amount to which he is entitled. [1986 c 125 § 4; 1981 c 136 § 48; 1971 ex.s. c 31 § 5; 1961 c 217 § 6.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.360 Assistance for parolees, work release, and discharged prisoners—Community services revolving fund—Composition—Disbursements—Deposits—Security by depository. The department of corrections shall create, maintain, and administer outside the state treasury a permanent revolving fund to be known as the "community services revolving fund" into which shall be deposited all moneys received by it under RCW 9.95.310 through 9.95.370 and any appropriation made for the purposes of RCW 9.95.310 through 9.95.370. All expenditures from this revolving fund shall be made by check or voucher signed by the secretary of corrections or his designee. The community services revolving fund shall be deposited by the department of corrections in such banks or financial institutions as it may select which shall give to the department a surety bond executed by a surety company authorized to do business in this state, or collateral eligible as security for deposit of state funds in at least the full amount of deposit. [1986 c 125 § 5; 1981 c 136 § 49; 1971 ex.s. c 31 § 6; 1961 c 217 § 7.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.370 Assistance for parolees and discharged prisoners—Agreement by recipient to repay funds. The secretary of corrections or his designee shall enter into a written agreement with every person receiving funds under RCW 9.95.310 through 9.95.370 that such person will repay such funds under the terms and conditions in said agreement. No person shall receive funds until such an agreement is validly made. [1981 c 136 § 50; 1971 ex.s. c 31 § 7; 1961 c 217 § 8.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.900 RCW 9.95.003 through 9.95.052, 9.95.070 through 9.95.265, 9.95.350, 9.95.360 inapplicable to felonies committed on or after July 1, 1984. The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.95.003, 9.95.005, 9.95.007, 9.95.010, 9.95.015, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.040, 9.95.052, 9.95.070, 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120, 9.95.121, 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140, 9.95.150, 9.95.160, 9.95.170, 9.95.190, 9.95.200, 9.95.210, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.350, and 9.95.360. [1981 c 137 § 32.]

Severability—1981 c 137: See RCW 9.94A.910.

Chapter 9.96

RESTORATION OF CIVIL RIGHTS

Sections

- 9.96.010 Restoration of civil rights.
9.96.020 Form of certificate.
9.96.030 Certified copy—Recording and indexing.
9.96.040 Copy of instrument restoring civil rights as evidence.
9.96.050 Final discharge of parolee—Restoration of civil rights—
Governor’s pardoning power not affected.

Governor

pardoning power: State Constitution Art. 3 § 9.
records to be kept: RCW 43.06.020.
remission of fines and forfeitures: State Constitution Art. 3 § 11.
Report of indeterminate sentence review board: RCW 9.95.260.
Restoration of employment rights: Chapter 9.96A RCW.
Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.

9.96.010 Restoration of civil rights. Whenever the governor shall grant a pardon to a person convicted of an infamous crime, or whenever the maximum term of imprisonment for which any such person was committed is about to expire or has expired, and such person has not otherwise had his civil rights restored, the governor shall have the power, in his discretion, to restore to such person his civil rights in the manner as in this chapter provided. [1961 c 187 § 2; 1931 c 19 § 1; 1929 c 26 § 2; RRS § 10250.]

9.96.020 Form of certificate. Whenever the governor shall determine to restore his civil rights to any person convicted of an infamous crime in any superior court of this state, he shall execute and file in the office of the secretary of state an instrument in writing in substantially the following form:

"To the People of the State of Washington
Greeting;

I, the undersigned Governor of the State of Washington, by virtue of the power vested in my office by the constitution and laws of the State of Washington, do by these presents restore to his civil rights forfeited by him (or her) by reason of his (or her) conviction of the crime of (naming it) in the Superior Court for the County of, on to-wit: The day of, 19. . .

Dated the day of, 19. . .
(Signed)
Governor of Washington."

[1931 c 19 § 2; 1929 c 26 § 3; RRS § 10251.]

9.96.030 Certified copy—Recording and indexing. Upon the filing of an instrument restoring civil rights in his office, it shall be the duty of the secretary of state to transmit a duly certified copy thereof to the clerk of the superior court named therein, who shall record the same in the journal of the court and index the same in the execution docket of the cause in which the conviction was had. [1931 c 19 § 3; 1929 c 26 § 4; RRS § 10252.]

9.96.040 Copy of instrument restoring civil rights as evidence. See RCW 5.44.090.

9.96.050 Final discharge of parolee—Restoration of civil rights— Governor’s pardoning power not affected. When a prisoner on parole has performed the obligations of his release for such time as shall satisfy the *board of prison terms and paroles that his final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the prisoner. The board retains the jurisdiction to issue a certificate of discharge after the expiration of the prisoner’s or parolee’s maximum statutory sentence: PROVIDED, That no such order of discharge shall be made in any case within a period of less than one year from the date on which the board has conditionally discharged the parolee from active supervision by a probation and parole officer, except where the parolee’s maximum statutory sentence expires earlier. Such discharge, regardless of when issued, shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certification of discharge shall so state.

The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person. [1980 c 75 § 1; 1961 c 187 § 1.]

*Reviser’s note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Chapter 9.96A

RESTORATION OF EMPLOYMENT RIGHTS

Sections

- 9.96A.010 Legislative declaration.
9.96A.020 Public employment—Licenses, permits, certificates, or registrations issued by state and political subdivisions—
Disqualification due to prior felony conviction removed—Exceptions.
9.96A.030 Chapter not applicable to law enforcement agencies.
9.96A.040 Violations—Adjudication pursuant to administrative procedure act.
9.96A.050 Provisions of chapter prevailing.
9.96A.900 Effective date—1973 c 135.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Restoration of civil rights: Chapter 9.96 RCW.

State lottery commission—Denial, suspension, and revocation of licenses—
Other provisions not applicable: RCW 67.70.090.

9.96A.010 Legislative declaration. The legislature declares that it is the policy of the state of Washington to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the responsibilities of citizenship, and the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to rehabilitation and the assumption of the responsibilities of citizenship. [1973 c 135 § 1.]

9.96A.020 Public employment—Licenses, permits, certificates, or registrations issued by state and political subdivisions—Disqualification due to prior felony conviction removed—Exceptions. Notwithstanding any other provisions of law to the contrary, a person shall not be

disqualified from employment by the state of Washington or any of its agencies or political subdivisions, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its agencies or political subdivisions solely because of a prior conviction of a felony: PROVIDED, This section shall not preclude the fact of any prior conviction of a crime from being considered. However, a person may be denied employment by the state of Washington or any of its agencies or political subdivisions, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years. [1973 c 135 § 2.]

9.96A.030 Chapter not applicable to law enforcement agencies. This chapter shall not be applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth in this chapter. [1973 c 135 § 3.]

9.96A.040 Violations—Adjudication pursuant to administrative procedure act. Any complaints or grievances concerning the violation of this chapter shall be processed and adjudicated in accordance with the procedures set forth in chapter 34.05 RCW, the administrative procedure act. [1973 c 135 § 4.]

9.96A.050 Provisions of chapter prevailing. The provisions of this chapter shall prevail over any other provisions of law which purport to govern the denial of licenses, permits, certificates, registrations, or other means to engage in a business, on the grounds of a lack of good moral character, or which purport to govern the suspension or revocation of such a license, permit, certificate, or registration on the grounds of conviction of a crime. [1973 c 135 § 5.]

9.96A.900 Effective date—1973 c 135. This act shall take effect on July 1, 1973. [1973 c 135 § 7.]

Chapter 9.98

PRISONERS—UNTRIED INDICTMENTS, INFORMATIONS, COMPLAINTS

Sections	
9.98.010	Disposition of untried indictment, information, complaint— Procedure—Escape, effect.
9.98.020	Loss of jurisdiction and failure of indictment, information, complaint—Dismissal.
9.98.030	Chapter not applicable to mentally ill.
9.98.040	Court not prohibited from ordering prisoner to trial.

9.98.010 Disposition of untried indictment, information, complaint—Procedure—Escape, effect. (1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information or complaint against the prisoner, he shall be brought to trial within one hundred twenty days after he shall have caused to be delivered to the prosecuting attorney and the superior court of the county in which the indictment, information or complaint is pending written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: PROVIDED, That for good cause shown in open court, the prisoner or his counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the *board of prison terms and paroles relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the superintendent having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by registered mail, return receipt requested.

(3) The superintendent having custody of the prisoner shall promptly inform him in writing of the source and contents of any untried indictment, information or complaint against him concerning which the superintendent has knowledge and of his right to make a request for final disposition thereof.

(4) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request. [1959 c 56 § 1.]

*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9.98.020 Loss of jurisdiction and failure of indictment, information, complaint—Dismissal. In the event that the action is not brought to trial within the period of time as herein provided, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice. [1959 c 56 § 2.]

9.98.030 Chapter not applicable to mentally ill. The provisions of this chapter shall not apply to any person adjudged to be mentally ill. [1959 c 56 § 3.]

9.98.040 Court not prohibited from ordering prisoner to trial. This chapter shall not be construed as preempting the right of the superior court on the motion of the county prosecuting attorney from ordering the superinten-

dent of a state penal or correctional institution to cause a prisoner to be transported to the superior court of the county for trial upon any untried indictment, information or complaint. [1959 c 56 § 4.]

Chapter 9.100

AGREEMENT ON DETAINEES

Sections

- 9.100.010 Agreement on detainees—Text.
- 9.100.020 Appropriate court defined.
- 9.100.030 Courts, state and political subdivisions enjoined to enforce agreement.
- 9.100.040 Escape—Effect.
- 9.100.050 Giving over inmate authorized.
- 9.100.060 Administrator—Appointment.
- 9.100.070 Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights.
- 9.100.080 Copies of chapter—Transmission.

Untried indictments, informations, complaints—Disposition: Chapter 9.98 RCW.

9.100.010 Agreement on detainees—Text. The agreement on detainees is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

TEXT OF THE AGREEMENT ON DETAINEES

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainees based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainees, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: PROVIDED, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of correction or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainees have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition

to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: PROVIDED, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: PROVIDED FURTHER, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to

Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(i) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(ii) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the

prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or effect [affect] any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the

constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1967 c 34 § 1.]

9.100.020 Appropriate court defined. The phrase "appropriate court" as used in the agreement on detainees shall, with reference to the courts of this state, mean any court with criminal jurisdiction. [1967 c 34 § 2.]

9.100.030 Courts, state and political subdivisions enjoined to enforce agreement. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainees and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes. [1967 c 34 § 3.]

9.100.040 Escape—Effect. Escape from custody while in another state pursuant to the agreement on detainees shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainees and shall be punishable in the same manner as an escape from said institution. [1967 c 34 § 4.]

9.100.050 Giving over inmate authorized. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainees. [1967 c 34 § 5.]

9.100.060 Administrator—Appointment. The governor is hereby authorized and empowered to designate and appoint a state officer to act as the administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article VII of the agreement on detainees. [1967 c 34 § 6.]

9.100.070 Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights. In order to implement Article IV(a) of the agreement on detainees, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within thirty days, and to contest the legality of his delivery. [1967 c 34 § 7.]

9.100.080 Copies of chapter—Transmission. Copies of this chapter shall, upon its approval, be transmitted by the secretary of state to the governor of each state, to the attorney general and the secretary of state of the United

States, and the council of state governments. [1967 c 34 §
8.]

Title 9A

WASHINGTON CRIMINAL CODE

(See also Crimes and Punishments, Title 9 RCW)

Chapters

- 9A.04 Preliminary article.
- 9A.08 Principles of liability.
- 9A.12 Insanity.
- 9A.16 Defenses.
- 9A.20 Classification of crimes.
- 9A.28 Anticipatory offenses.
- 9A.32 Homicide.
- 9A.36 Assault and other crimes involving physical harm.
- 9A.40 Kidnapping, unlawful imprisonment, and custodial interference.
- 9A.42 Criminal mistreatment.
- 9A.44 Sexual offenses.
- 9A.46 Harassment.
- 9A.48 Arson, reckless burning, and malicious mischief.
- 9A.52 Burglary and trespass.
- 9A.56 Theft and robbery.
- 9A.60 Fraud.
- 9A.61 Defrauding a public utility.
- 9A.64 Family offenses.
- 9A.68 Bribery and corrupt influence.
- 9A.72 Perjury and interference with official proceedings.
- 9A.76 Obstructing governmental operation.
- 9A.80 Abuse of office.
- 9A.82 Criminal profiteering act.
- 9A.83 Money laundering.
- 9A.84 Public disturbance.
- 9A.88 Indecent exposure—Prostitution.
- 9A.98 Laws repealed.

Crimes and punishments: Title 9 RCW.

Explosives: Chapter 70.74 RCW.

Harassment: Chapter 10.14 RCW.

Chapter 9A.04

PRELIMINARY ARTICLE

Sections

- 9A.04.010 Title, effective date, application, severability, captions.
- 9A.04.020 Purposes—Principles of construction.
- 9A.04.030 State criminal jurisdiction.
- 9A.04.040 Classes of crimes.
- 9A.04.050 People capable of committing crimes—Capability of children.
- 9A.04.060 Common law to supplement statute.
- 9A.04.070 Who amenable to criminal statutes.
- 9A.04.080 Limitation of actions.
- 9A.04.090 Application of general provisions of the code.
- 9A.04.100 Proof beyond a reasonable doubt.
- 9A.04.110 Definitions.

9A.04.010 Title, effective date, application, severability, captions. (1) This title shall be known and may be cited as the Washington Criminal Code and shall become effective on July 1, 1976.

(2) The provisions of this title shall apply to any offense committed on or after July 1, 1976, which is defined in this title or the general statutes, unless otherwise expressly provided or unless the context otherwise requires, and shall also apply to any defense to prosecution for such an offense.

(3) The provisions of this title do not apply to or govern the construction of and punishment for any offense committed prior to July 1, 1976, or to the construction and application of any defense to a prosecution for such an offense. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this title had not been enacted.

(4) If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected, and to this end the provisions of this title are declared to be severable.

(5) Chapter, section, and subsection captions are for organizational purposes only and shall not be construed as part of this title. [1975 1st ex.s. c 260 § 9A.04.010.]

Legislative direction for codification—1975 1st ex.s. c 260: "The provisions of this act shall constitute a new Title in the Revised Code of Washington to be designated as Title 9A RCW." [1975 1st ex.s. c 260 § 9A.92.900.]

9A.04.020 Purposes—Principles of construction. (1) The general purposes of the provisions governing the definition of offenses are:

(a) To forbid and prevent conduct that inflicts or threatens substantial harm to individual or public interests;

(b) To safeguard conduct that is without culpability from condemnation as criminal;

(c) To give fair warning of the nature of the conduct declared to constitute an offense;

(d) To differentiate on reasonable grounds between serious and minor offenses, and to prescribe proportionate penalties for each.

(2) The provisions of this title shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this title. [1975 1st ex.s. c 260 § 9A.04.020.]

9A.04.030 State criminal jurisdiction. The following persons are liable to punishment:

(1) A person who commits in the state any crime, in whole or in part.

(2) A person who commits out of the state any act which, if committed within it, would be theft and is afterward found in the state with any of the stolen property.

(3) A person who being out of the state, counsels, causes, procures, aids, or abets another to commit a crime in this state.

(4) A person who, being out of the state, abducts or kidnaps by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends, or conveys such person into this state.

(5) A person who commits an act without the state which affects persons or property within the state, which, if committed within the state, would be a crime.

(6) A person who, being out of the state, makes a statement, declaration, verification, or certificate under RCW 9A.72.085 which, if made within the state, would be perjury. [1981 c 187 § 2; 1975 1st ex.s. c 260 § 9A.04.030.]

9A.04.040 Classes of crimes. (1) An offense defined by this title or by any other statute of this state, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, gross misdemeanors, or misdemeanors.

(2) A crime is a felony if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for a term in excess of one year. A crime is a misdemeanor if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for no more than ninety days. Every other crime is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.04.040.]

9A.04.050 People capable of committing crimes—Capability of children. Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his examination by one or more physicians, whose opinion shall be competent evidence upon the question of his age. [1975 1st ex.s. c 260 § 9A.04.050.]

9A.04.060 Common law to supplement statute. The provisions of the common law relating to the commission of crime and the punishment thereof, insofar as not inconsistent with the Constitution and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the courts of this state having jurisdiction of the offense. [1975 1st ex.s. c 260 § 9A.04.060.]

9A.04.070 Who amenable to criminal statutes. Every person, regardless of whether or not he is an inhabitant of this state, may be tried and punished under the laws of this state for an offense committed by him therein, except when such offense is cognizable exclusively in the courts of the United States. [1975 1st ex.s. c 260 § 9A.04.070.]

9A.04.080 Limitation of actions. (1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

- (i) Murder;
- (ii) Arson if a death results.

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

- (ii) Arson if no death results.

(c) Violations of the following statutes shall not be prosecuted more than three years after the victim's eighteenth birthday or more than seven years after their commission, whichever is later:

(i) RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, *9A.44.070, 9A.44.080, or 9A.44.100(1)(b); or

(ii) If the victim was under the age of fourteen years of age at the time of the commission of the offense, RCW 9A.44.040, 9A.44.050, or 9A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission: Violations of RCW 9A.82.060 or 9A.82.080.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) No other felony may be prosecuted more than three years after its commission.

(h) No gross misdemeanor may be prosecuted more than two years after its commission.

(i) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside. [1989 c 317 § 3; 1988 c 145 § 14. Prior: 1986 c 257 § 13; 1986 c 85 § 1; prior: 1985 c 455 § 19; 1985 c 186 § 1; 1984 c 270 § 18; 1982 c 129 § 1; 1981 c 203 § 1; 1975 1st ex.s. c 260 § 9A.04.080.]

*Reviser's note: RCW 9A.44.070 and 9A.44.080 were repealed by 1988 c 145 § 24.

Intent—1989 c 317: See note following RCW 4.16.340.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—Severability—1985 c 455: See RCW 9A.82.902 and 9A.82.904.

Severability—Effective date—1984 c 270: See RCW 9A.82.900 and 9A.82.901.

Severability—1982 c 129: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1982 c 129 § 11.]

9A.04.090 Application of general provisions of the code. The provisions of chapters 9A.04 through 9A.28 RCW of this title are applicable to offenses defined by this title or another statute, unless this title or such other statute specifically provides otherwise. [1975 1st ex.s. c 260 § 9A.04.090.]

9A.04.100 Proof beyond a reasonable doubt. (1) Every person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt.

(2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest degree. [1975 1st ex.s. c 260 § 9A.04.100.]

9A.04.110 Definitions. In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;
 (2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building", in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle; railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person", "he", and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Property" means anything of value, whether tangible or intangible, real or personal;

(22) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(23) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(24) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(25) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships;

(26) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(27) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular. [1988 c 158 § 1; 1987 c 324 § 1; 1986 c 257 § 3; 1975 1st ex.s. c 260 § 9A.04.110.]

Effective date—1988 c 158: "This act shall take effect July 1, 1988." [1988 c 158 § 4.]

Effective date—1987 c 324: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1988." [1987 c 324 § 4.]

Effective date—1986 c 257 §§ 3-10: "Sections 3 through 10 of this act shall take effect on July 1, 1988." [1987 c 324 § 3; 1986 c 257 § 12.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Chapter 9A.08

PRINCIPLES OF LIABILITY

Sections

- 9A.08.010 General requirements of culpability.
 9A.08.020 Liability for conduct of another—Complicity.
 9A.08.030 Criminal liability of corporations and persons acting or under a duty to act in their behalf.

9A.08.010 General requirements of culpability. (1) Kinds of Culpability Defined.

(a) **INTENT.** A person acts with intent or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.

(b) **KNOWLEDGE.** A person knows or acts knowingly or with knowledge when:

(i) he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense.

(c) **RECKLESSNESS.** A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.

(d) **CRIMINAL NEGLIGENCE.** A person is criminally negligent or acts with criminal negligence when he fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.

(2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(3) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

(4) Requirement of Wilfulness Satisfied by Acting Knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears. [1975 1st ex.s. c 260 § 9A.08.010.]

9A.08.020 Liability for conduct of another—Complicity. (1) A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the crime, he causes an innocent or irresponsible person to engage in such conduct; or

(b) He is made accountable for the conduct of such other person by this title or by the law defining the crime; or

(c) He is an accomplice of such other person in the commission of the crime.

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he

(i) solicits, commands, encourages, or requests such other person to commit it; or

(ii) aids or agrees to aid such other person in planning or committing it; or

(b) His conduct is expressly declared by law to establish his complicity.

(4) A person who is legally incapable of committing a particular crime himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

(5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:

(a) He is a victim of that crime; or

(b) He terminates his complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.

(6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted. [1975-'76 2nd ex.s. c 38 § 1; 1975 1st ex.s. c 260 § 9A.08.020.]

Effective date—1975-'76 2nd ex.s. c 38: "This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1976." [1975-'76 2nd ex.s. c 38 § 21.]

Severability—1975-'76 2nd ex.s. c 38: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 38 § 20.]

9A.08.030 Criminal liability of corporations and persons acting or under a duty to act in their behalf. (1) As used in this section:

(a) "Agent" means any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation;

(b) "Corporation" includes a joint stock association;

(c) "High managerial agent" means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

(2) A corporation is guilty of an offense when:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law; or

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and on behalf of the corporation; or

(c) The conduct constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his employment and in behalf of the corporation and (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.

(3) A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation to the same extent

as if such conduct were performed in his own name or behalf.

(4) Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows he has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent.

(5) Every corporation, whether foreign or domestic, which shall violate any provision of RCW 9A.28.040, shall forfeit every right and franchise to do business in this state. The attorney general shall begin and conduct all actions and proceedings necessary to enforce the provisions of this subsection. [1975 1st ex.s. c 260 § 9A.08.030.]

Chapter 9A.12 INSANITY

Sections

9A.12.010 Insanity.

9A.12.010 Insanity. To establish the defense of insanity, it must be shown that:

(1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(a) He was unable to perceive the nature and quality of the act with which he is charged; or

(b) He was unable to tell right from wrong with reference to the particular act charged.

(2) The defense of insanity must be established by a preponderance of the evidence. [1975 1st ex.s. c 260 § 9A.12.010.]

Chapter 9A.16 DEFENSES

Sections

9A.16.010 Definitions.

9A.16.020 Use of force—When lawful.

9A.16.030 Homicide—When excusable.

9A.16.040 Justifiable homicide or use of deadly force by public officer, peace officer, person aiding.

9A.16.050 Homicide—By other person—When justifiable.

9A.16.060 Duress.

9A.16.070 Entrapment.

9A.16.080 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.

9A.16.090 Intoxication.

9A.16.100 Use of force on children—Policy—Actions presumed unreasonable.

9A.16.110 Defense of person or property against heinous crime—Indemnification or reimbursement by state for expenses of defendant.

9A.16.010 Definitions. In this chapter, unless a different meaning is plainly required:

(1) "Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

(2) "Deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. [1986 c 209 § 1; 1975 1st ex.s. c 260 § 9A.16.010.]

9A.16.020 Use of force—When lawful. The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;

(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

(4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

(5) Whenever used by a carrier of passengers or the carrier's authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to the offender's personal safety;

(6) Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority for the restraint or custody of the person. [1986 c 149 § 2; 1979 ex.s. c 244 § 7; 1977 ex.s. c 80 § 13; 1975 1st ex.s. c 260 § 9A.16.020.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

9A.16.030 Homicide—When excusable. Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, without criminal negligence, or without any unlawful intent. [1979 ex.s. c 244 § 8; 1975 1st ex.s. c 260 § 9A.16.030.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

9A.16.040 Justifiable homicide or use of deadly force by public officer, peace officer, person aiding. (1) Homicide or the use of deadly force is justifiable in the following cases:

(a) When a public officer is acting in obedience to the judgment of a competent court; or

(b) When necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.

(c) When necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

(ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; or

(iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or

(iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.

(3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

(4) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section. [1986 c 209 § 2; 1975 1st ex.s. c 260 § 9A.16.040.]

Legislative recognition: "The legislature recognizes that RCW 9A.16.040 establishes a dual standard with respect to the use of deadly force by peace officers and private citizens, and further recognizes that private citizens' permissible use of deadly force under the authority of RCW 9.01.200, 9A.16.020, or 9A.16.050 is not restricted and remains broader than the limitations imposed on peace officers." [1986 c 209 § 3.]

9A.16.050 Homicide—By other person—When justifiable. Homicide is also justifiable when committed either:

(1) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his presence or company, when there is

reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or

(2) In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling, or other place of abode, in which he is. [1975 1st ex.s. c 260 § 9A.16.050.]

9A.16.060 Duress. (1) In any prosecution for a crime, it is a defense that:

(a) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or another would be liable to immediate death or immediate grievous bodily injury; and

(b) That such apprehension was reasonable upon the part of the actor; and

(c) That the actor would not have participated in the crime except for the duress involved.

(2) The defense of duress is not available if the crime charged is murder or manslaughter.

(3) The defense of duress is not available if the actor intentionally or recklessly places himself in a situation in which it is probable that he will be subject to duress.

(4) The defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse. [1975 1st ex.s. c 260 § 9A.16.060.]

9A.16.070 Entrapment. (1) In any prosecution for a crime, it is a defense that:

(a) The criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and

(b) The actor was lured or induced to commit a crime which the actor had not otherwise intended to commit.

(2) The defense of entrapment is not established by a showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime. [1975 1st ex.s. c 260 § 9A.16.070.]

9A.16.080 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense. In any criminal action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer, by the owner of the mercantile establishment, or by the owner's authorized employee or agent, and that such peace officer, owner, employee, or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft or shoplifting on such premises of such merchandise. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a

statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise. [1975 1st ex.s. c 260 § 9A.16.080.]

9A.16.090 Intoxication. No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining such mental state. [1975 1st ex.s. c 260 § 9A.16.090.]

9A.16.100 Use of force on children—Policy—Actions presumed unreasonable. It is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. However, the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. Any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive. [1986 c 149 § 1.]

9A.16.110 Defense of person or property against heinous crime—Indemnification or reimbursement by state for expenses of defendant. (1) No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself or herself, his or her family, or his or her real or personal property, or for coming to the aid of another who is in imminent danger of or the victim of assault, robbery, kidnapping, arson, burglary, rape, murder, or any other heinous crime.

(2) When a substantial question of self defense in such a case shall exist which needs legal investigation or court action for the full determination of the facts, and the defendant's actions are subsequently found justified under the intent of this section, the state of Washington shall indemnify or reimburse such defendant for all loss of time, legal fees, or other expenses involved in his or her defense. This indemnification or reimbursement is an award of reasonable costs which include loss of time, legal fees, or other expenses and is not an independent cause of action. The determination of an award shall be by the judge or jury

at the discretion of the judge in the criminal proceeding. To award these reasonable costs the trier of fact must find that the defendant's claim of self-defense was sustained by a preponderance of the evidence: PROVIDED, HOWEVER, That nothing shall preclude the legislature from granting a higher award through the sundry claims process.

(3) Whenever the issue of self defense under this section is decided by a judge or whenever a judge exercises the discretion authorized under subsection (2) of this section in determining an award, the judge shall consider the same questions as must be answered in the special verdict under subsection (4) of this section.

(4) Whenever the issue of self defense under this section has been submitted to a jury, and the jury has found the defendant not guilty, and the judge has submitted an award determination to the jury, the court shall instruct the jury to return a special verdict in substantially the following form:

- | | | |
|--|-----------|--|
| | answer | |
| | yes or no | |
| 1. Was the finding of not guilty based upon self defense? | | |
| 2. If your answer to question 1 is no, do not answer the remaining question. | | |
| 3. If your answer to question 1 is yes, was the defendant: | | |
| a. Protecting himself or herself? | | |
| b. Protecting his or her family? | | |
| c. Protecting his or her property? | | |
| d. Coming to the aid of another who was in imminent danger of a heinous crime? | | |
| e. Coming to the aid of another who was the victim of a heinous crime? | | |

[1989 c 94 § 1; 1977 ex.s. c 206 § 8. Formerly RCW 9.01.200.]

Use of deadly force—Legislative recognition: See note following RCW 9A.16.040.

**Chapter 9A.20
CLASSIFICATION OF CRIMES**

Sections

- 9A.20.010 Classification and designation of crimes.
- 9A.20.020 Authorized sentences for crimes committed before July 1, 1984.
- 9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after.
- 9A.20.030 Alternative to a fine—Restitution.
- 9A.20.040 Prosecutions related to felonies defined outside Title 9A RCW.

Assessments required of convicted persons
offender supervision: RCW 9.94A.270.
parolees: RCW 72.04A.120.
probationers: RCW 10.64.120.

9A.20.010 Classification and designation of crimes.

(1) Classified Felonies. (a) The particular classification of each felony defined in Title 9A RCW is expressly designated in the section defining it.

(b) For purposes of sentencing, classified felonies are designated as one of three classes, as follows:

- (i) Class A felony; or

- (ii) Class B felony; or
- (iii) Class C felony.

(2) Misdemeanors and Gross Misdemeanors. (a) Any crime punishable by a fine of not more than one thousand dollars, or by imprisonment in a county jail for not more than ninety days, or by both such fine and imprisonment is a misdemeanor. Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor.

(b) All crimes other than felonies and misdemeanors are gross misdemeanors. [1984 c 258 § 808; 1975 1st ex.s. c 260 § 9A.20.010.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

9A.20.020 Authorized sentences for crimes committed before July 1, 1984. (1) Felony. Every person convicted of a classified felony shall be punished as follows:

(a) For a class A felony, by imprisonment in a state correctional institution for a maximum term fixed by the court of not less than twenty years, or by a fine in an amount fixed by the court of not more than fifty thousand dollars, or by both such imprisonment and fine;

(b) For a class B felony, by imprisonment in a state correctional institution for a maximum term of not more than ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such imprisonment and fine;

(c) For a class C felony, by imprisonment in a state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than ten thousand dollars, or by both such imprisonment and fine.

(2) Gross Misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed prior to July 1, 1984. [1982 c 192 § 9; 1981 c 137 § 37; 1975-'76 2nd ex.s. c 38 § 2; 1975 1st ex.s. c 260 § 9A.20.020.]

Severability—1981 c 137: See RCW 9.94A.910.

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after. (1) Felony. No person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed on or after July 1, 1984. [1982 c 192 § 10.]

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

9A.20.030 Alternative to a fine—Restitution. (1) If a person has gained money or property or caused a victim to lose money or property through the commission of a crime, upon conviction thereof or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, the court, in lieu of imposing the fine authorized for the offense under RCW 9A.20.020, may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the commission of a crime. Such amount may be used to provide restitution to the victim at the order of the court. It shall be the duty of the prosecuting attorney to investigate the alternative of restitution, and to recommend it to the court, when the prosecuting attorney believes that restitution is appropriate and feasible. If the court orders restitution, the court shall make a finding as to the amount of the defendant's gain or victim's loss from the crime, and if the record does not contain sufficient evidence to support such finding the court may conduct a hearing upon the issue. For purposes of this section, the terms "gain" or "loss" refer to the amount of money or the value of property or services gained or lost.

(2) Notwithstanding any other provision of law, this section also applies to any corporation or joint stock association found guilty of any crime. [1982 1st ex.s. c 47 § 12; 1979 c 29 § 3; 1975 1st ex.s. c 260 § 9A.20.030.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Restitution

condition of probation: RCW 9.95.210.

condition to suspending sentence: RCW 9.92.060.

(1992 Ed.)

disposition when victim dead or not found: RCW 7.68.290.

9A.20.040 Prosecutions related to felonies defined outside Title 9A RCW. In any prosecution under this title where the grade or degree of a crime is determined by reference to the degree of a felony for which the defendant or another previously had been sought, arrested, charged, convicted, or sentenced, if such felony is defined by a statute of this state which is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this title;

(2) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this title;

(3) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this title. [1975 1st ex.s. c 260 § 9A.20.040.]

Chapter 9A.28

ANTICIPATORY OFFENSES

Sections

9A.28.010 Prosecutions based on felonies defined outside Title 9A RCW.

9A.28.020 Criminal attempt.

9A.28.030 Criminal solicitation.

9A.28.040 Criminal conspiracy.

9A.28.010 Prosecutions based on felonies defined outside Title 9A RCW. In any prosecution under this title for attempt, solicitation, or conspiracy to commit a felony defined by a statute of this state which is not in this title, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this title;

(2) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is eight years or more but less than twenty years, such felony shall be treated as a class B felony for purposes of this title;

(3) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this title. [1975 1st ex.s. c 260 § 9A.28.010.]

9A.28.020 Criminal attempt. (1) A person is guilty of an attempt to commit crime if, with intent to commit a specific crime, he does any act which is a substantial step toward the commission of that crime.

(2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have

been attempted was, under the attendant circumstances, factually or legally impossible of commission.

(3) An attempt to commit a crime is a:

(a) Class A felony when the crime attempted is murder in the first degree or arson in the first degree;

(b) Class B felony when the crime attempted is a class A felony other than murder in the first degree or arson in the first degree;

(c) Class C felony when the crime attempted is a class B felony;

(d) Gross misdemeanor when the crime attempted is a class C felony;

(e) Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor. [1981 c 203 § 3; 1975 1st ex.s. c 260 § 9A.28.020.]

9A.28.030 Criminal solicitation. (1) A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

(2) Criminal solicitation shall be punished in the same manner as criminal attempt under RCW 9A.28.020. [1975 1st ex.s. c 260 § 9A.28.030.]

9A.28.040 Criminal conspiracy. (1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

(2) It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:

- (a) Has not been prosecuted or convicted; or
- (b) Has been convicted of a different offense; or
- (c) Is not amenable to justice; or
- (d) Has been acquitted; or
- (e) Lacked the capacity to commit an offense.

(3) Criminal conspiracy is a:

(a) Class A felony when an object of the conspiratorial agreement is murder in the first degree;

(b) Class B felony when an object of the conspiratorial agreement is a class A felony other than murder in the first degree;

(c) Class C felony when an object of the conspiratorial agreement is a class B felony;

(d) Gross misdemeanor when an object of the conspiratorial agreement is a class C felony;

(e) Misdemeanor when an object of the conspiratorial agreement is a gross misdemeanor or misdemeanor. [1975 1st ex.s. c 260 § 9A.28.040.]

Chapter 9A.32 HOMICIDE

Sections

- 9A.32.010 Homicide defined.
- 9A.32.020 Premeditation—Limitations.
- 9A.32.030 Murder in the first degree.
- 9A.32.040 Murder in the first degree—Sentence.
- 9A.32.050 Murder in the second degree.
- 9A.32.055 Homicide by abuse.
- 9A.32.060 Manslaughter in the first degree.
- 9A.32.070 Manslaughter in the second degree.

Capital punishment—Aggravated first degree murder: Chapter 10.95 RCW.

Controlled substances homicide: RCW 69.50.415.

9A.32.010 Homicide defined. Homicide is the killing of a human being by the act, procurement or omission of another, death occurring within three years and a day, and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable homicide, or (5) justifiable homicide. [1987 c 187 § 2; 1983 c 10 § 1; 1975 1st ex.s. c 260 § 9A.32.010.]

Excusable homicide: RCW 9A.16.030.

Justifiable homicide: RCW 9A.16.040 and 9A.16.050.

9A.32.020 Premeditation—Limitations. (1) As used in this chapter, the premeditation required in order to support a conviction of the crime of murder in the first degree must involve more than a moment in point of time.

(2) Nothing contained in this chapter shall affect RCW 46.61.520. [1975 1st ex.s. c 260 § 9A.32.020.]

9A.32.030 Murder in the first degree. (1) A person is guilty of murder in the first degree when:

(a) With a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person; or

(b) Under circumstances manifesting an extreme indifference to human life, he or she engages in conduct which creates a grave risk of death to any person, and thereby causes the death of a person; or

(c) He or she commits or attempts to commit the crime of either (1) robbery in the first or second degree, (2) rape in the first or second degree, (3) burglary in the first degree, (4) arson in the first or second degree, or (5) kidnapping in the first or second degree, and in the course of or in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants: Except that in any prosecution under this subdivision (1)(c) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the first degree is a class A felony. [1990 c 200 § 1; 1975-'76 2nd ex.s. c 38 § 3; 1975 1st ex.s. c 260 § 9A.32.030.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.32.040 Murder in the first degree—Sentence. Notwithstanding RCW 9A.32.030(2), any person convicted of the crime of murder in the first degree shall be sentenced to life imprisonment. [1982 c 10 § 2. Prior: (1) 1981 c 138 § 21; 1977 ex.s. c 206 § 3; 1975 1st ex.s. c 260 § 9A.32.040. (2) 1981 c 136 § 55, repealed by 1982 c 10 § 18.]

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 138: See RCW 10.95.900.

Effective date—1981 c 136: See RCW 72.09.900.

Capital punishment—Aggravated first degree murder: Chapter 10.95 RCW.

9A.32.050 Murder in the second degree. (1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he causes the death of such person or of a third person; or

(b) He commits or attempts to commit any felony other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision (1)(b) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the second degree is a class A felony. [1975-'76 2nd ex.s. c 38 § 4; 1975 1st ex.s. c 260 § 9A.32.050.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.32.055 Homicide by abuse. (1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of

assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

(2) As used in this section, "dependent adult" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(3) Homicide by abuse is a class A felony. [1987 c 187 § 1.]

9A.32.060 Manslaughter in the first degree. (1) A person is guilty of manslaughter in the first degree when:

(a) He recklessly causes the death of another person; or

(b) He intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child.

(2) Manslaughter in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.32.060.]

9A.32.070 Manslaughter in the second degree. (1) A person is guilty of manslaughter in the second degree when, with criminal negligence, he causes the death of another person.

(2) Manslaughter in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.32.070.]

Chapter 9A.36

ASSAULT AND OTHER CRIMES INVOLVING PHYSICAL HARM

Sections

9A.36.011	Assault in the first degree.
9A.36.021	Assault in the second degree.
9A.36.031	Assault in the third degree.
9A.36.041	Assault in the fourth degree.
9A.36.045	Reckless endangerment in the first degree.
9A.36.050	Reckless endangerment in the second degree.
9A.36.060	Promoting a suicide attempt.
9A.36.070	Coercion.
9A.36.080	Malicious harassment.
9A.36.090	Threats against governor or family.
9A.36.100	Custodial assault.
9A.36.120	Assault of a child in the first degree.
9A.36.130	Assault of a child in the second degree.
9A.36.140	Assault of a child in the third degree.

9A.36.011 Assault in the first degree. (1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:

(a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death; or

(b) Administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(c) Assaults another and inflicts great bodily harm.

(2) Assault in the first degree is a class A felony. [1986 c 257 § 4.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

9A.36.021 Assault in the second degree. (1) A person is guilty of assault in the second degree if he or she,

under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison, the human immunodeficiency virus as defined in chapter 70.24 RCW, or any other destructive or noxious substance; or

(e) With intent to inflict bodily harm, exposes or transmits human immunodeficiency virus as defined in chapter 70.24 RCW; or

(f) With intent to commit a felony, assaults another; or

(g) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture.

(2) Assault in the second degree is a class B felony. [1988 c 266 § 2; 1988 c 206 § 916; 1988 c 158 § 2; 1987 c 324 § 2; 1986 c 257 § 5.]

Reviser's note: This section was amended by 1988 c 158 § 2, 1988 c 206 § 916, and by 1988 c 266 § 2, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1988 c 266: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1988." [1988 c 266 § 3.]

Effective date—1988 c 206 §§ 916, 917: "Sections 916 and 917 of this act shall take effect July 1, 1988." [1988 c 206 § 922.]

Severability—1988 c 206: See RCW 70.24.900.

Effective date—1988 c 158: See note following RCW 9A.04.110.

Effective date—1987 c 324: See note following RCW 9A.04.110.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

9A.36.031 Assault in the third degree. (1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver by a public or private transit company while that person is operating or is in control of a vehicle that is owned or operated by the transit company and that is occupied by one or more passengers; or

(c) Assaults a school bus driver employed by a school district or a private company under contract for transportation services with a school district while the driver is operating or is in control of a school bus that is occupied by one or more passengers; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a fire fighter or other employee of a fire department or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault.

(2) Assault in the third degree is a class C felony. [1990 c 236 § 1; 1989 c 169 § 1; 1988 c 158 § 3; 1986 c 257 § 6.]

Effective date—1988 c 158: See note following RCW 9A.04.110.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

9A.36.041 Assault in the fourth degree. (1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

(2) Assault in the fourth degree is a gross misdemeanor. [1987 c 188 § 2; 1986 c 257 § 7.]

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

Effective date—1987 c 188: See note following RCW 9A.36.100.

Severability—1986 c 257: See note following RCW 9A.56.010.

9A.36.045 Reckless endangerment in the first degree. (1) A person is guilty of reckless endangerment in the first degree when he or she recklessly discharges a firearm in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge.

(2) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

(3) Reckless endangerment in the first degree is a class C felony. [1989 c 271 § 109.]

Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Application—1989 c 271 §§ 101 through 111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

9A.36.050 Reckless endangerment in the second degree. (1) A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct not amounting to reckless endangerment in the first degree but which creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment in the second degree is a gross misdemeanor. [1989 c 271 § 110; 1975 1st ex.s. c 260 § 9A.36.050.]

Finding—Intent—1989 c 271 §§ 102, 109, and 110: "The legislature finds that increased trafficking in illegal drugs has increased the likelihood of "drive-by shootings." It is the intent of the legislature in sections 102, 109, and 110 of this act to categorize such reckless and criminal activity into a separate crime and to provide for an appropriate punishment." [1989 c 271 § 108.] "Sections 102, 109, and 110 of this act" consist of the enactment of RCW 9A.36.045 and the 1989 c 271 amendments to RCW 9.94A.320 and 9A.36.050.

Application—1989 c 271 §§ 101 through 111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

9A.36.060 Promoting a suicide attempt. (1) A person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide.

(2) Promoting a suicide attempt is a class C felony. [1975 1st ex.s. c 260 § 9A.36.060.]

9A.36.070 Coercion. (1) A person is guilty of coercion if by use of a threat he compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he has a legal right to engage in.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in RCW 9A.04.110(25)(a), (b), or (c).

(3) Coercion is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.36.070.]

9A.36.080 Malicious harassment. (1) A person is guilty of malicious harassment if he maliciously and with the intent to intimidate or harass another person because of, or in a way that is reasonably related to, associated with, or directed toward, that person's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap:

(a) Causes physical injury to another person; or

(b) By words or conduct places another person in reasonable fear of harm to his person or property or harm to the person or property of a third person. Such words or conduct include, but are not limited to, (i) cross burning, (ii) painting, drawing, or depicting symbols or words on the property of the victim when the symbols or words historically or traditionally connote hatred or threats toward the victim, or (iii) written or oral communication designed to intimidate or harass because of, or in a way that is reasonably related to, associated with, or directed toward, that person's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap. However, it does not constitute malicious harassment for a person to speak or act in a critical, insulting, or deprecatory way unless the context or circumstances surrounding the words or conduct places another person in reasonable fear of harm to his or her person or property or harm to the person or property of a third person; or

(c) Causes physical damage to or destruction of the property of another person.

(2) The following constitute per se violations of this section:

(a) Cross burning; or

(b) Defacement of the property of the victim or a third person with symbols or words when the symbols or words historically or traditionally connote hatred or threats toward the victim.

(3) Malicious harassment is a class C felony.

(4) In addition to the criminal penalty provided in subsection (3) of this section, there is hereby created a civil cause of action for malicious harassment. A person may be liable to the victim of malicious harassment for actual damages and punitive damages of up to ten thousand dollars.

(5) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law. [1989 c 95 § 1; 1984 c 268 § 1; 1981 c 267 § 1.]

Construction—1989 c 95: "The provisions of this act shall be liberally construed in order to effectuate its purpose." [1989 c 95 § 3.]

Severability—1989 c 95: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 95 § 4.]

Harassment: Chapters 9A.46 and 10.14 RCW.

9A.36.090 Threats against governor or family. (1) Whoever knowingly and wilfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the governor of the state or his immediate family, the governor-elect, the lieutenant governor, other officer next in the order of succession to the office of governor of the state, or the lieutenant governor-elect, or knowingly and wilfully otherwise makes any such threat against the governor, governor-elect, lieutenant governor, other officer next in the order of succession to the office of governor, or lieutenant governor-elect, shall be guilty of a class C felony.

(2) As used in this section, the term "governor-elect" and "lieutenant governor-elect" means such persons as are the successful candidates for the offices of governor and lieutenant governor, respectively, as ascertained from the results of the general election. As used in this section, the phrase "other officer next in the order of succession to the office of governor" means the person other than the lieutenant governor next in order of succession to the office of governor under Article 3, section 10 of the state Constitution.

(3) The Washington state patrol may investigate for violations of this section. [1982 c 185 § 1.]

Reviser's note: 1982 c 185 § 2 directed that this section constitute a new chapter in Title 9 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 9A.36 RCW.

9A.36.100 Custodial assault. (1) A person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree and where the person:

(a) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any juvenile corrections institution or local juvenile detention facilities who was performing official duties at the time of the assault;

(b) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provid-

er, or any vendor or agent thereof at any adult corrections institution or local adult detention facilities who was performing official duties at the time of the assault;

(c)(i) Assaults a full or part-time community correction officer while the officer is performing official duties; or

(ii) Assaults any other full or part-time employee who is employed in a community corrections office while the employee is performing official duties; or

(d) Assaults any volunteer who was assisting a person described in (c) of this subsection at the time of the assault.

(2) Custodial assault is a class C felony. [1988 c 151 § 1; 1987 c 188 § 1.]

Effective date—1987 c 188: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 188 § 3.]

9A.36.120 Assault of a child in the first degree. (1) A person eighteen years of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the first degree, as defined in RCW 9A.36.011, against the child; or

(b) Intentionally assaults the child and either:

(i) Recklessly inflicts great bodily harm; or

(ii) Causes substantial bodily harm, and the person has previously engaged in a pattern or practice either of (A) assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks, or (B) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the first degree is a class A felony. [1992 c 145 § 1.]

9A.36.130 Assault of a child in the second degree.

(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the second degree if the child is under the age of thirteen and the person:

(a) Commits the crime of assault in the second degree, as defined in RCW 9A.36.021, against a child; or

(b) Intentionally assaults the child and causes bodily harm that is greater than transient physical pain or minor temporary marks, and the person has previously engaged in a pattern or practice either of (i) assaulting the child which has resulted in bodily harm that is greater than transient pain or minor temporary marks, or (ii) causing the child physical pain or agony that is equivalent to that produced by torture.

(2) Assault of a child in the second degree is a class B felony. [1992 c 145 § 2.]

9A.36.140 Assault of a child in the third degree.

(1) A person eighteen years of age or older is guilty of the crime of assault of a child in the third degree if the child is under the age of thirteen and the person commits the crime of assault in the third degree as defined in RCW 9A.36.031(1)(d) or (f) against the child.

(2) Assault of a child in the third degree is a class C felony. [1992 c 145 § 3.]

Chapter 9A.40

KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE

Sections

9A.40.010	Definitions.
9A.40.020	Kidnapping in the first degree.
9A.40.030	Kidnapping in the second degree.
9A.40.040	Unlawful imprisonment.
9A.40.060	Custodial interference in the first degree.
9A.40.070	Custodial interference in the second degree.
9A.40.080	Custodial interference—Assessment of costs—Defense—Consent defense, restricted.

9A.40.010 Definitions. The following definitions apply in this chapter:

(1) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him has not acquiesced.

(2) "Abduct" means to restrain a person by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly force;

(3) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse. [1975 1st ex.s. c 260 § 9A.40.010.]

9A.40.020 Kidnapping in the first degree. (1) A person is guilty of kidnapping in the first degree if he intentionally abducts another person with intent:

(a) To hold him for ransom or reward, or as a shield or hostage; or

(b) To facilitate commission of any felony or flight thereafter; or

(c) To inflict bodily injury on him; or

(d) To inflict extreme mental distress on him or a third person; or

(e) To interfere with the performance of any governmental function.

(2) Kidnapping in the first degree is a class A felony. [1975 1st ex.s. c 260 § 9A.40.020.]

9A.40.030 Kidnapping in the second degree. (1) A person is guilty of kidnapping in the second degree if he intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

(2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that (a) the abduction does not include the use of or intent to use or threat to use deadly force, and (b) the actor is a relative of the person abducted, and (c) the actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

(3) Kidnapping in the second degree is a class B felony. [1975 1st ex.s. c 260 § 9A.40.030.]

9A.40.040 Unlawful imprisonment. (1) A person is guilty of unlawful imprisonment if he knowingly restrains another person.

(2) Unlawful imprisonment is a class C felony. [1975 1st ex.s. c 260 § 9A.40.040.]

9A.40.060 Custodial interference in the first degree.

(1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child or incompetent person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

(a) Intends to hold the child or incompetent person permanently or for a protracted period; or

(b) Exposes the child or incompetent person to a substantial risk of illness or physical injury; or

(c) Causes the child or incompetent person to be removed from the state of usual residence; or

(d) Retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period with intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to physical custody or to prevent a parent, guardian, institution, agency, or other person with lawful right to physical custody from regaining custody.

(2) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

(3) Custodial interference in the first degree is a class C felony. [1984 c 95 § 1.]

Severability—1984 c 95: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 95 § 8.]

9A.40.070 Custodial interference in the second degree.

(1) A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person. This subsection shall not apply to a parent's noncompliance with a court-ordered parenting plan.

(2) A parent of a child is guilty of custodial interference in the second degree if: (a) The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan; or (b) the parent has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160(3); or (c) if the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.

(3) Nothing in (b) of this subsection prohibits conviction of custodial interference in the second degree under (a) or (c) of this subsection in absence of findings of contempt.

(4) The first conviction of custodial interference in the second degree is a gross misdemeanor. The second or subsequent conviction of custodial interference in the second degree is a class C felony. [1989 c 318 § 2; 1984 c 95 § 2.]

Severability—1989 c 318: See note following RCW 26.09.160.

Severability—1984 c 95: See note following RCW 9A.40.060.

9A.40.080 Custodial interference—Assessment of costs—Defense—Consent defense, restricted.

(1) Any reasonable expenses incurred in locating or returning a child or incompetent person shall be assessed against a defendant convicted under RCW 9A.40.060 or 9A.40.070.

(2) In any prosecution of custodial interference in the first or second degree, it is a complete defense, if established by the defendant by a preponderance of the evidence, that:

(a) The defendant's purpose was to protect the child, incompetent person, or himself or herself from imminent physical harm, that the belief in the existence of the imminent physical harm was reasonable, and that the defendant sought the assistance of the police, sheriff's office, protective agencies, or the court of any state before committing the acts giving rise to the charges or within a reasonable time thereafter;

(b) The complainant had, prior to the defendant committing the acts giving rise to the crime, for a protracted period of time, failed to exercise his or her rights to physical custody or access to the child under a court-ordered parenting plan or order granting visitation rights, provided that such failure was not the direct result of the defendant's denial of access to such person;

(c) The acts giving rise to the charges were consented to by the complainant; or

(d) The offender, after providing or making a good faith effort to provide notice to the person entitled to access to the child, failed to provide access to the child due to reasons that a reasonable person would believe were directly related to the welfare of the child, and allowed access to the child in accordance with the court order within a reasonable period of time. The burden of proof that the denial of access was reasonable is upon the person denying access to the child.

(3) Consent of a child less than sixteen years of age or of an incompetent person does not constitute a defense to an action under RCW 9A.40.060 or 9A.40.070. [1989 c 318 § 5; 1984 c 95 § 3.]

Severability—1989 c 318: See note following RCW 26.09.160.

Severability—1984 c 95: See note following RCW 9A.40.060.

Child custody, action by relative: RCW 26.09.255.

Chapter 9A.42
CRIMINAL MISTREATMENT

Sections

- 9A.42.010 Definitions.
9A.42.020 Criminal mistreatment in the first degree.
9A.42.030 Criminal mistreatment in the second degree.
9A.42.040 Withdrawal of life support systems.
9A.42.050 Defense of financial inability.

9A.42.010 Definitions. As used in this chapter:

(1) "Basic necessities of life" means food, shelter, clothing, and health care.

(2)(a) "Bodily injury" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily part or organ.

(3) "Child" means a person under eighteen years of age.

(4) "Dependent person" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(5) "Parent" has its ordinary meaning and also includes a guardian and the authorized agent of a parent or guardian. [1986 c 250 § 1.]

9A.42.020 Criminal mistreatment in the first degree. (1) A parent of a child or the person entrusted with the physical custody of a child or dependent person is guilty of criminal mistreatment in the first degree if he or she recklessly causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the first degree is a class B felony. [1986 c 250 § 2.]

9A.42.030 Criminal mistreatment in the second degree. (1) A parent of a child or the person entrusted with the physical custody of a child or dependent person is guilty of criminal mistreatment in the second degree if he or she recklessly either (a) creates an imminent and substantial risk of death or great bodily harm, or (b) causes substantial bodily harm by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the second degree is a class C felony. [1986 c 250 § 3.]

9A.42.040 Withdrawal of life support systems. RCW 9A.42.020 and 9A.42.030 do not apply to a decision to withdraw life support systems made in accordance with law by a health care professional and family members or others with a legal duty to care for the patient. [1986 c 250 § 4.]

9A.42.050 Defense of financial inability. In any prosecution for criminal mistreatment, it shall be a defense that the withholding of the basic necessities of life is due to financial inability only if the person charged has made a reasonable effort to obtain adequate assistance. [1986 c 250 § 5.]

Chapter 9A.44
SEXUAL OFFENSES

Sections

- 9A.44.010 Definitions.
9A.44.020 Testimony—Evidence—Written motion—Admissibility.
9A.44.030 Defenses to prosecution under this chapter.
9A.44.040 Rape in the first degree.
9A.44.045 Minimum term for first degree rape—Restrictions on release from confinement—Application to offenses before July 1, 1984.
9A.44.050 Rape in the second degree.
9A.44.060 Rape in the third degree.
9A.44.073 Rape of a child in the first degree.
9A.44.076 Rape of a child in the second degree.
9A.44.079 Rape of a child in the third degree.
9A.44.083 Child molestation in the first degree.
9A.44.086 Child molestation in the second degree.
9A.44.089 Child molestation in the third degree.
9A.44.093 Sexual misconduct with a minor in the first degree.
9A.44.096 Sexual misconduct with a minor in the second degree.
9A.44.100 Indecent liberties.
9A.44.120 Admissibility of child's statement—Conditions.
9A.44.130 Registration of sex offenders—Procedures—Sex offense defined—Penalties.
9A.44.140 Registration of sex offenders—Termination of duty to register.
9A.44.150 Testimony of child by closed circuit television.
9A.44.900 Decodifications and additions to this chapter.
9A.44.901 Construction—Sections decodified and added to this chapter.
9A.44.902 Effective date—1979 ex.s. c 244.
9A.44.903 Section captions—1988 c 145.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Witnesses: Rules of court: ER 601 through 615.

9A.44.010 Definitions. As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party.

(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual

intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.

(5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

(7) "Consent" means that at the time of the act of sexual intercourse there are actual words or conduct indicating freely given agreement to have sexual intercourse.

(8) "Significant relationship" means a situation in which the perpetrator is:

(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors; or

(b) A person who in the course of his or her employment supervises minors.

(9) "Abuse of a supervisory position" means a direct or indirect threat or promise to use authority to the detriment or benefit of a minor.

(10) "Developmentally disabled," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person as defined in *RCW 71.20.016.

(11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled persons at the facility. [1988 c 146 § 3; 1988 c 145 § 1; 1981 c 123 § 1; 1975 1st ex.s. c 14 § 1. Formerly RCW 9.79.140.]

*Reviser's note: RCW 71.20.016 was repealed by 1988 c 176; later enactment, see RCW 71A.10.020.

Severability—Effective dates—1988 c 146: See notes following RCW 9A.44.050.

Effective date—1988 c 145: "This act shall take effect July 1, 1988." [1988 c 145 § 26.]

Savings—Application—1988 c 145: "This act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988." [1988 c 145 § 25.]

9A.44.020 Testimony—Evidence—Written motion—Admissibility. (1) In order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated.

(2) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

(3) In any prosecution for the crime of rape or for an attempt to commit, or an assault with an intent to commit any such crime evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent only pursuant to the following procedure:

(a) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.

(b) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

(d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(4) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing pursuant to subsection (3) of this section concerning such evidence. [1975 1st ex.s. c 14 § 2. Formerly RCW 9.79.150.]

9A.44.030 Defenses to prosecution under this chapter. (1) In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

(2) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, That it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be the age identified in subsection (3) of this section based upon declarations as to age by the alleged victim.

(3) The defense afforded by subsection (2) of this section requires that for the following defendants, the reasonable belief be as indicated:

(a) For a defendant charged with rape of a child in the first degree, that the victim was at least twelve, or was less than twenty-four months younger than the defendant;

(b) For a defendant charged with rape of a child in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(c) For a defendant charged with rape of a child in the third degree, that the victim was at least sixteen, or was less than forty-eight months younger than the defendant;

(d) For a defendant charged with sexual misconduct with a minor in the first degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant;

(e) For a defendant charged with child molestation in the first degree, that the victim was at least twelve, or was less than thirty-six months younger than the defendant;

(f) For a defendant charged with child molestation in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;

(g) For a defendant charged with child molestation in the third degree, that the victim was at least sixteen, or was less than thirty-six months younger than the defendant;

(h) For a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant. [1988 c 145 § 20; 1975 1st ex.s. c 14 § 3. Formerly RCW 9.79.160.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.040 Rape in the first degree. (1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

(a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or

(b) Kidnaps the victim; or

(c) Inflicts serious physical injury; or

(d) Feloniously enters into the building or vehicle where the victim is situated.

(2) Rape in the first degree is a class A felony. [1983 c 118 § 1; 1983 c 73 § 1; 1982 c 192 § 11; 1982 c 10 § 3. Prior: (1) 1981 c 137 § 36; 1979 ex.s. c 244 § 1; 1975 1st ex.s. c 247 § 1; 1975 1st ex.s. c 14 § 4. (2) 1981 c 136 § 57, repealed by 1982 c 10 § 18. Formerly RCW 9.79.170.]

Reviser's note: This section was amended by 1983 c 73 § 1 and by 1983 c 118 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1983 c 73: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 73 § 2.]

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 137: See RCW 9.94A.910.

Effective date—1981 c 136: See RCW 72.09.900.

9A.44.045 Minimum term for first degree rape—Restrictions on release from confinement—Application to

offenses before July 1, 1984. No person convicted of rape in the first degree shall be granted a deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility: PROVIDED, That every person convicted of rape in the first degree shall be confined for a minimum of three years: PROVIDED FURTHER, That the *board of prison terms and paroles shall have authority to set a period of confinement greater than three years but shall never reduce the minimum three-year period of confinement; nor shall the board release the convicted person during the first three years of confinement as a result of any type of good time calculation; nor shall the department of corrections permit the convicted person to participate in any work release program or furlough program during the first three years of confinement. This section applies only to offenses committed prior to July 1, 1984. [1982 c 192 § 12.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

9A.44.050 Rape in the second degree. (1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

(a) By forcible compulsion;

(b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(c) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim.

(2) Rape in the second degree is a class A felony. [1990 c 3 § 901; 1988 c 146 § 1; 1983 c 118 § 2; 1979 ex.s. c 244 § 2; 1975 1st ex.s. c 14 § 5. Formerly RCW 9.79.180.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1988 c 146: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 146 § 5.]

Effective dates—1988 c 146: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1988]. The remainder of this act shall take effect July 1, 1988." [1988 c 146 § 6.]

9A.44.060 Rape in the third degree. (1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:

(a) Where the victim did not consent as defined in *RCW 9A.44.010(6), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or

(b) Where there is threat of substantial unlawful harm to property rights of the victim.

(2) Rape in the third degree is a class C felony. [1979 ex.s. c 244 § 3; 1975 1st ex.s. c 14 § 6. Formerly RCW 9.79.190.]

***Reviser's note:** The reference to subsection (6) of RCW 9A.44.010 is erroneous. As a result of the amendment by 1988 c 146 § 3, "consent" is defined in subsection (7) of that section.

9A.44.073 Rape of a child in the first degree. (1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony. [1988 c 145 § 2.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.076 Rape of a child in the second degree. (1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Rape of a child in the second degree is a class A felony. [1990 c 3 § 903; 1988 c 145 § 3.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.079 Rape of a child in the third degree. (1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Rape of a child in the third degree is a class C felony. [1988 c 145 § 4.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.083 Child molestation in the first degree. (1) A person is guilty of child molestation in the first degree when the person has sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the first degree is a class A felony. [1990 c 3 § 902; 1988 c 145 § 5.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.086 Child molestation in the second degree. (1) A person is guilty of child molestation in the second degree when the person has sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the second degree is a class B felony. [1988 c 145 § 6.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.089 Child molestation in the third degree.

(1) A person is guilty of child molestation in the third degree when the person has sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Child molestation in the third degree is a class C felony. [1988 c 145 § 7.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.093 Sexual misconduct with a minor in the first degree. (1) A person is guilty of sexual misconduct with a minor in the first degree when the person has sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in sexual intercourse with the victim.

(2) Sexual misconduct with a minor in the first degree is a class C felony. [1988 c 145 § 8.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.096 Sexual misconduct with a minor in the second degree. (1) A person is guilty of sexual misconduct with a minor in the second degree when the person has sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in sexual contact with the victim.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor. [1988 c 145 § 9.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.100 Indecent liberties. (1) A person is guilty of indecent liberties when he knowingly causes another person who is not his spouse to have sexual contact with him or another:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless; or

(c) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim.

(2) Indecent liberties is a class B felony. [1988 c 146 § 2; 1988 c 145 § 10; 1986 c 131 § 1; 1975 1st ex.s. c 260 § 9A.88.100. Formerly RCW 9A.88.100.]

Severability—Effective dates—1988 c 146: See notes following RCW 9A.44.050.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.120 Admissibility of child's statement—Conditions. A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another or describing any attempted act of sexual contact with or on the child by another, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings, including juvenile offense adjudications, in the courts of the state of Washington if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

(2) The child either:

(a) Testifies at the proceedings; or

(b) Is unavailable as a witness: PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement. [1991 c 169 § 1; 1985 c 404 § 1; 1982 c 129 § 2.]

Severability—1982 c 129: See note following RCW 9A.04.080.

9A.44.130 Registration of sex offenders—Procedures—Sex offense defined—Penalties. (1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence.

(2) The person shall provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; and (h) social security number.

(3)(a) Sex offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses:

(i) **SEX OFFENDERS IN CUSTODY.** Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(ii) **SEX OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders, who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the active supervision of the state department

of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991.

(iii) **SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(iv) **SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders who move to Washington state from another state that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state, federal statutes, or Washington state for offenses committed on or after February 28, 1990. Sex offenders from other states who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (7) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within ten days of establishing the new residence. If any person required to register pursuant to this section moves to a new county, the person must register with the county sheriff in the new county within ten days of establishing the new residence. The person must also send written notice within ten days of the

change of address in the new county to the county sheriff with whom the person last registered.

(5) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex offense by RCW 9.94A.030.

(7) A person who knowingly fails to register as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor. [1991 c 274 § 2; 1990 c 3 § 402.]

Finding and intent—1991 c 274: "The legislature finds that sex offender registration has assisted law enforcement agencies in protecting their communities. This act is intended to clarify and amend the deadlines for sex offenders to register. This act's clarification or amendment of RCW 9A.44.130 does not relieve the obligation of sex offenders to comply with the registration requirements of RCW 9A.44.130 as that statute exists before July 28, 1991." [1991 c 274 § 1.] This act consisted of the 1991 c 274 amendments to RCW 9A.44.130 and 9A.44.140.

Finding—Policy—1990 c 3 § 402: "The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in RCW 9A.44.130." [1990 c 3 § 401.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9A.44.140 Registration of sex offenders—Termination of duty to register. (1) The duty to register under RCW 9A.44.130 shall end:

(a) For a person convicted of a class A felony: Such person may only be relieved of the duty to register under subsection (2) or (3) of this section.

(b) For a person convicted of a class B felony: Fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of any new offenses.

(c) For a person convicted of a class C felony: Ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses.

(2) Any person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions in other states, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider

the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. Except as provided in subsection (3) of this section, the court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(3) An offender having a duty to register under RCW 9A.44.130 for a sex offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after adjudication, and may consider other factors. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was fifteen years of age or older only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The court may relieve the petitioner of the duty to register for a sex offense that was committed while the petitioner was under the age of fifteen if the petitioner (a) has not been adjudicated of any additional sex offenses during the twenty-four months following the adjudication for the sex offense giving rise to the duty to register, and (b) the petitioner proves by a preponderance of the evidence that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(4) Unless relieved of the duty to register pursuant to this section, a violation of RCW 9A.44.130 is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

(5) Nothing in RCW 9.94A.220 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to RCW 9A.44.130. [1991 c 274 § 3; 1990 c 3 § 408.]

Finding and intent—1991 c 274: See note following RCW 9A.44.130.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9A.44.150 Testimony of child by closed circuit television. (1) On motion of the prosecuting attorney in a criminal proceeding, the court may order that a child under the age of ten may testify in a room outside the presence of the defendant and the jury while one-way closed circuit television equipment simultaneously projects the child's testimony into another room so the defendant and the jury can watch and hear the child testify if:

(a) The testimony will describe an act or attempted act of sexual contact performed with or on the child by another or describe an act or attempted act of physical abuse against the child by another;

(b) The testimony is taken during the criminal proceeding;

(c) The court finds by substantial evidence, in a hearing conducted outside the presence of the jury, that requiring the

child to testify in the presence of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at the trial. If the defendant is excluded from the presence of the child, the jury must also be excluded;

(d) As provided in subsection (1) (a) and (b) of this section, the court may allow a child to testify in the presence of the defendant but outside the presence of the jury, via closed circuit television, if the court finds, upon motion and hearing outside the presence of the jury, that the child will suffer serious emotional distress that will prevent the child from reasonably communicating at the trial in front of the jury, or, that although the child may be able to reasonably communicate at trial in front of the jury, the child will suffer serious emotional or mental distress from testifying in front of the jury. If the child is able to communicate in front of the defendant but not the jury the defendant will remain in the room with the child while the jury is excluded from the room;

(e) The court finds that the prosecutor has made all reasonable efforts to prepare the child for testifying, including informing the child or the child's parent or guardian about community counseling services, giving court tours, and explaining the trial process. If the prosecutor fails to demonstrate that preparations were implemented or the prosecutor in good faith attempted to implement them, the court shall deny the motion;

(f) The court balances the strength of the state's case without the testimony of the child against the defendant's constitutional rights and the degree of infringement of the closed-circuit television procedure on those rights;

(g) The court finds that no less restrictive method of obtaining the testimony exists that can adequately protect the child from the serious emotional or mental distress;

(h) When the court allows the child to testify outside the presence of the defendant, the defendant can communicate constantly with the defense attorney by electronic transmission and be granted reasonable court recesses during the child's testimony for person-to-person consultation with the defense attorney;

(i) The court can communicate with the attorneys by an audio system so that the court can rule on objections and otherwise control the proceedings;

(j) All parties in the room with the child are on camera and can be viewed by all other parties. If viewing all participants is not possible, the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child;

(k) The court finds that the television equipment is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment; and

(l) The court imposes reasonable guidelines upon the parties for conducting the filming to avoid trauma to the child or abuse of the procedure for tactical advantage.

The prosecutor, defense attorney, and a neutral and trained victim's advocate, if any, shall always be in the room where the child is testifying. The court in the court's discretion depending on the circumstances and whether the jury or defendant or both are excluded from the room where the child is testifying, may remain or may not remain in the room with the child.

(2) During the hearing conducted under subsection (1) of this section to determine whether the child may testify outside the presence of the defendant and/or the jury, the court may conduct the observation and examination of the child outside the presence of the defendant if:

(a) The prosecutor alleges and the court concurs that the child will be unable to testify in front of the defendant or will suffer severe emotional or mental distress if forced to testify in front of the defendant;

(b) The defendant can observe and hear the child by closed-circuit television;

(c) The defendant can communicate constantly with the defense attorney during the examination of the child by electronic transmission and be granted reasonable court recesses during the child's examination for person-to-person consultation with the defense attorney; and

(d) The court finds the closed-circuit television is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment. Whenever possible, all the parties in the room with the child shall be on camera so that the viewers can see all the parties. If viewing all participants is not possible, then the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child.

(3) The court shall make particularized findings on the record articulating the factors upon which the court based its decision to allow the child to testify via closed-circuit television pursuant to this section. The factors the court may consider include, but are not limited to, a consideration of the child's age, physical health, emotional stability, expressions by the child of fear of testifying in open court or in front of the defendant, the relationship of the defendant to the child, and the court's observations of the child's inability to reasonably communicate in front of the defendant or in open court. The court's findings shall identify the impact the factors have upon the child's ability to testify in front of the jury or the defendant or both and the specific nature of the emotional or mental trauma the child would suffer. The court shall determine whether the source of the trauma is the presence of the defendant, the jury, or both, and shall limit the use of the closed-circuit television accordingly.

(4) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense.

(5) This section may not preclude the presence of both the victim and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

(6) The Washington supreme court may adopt rules of procedure regarding closed-circuit television procedures.

(7) All recorded tapes of testimony produced by closed-circuit television equipment shall be subject to any protective order of the court for the purpose of protecting the privacy of the child.

(8) Nothing in this section creates a right of the child witness to a closed-circuit television procedure in lieu of testifying in open court.

(9) The state shall bear the costs of the closed-circuit television procedure. [1990 c 150 § 2.]

Legislative declaration—1990 c 150: "The legislature declares that protection of child witnesses in sexual assault and physical abuse cases is a substantial and compelling interest of the state. Sexual and physical abuse cases are some of the most difficult cases to prosecute, in part because frequently no witnesses exist except the child victim. When abuse is prosecuted, a child victim may suffer serious emotional and mental trauma from exposure to the abuser or from testifying in open court. In rare cases, the child is so traumatized that the child is unable to testify at trial and is unavailable as a witness or the child's ability to communicate in front of the jury or defendant is so reduced that the truth-seeking function of trial is impaired. In other rare cases, the child is able to proceed to trial but suffers long-lasting trauma as a result of testifying in court or in front of the defendant. The creation of procedural devices designed to enhance the truth-seeking process and to shield child victims from the trauma of exposure to the abuser and the courtroom is a compelling state interest." [1990 c 150 § 1.]

Severability—1990 c 150: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 150 § 3.]

9A.44.900 Decodifications and additions to this chapter. RCW 9.79.140, 9.79.150, 9.79.160, 9.79.170 as now or hereafter amended, 9.79.180 as now or hereafter amended, 9.79.190 as now or hereafter amended, 9.79.200 as now or hereafter amended, 9.79.210 as now or hereafter amended, 9.79.220 as now or hereafter amended, 9A.88.020, and 9A.88.100 are each decodified and are each added to Title 9A RCW as a new chapter with the designation chapter 9A.44 RCW. [1979 ex.s. c 244 § 17.]

9A.44.901 Construction—Sections decodified and added to this chapter. The sections decodified by RCW 9A.44.900 and added to Title 9A RCW as a new chapter with the designation chapter 9A.44 RCW shall be construed as part of Title 9A RCW. [1979 ex.s. c 244 § 18.]

9A.44.902 Effective date—1979 ex.s. c 244. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979. [1979 ex.s. c 244 § 19.]

9A.44.903 Section captions—1988 c 145. Section captions as used in this chapter do not constitute any part of the law. [1988 c 145 § 22.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Chapter 9A.46 HARASSMENT

Sections

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(1992 Ed.)

9A.46.905 Effective date—1985 c 288.

9A.46.910 Severability—1985 c 288.

Disclosure of information to person threatened or harassed by mentally ill person: RCW 71.05.390.

Harassment: RCW 9A.36.080, chapter 10.14 RCW.

9A.46.010 Legislative finding. The legislature finds that the prevention of serious, personal harassment is an important government objective. Toward that end, this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim.

The legislature further finds that the protection of such persons from harassment can be accomplished without infringing on constitutionally protected speech or activity. [1985 c 288 § 1.]

9A.46.020 Definition—Penalties. (1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

(2) A person who harasses another is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW, except that the person is guilty of a class C felony if either of the following applies: (a) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; or (b) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person.

(3) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law. [1992 c 186 § 2; 1985 c 288 § 2.]

Severability—1992 c 186: See note following RCW 9A.46.110.

9A.46.030 Place where committed. Any harassment offense committed as set forth in RCW 9A.46.020 or 9A.46.110 may be deemed to have been committed where the conduct occurred or at the place from which the threat or threats were made or at the place where the threats were received. [1992 c 186 § 3; 1985 c 288 § 3.]

Severability—1992 c 186: See note following RCW 9A.46.110.

9A.46.040 Court-ordered requirements upon person charged with crime—Violation. (1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) An intentional violation of a court order issued under this section is a misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW. A certified copy of the order shall be provided to the victim by the clerk of the court. [1985 c 288 § 4.]

9A.46.050 Arraignment—No-contact order. A defendant who is charged by citation, complaint, or information with an offense involving harassment and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information. At that appearance, the court shall determine the necessity of imposing a no-contact or no-harassment order or other conditions of pretrial release according to the procedures established by court rule for preliminary appearance or an arraignment. [1985 c 288 § 5.]

9A.46.060 Crimes included in harassment. As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

- (1) Harassment (RCW 9A.46.020);
- (2) Malicious harassment (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (RCW 9A.36.011);
- (5) Assault of a child in the first degree (RCW 9A.36.120);
- (6) Assault in the second degree (RCW 9A.36.021);
- (7) Assault of a child in the second degree (RCW 9A.36.130);
- (8) Assault in the fourth degree (RCW 9A.36.041);
- (9) Reckless endangerment in the second degree (RCW 9A.36.050);
- (10) Extortion in the first degree (RCW 9A.56.120);
- (11) Extortion in the second degree (RCW 9A.56.130);
- (12) Coercion (RCW 9A.36.070);
- (13) Burglary in the first degree (RCW 9A.52.020);
- (14) Burglary in the second degree (RCW 9A.52.030);
- (15) Criminal trespass in the first degree (RCW 9A.52.070);
- (16) Criminal trespass in the second degree (RCW 9A.52.080);

(17) Malicious mischief in the first degree (RCW 9A.48.070);

(18) Malicious mischief in the second degree (RCW 9A.48.080);

(19) Malicious mischief in the third degree (RCW 9A.48.090);

(20) Kidnapping in the first degree (RCW 9A.40.020);

(21) Kidnapping in the second degree (RCW 9A.40.030);

(22) Unlawful imprisonment (RCW 9A.40.040);

(23) Rape in the first degree (RCW 9A.44.040);

(24) Rape in the second degree (RCW 9A.44.050);

(25) Rape in the third degree (RCW 9A.44.060);

(26) Indecent liberties (RCW 9A.44.100);

(27) Rape of a child in the first degree (RCW 9A.44.073);

(28) Rape of a child in the second degree (RCW 9A.44.076);

(29) Rape of a child in the third degree (RCW 9A.44.079);

(30) Child molestation in the first degree (RCW 9A.44.083);

(31) Child molestation in the second degree (RCW 9A.44.086);

(32) Child molestation in the third degree (RCW 9A.44.089); and

(33) Stalking (RCW 9A.46.110). [1992 c 186 § 4; 1992 c 145 § 12; 1988 c 145 § 15; 1985 c 288 § 6.]

Reviser's note: This section was amended by 1992 c 145 § 12 and by 1992 c 186 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1992 c 186: See note following RCW 9A.46.110.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.46.070 Enforcement of orders restricting contact. Any law enforcement agency in this state may enforce this chapter as it relates to orders restricting the defendants' ability to have contact with the victim or others. [1985 c 288 § 7.]

9A.46.080 Order restricting contact—Violation. The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section is a misdemeanor. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest. [1985 c 288 § 8.]

9A.46.090 Nonliability of peace officer. A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith

under this chapter arising from an alleged incident of harassment brought by any party to the incident. [1985 c 288 § 9.]

9A.46.100 "Convicted," time when. As used in RCW 9.61.230, 9A.46.020, or 9A.46.110, a person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing, posttrial motions, and appeals. [1992 c 186 § 5; 1985 c 288 § 10.]

Severability—1992 c 186: See note following RCW 9A.46.110.

9A.46.110 Stalking. (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly follows another person to that person's home, school, place of employment, business, or any other location, or follows the person while the person is in transit between locations; and

(b) The person being followed is intimidated, harassed, or placed in fear that the stalker intends to injure the person or property of the person being followed or of another person. The feeling of fear, intimidation, or harassment must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person being followed; or

(ii) Knows or reasonably should know that the person being followed is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person being followed did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person being followed.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private detective acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person.

(5) A person who stalks another person is guilty of a gross misdemeanor except that the person is guilty of a class C felony if any of the following applies: (a) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact order or no-harassment order; (b) the person violates a court order issued pursuant to RCW 9A.46.040 protecting the person being stalked; or (c) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense

under this section for stalking another person. [1992 c 186 § 1.]

Severability—1992 c 186: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 186 § 10.]

9A.46.900 Short title. This act shall be known as the anti-harassment act of 1985. [1985 c 288 § 12.]

9A.46.905 Effective date—1985 c 288. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1985. [1985 c 288 § 15.]

9A.46.910 Severability—1985 c 288. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 288 § 14.]

Chapter 9A.48

ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF

Sections

- 9A.48.010 Definitions.
- 9A.48.020 Arson in the first degree.
- 9A.48.030 Arson in the second degree.
- 9A.48.040 Reckless burning in the first degree.
- 9A.48.050 Reckless burning in the second degree.
- 9A.48.060 Reckless burning—Defense.
- 9A.48.070 Malicious mischief in the first degree.
- 9A.48.080 Malicious mischief in the second degree.
- 9A.48.090 Malicious mischief in the third degree.
- 9A.48.100 Malicious mischief—"Physical damage" defined.

Explosives: Chapter 70.74 RCW.

9A.48.010 Definitions. (1) For the purpose of this chapter, as now or hereinafter amended, unless the context indicates otherwise:

(a) "Building" has the definition in RCW 9A.04.110(5), and where a building consists of two or more units separately secured or occupied, each unit shall not be treated as a separate building;

(b) "Damages", in addition to its ordinary meaning, includes any charring, scorching, burning, or breaking, or agricultural or industrial sabotage, and shall include any diminution in the value of any property as a consequence of an act.

(2) To constitute arson it shall not be necessary that a person other than the actor should have had ownership in the building or structure damaged or set on fire. [1975-'76 2nd ex.s. c 38 § 6; 1975 1st ex.s. c 260 § 9A.48.010.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.48.020 Arson in the first degree. (1) A person is guilty of arson in the first degree if he knowingly and maliciously:

(a) Causes a fire or explosion which is manifestly dangerous to any human life, including firemen; or

(b) Causes a fire or explosion which damages a dwelling; or

(c) Causes a fire or explosion in any building in which there shall be at the time a human being who is not a participant in the crime; or

(d) Causes a fire or explosion on property valued at ten thousand dollars or more with intent to collect insurance proceeds.

(2) Arson in the first degree is a class A felony. [1981 c 203 § 2; 1975 1st ex.s. c 260 § 9A.48.020.]

9A.48.030 Arson in the second degree. (1) A person is guilty of arson in the second degree if he knowingly and maliciously causes a fire or explosion which damages a building, or any structure or erection appurtenant to or joining any building, or any wharf, dock, machine, engine, automobile, or other motor vehicle, watercraft, aircraft, bridge, or trestle, or hay, grain, crop, or timber, whether cut or standing or any range land, or pasture land, or any fence, or any lumber, shingle, or other timber products, or any property.

(2) Arson in the second degree is a class B felony. [1975 1st ex.s. c 260 § 9A.48.030.]

9A.48.040 Reckless burning in the first degree. (1) A person is guilty of reckless burning in the first degree if he recklessly damages a building or other structure or any vehicle, railway car, aircraft or watercraft or any hay, grain, crop, or timber whether cut or standing, by knowingly causing a fire or explosion.

(2) Reckless burning in the first degree is a class C felony. [1975 1st ex.s. c 260 § 9A.48.040.]

9A.48.050 Reckless burning in the second degree. (1) A person is guilty of reckless burning in the second degree if he knowingly causes a fire or explosion, whether on his own property or that of another, and thereby recklessly places a building or other structure, or any vehicle, railway car, aircraft, or watercraft, or any hay, grain, crop or timber, whether cut or standing, in danger of destruction or damage.

(2) Reckless burning in the second degree is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.48.050.]

9A.48.060 Reckless burning—Defense. In any prosecution for the crime of reckless burning in the first or second degrees, it shall be a defense if the defendant establishes by a preponderance of the evidence that:

(a) No person other than the defendant had a possessory, or pecuniary interest in the damaged or endangered property, or if other persons had such an interest, all of them consented to the defendant's conduct; and

(b) The defendant's sole intent was to destroy or damage the property for a lawful purpose. [1975 1st ex.s. c 260 § 9A.48.060.]

9A.48.070 Malicious mischief in the first degree. (1) A person is guilty of malicious mischief in the first degree if he knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding one thousand five hundred dollars;

(b) Causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication; or

(c) Causes an impairment of the safety, efficiency, or operation of an aircraft by physically damaging or tampering with the aircraft or aircraft equipment, fuel, lubricant, or parts.

(2) Malicious mischief in the first degree is a class B felony. [1983 1st ex.s. c 4 § 1; 1975 1st ex.s. c 260 § 9A.48.070.]

Severability—1983 1st ex.s. c 4: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 4 § 6.]

9A.48.080 Malicious mischief in the second degree. (1) A person is guilty of malicious mischief in the second degree if he knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding two hundred fifty dollars; or

(b) Creates a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication; or

(c) Notwithstanding RCW 16.52.070, causes physical damage, destruction, or injury by amputation, mutilation, castration, or other malicious act to a horse, mule, cow, heifer, bull, steer, swine, goat, or sheep which is the property of another.

(2) Malicious mischief in the second degree is a class C felony. [1979 c 145 § 2; 1975 1st ex.s. c 260 § 9A.48.080.]

Action by owner of stolen livestock: RCW 4.24.320.

9A.48.090 Malicious mischief in the third degree. (1) A person is guilty of malicious mischief in the third degree if he knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree.

(2) Malicious mischief in the third degree is a gross misdemeanor if the damage to the property is in an amount exceeding fifty dollars; otherwise, it is a misdemeanor. [1975 1st ex.s. c 260 § 9A.48.090.]

9A.48.100 Malicious mischief—"Physical damage" defined. For the purposes of RCW 9A.48.070 through 9A.48.090 inclusive:

(1) "Physical damage", in addition to its ordinary meaning, shall include the total or partial alteration, damage, obliteration, or erasure of records, information, data, computer programs, or their computer representations, which are recorded for use in computers or the impairment, interruption, or interference with the use of such records, information, data, or computer programs, or the impairment, interruption, or interference with the use of any computer or

services provided by computers. "Physical damage" also includes any diminution in the value of any property as the consequence of an act;

(2) If more than one item of property is physically damaged as a result of a common scheme or plan by a person and the physical damage to the property would, when considered separately, constitute mischief in the third degree because of value, then the value of the damages may be aggregated in one count. If the sum of the value of all the physical damages exceeds two hundred fifty dollars, the defendant may be charged with and convicted of malicious mischief in the second degree. [1984 c 273 § 4; 1981 c 260 § 2. Prior: 1979 ex.s. c 244 § 11; 1979 c 145 § 3; 1977 ex.s. c 174 § 1; 1975 1st ex.s. c 260 § 9A.48.100.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

Action by owner of stolen livestock: RCW 4.24.320.

Computer trespass: RCW 9A.52.110 through 9A.52.130.

Chapter 9A.52 BURGLARY AND TRESPASS

Sections

9A.52.010	Definitions.
9A.52.020	Burglary in the first degree.
9A.52.025	Residential burglary.
9A.52.030	Burglary in the second degree.
9A.52.040	Inference of intent.
9A.52.050	Other crime in committing burglary punishable.
9A.52.060	Making or having burglar tools.
9A.52.070	Criminal trespass in the first degree.
9A.52.080	Criminal trespass in the second degree.
9A.52.090	Criminal trespass—Defenses.
9A.52.095	Vehicle prowling in the first degree.
9A.52.100	Vehicle prowling in the second degree.
9A.52.110	Computer trespass in the first degree.
9A.52.120	Computer trespass in the second degree.
9A.52.130	Computer trespass—Commission of other crime.

9A.52.010 Definitions. The following definitions apply in this chapter:

(1) "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property;

(2) "Enter". The word "enter" when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;

(3) "Enters or remains unlawfully". A person "enters or remains unlawfully" in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner. Land that is used for commercial aquaculture or for

growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given by posting in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land;

(4) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a computer;

(5) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data;

(6) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means. [1985 c 289 § 1. Prior: 1984 c 273 § 5; 1984 c 49 § 1; 1975 1st ex.s. c 260 § 9A.52.010.]

9A.52.020 Burglary in the first degree. (1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling and if, in entering or while in the dwelling or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person therein.

(2) Burglary in the first degree is a class A felony. [1975 1st ex.s. c 260 § 9A.52.020.]

9A.52.025 Residential burglary. (1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

(2) Residential burglary is a class B felony. In establishing sentencing guidelines and disposition standards, the sentencing guidelines commission and the juvenile disposition standards commission shall consider residential burglary as a more serious offense than second degree burglary. [1989 2nd ex.s. c 1 § 1; 1989 c 412 § 1.]

Effective date—1989 2nd ex.s. c 1: "This act shall take effect July 1, 1990." [1989 2nd ex.s. c 1 § 4; 1989 c 412 § 4.]

9A.52.030 Burglary in the second degree. (1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building other than a vehicle or a dwelling.

(2) Burglary in the second degree is a class B felony. [1989 2nd ex.s. c 1 § 2; 1989 c 412 § 2; 1975-'76 2nd ex.s. c 38 § 7; 1975 1st ex.s. c 260 § 9A.52.030.]

Effective date—1989 2nd ex.s. c 1: See note following RCW 9A.52.025.

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.52.040 Inference of intent. In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence

satisfactory to the trier of fact to have been made without such criminal intent. [1975 1st ex.s. c 260 § 9A.52.040.]

9A.52.050 Other crime in committing burglary punishable. Every person who, in the commission of a burglary shall commit any other crime, may be punished therefor as well as for the burglary, and may be prosecuted for each crime separately. [1975 1st ex.s. c 260 § 9A.52.050.]

9A.52.060 Making or having burglar tools. (1) Every person who shall make or mend or cause to be made or mended, or have in his possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglar tools.

(2) Making or having burglar tools is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.52.060.]

9A.52.070 Criminal trespass in the first degree. (1) A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a building.

(2) Criminal trespass in the first degree is a gross misdemeanor. [1979 ex.s. c 244 § 12; 1975 1st ex.s. c 260 § 9A.52.070.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

9A.52.080 Criminal trespass in the second degree. (1) A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor. [1979 ex.s. c 244 § 13; 1975 1st ex.s. c 260 § 9A.52.080.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

9A.52.090 Criminal trespass—Defenses. In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a defense that:

(1) A building involved in an offense under RCW 9A.52.070 was abandoned; or

(2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain; or

(4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the

legal process. [1986 c 219 § 2; 1975 1st ex.s. c 260 § 9A.52.090.]

9A.52.095 Vehicle prowling in the first degree. (1) A person is guilty of vehicle prowling in the first degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a motor home, as defined in RCW 46.04.305, or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the first degree is a class C felony. [1982 1st ex.s. c 47 § 13.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.52.100 Vehicle prowling in the second degree. (1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the second degree is a gross misdemeanor. [1982 1st ex.s. c 47 § 14; 1975 1st ex.s. c 260 § 9A.52.100.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.52.110 Computer trespass in the first degree. (1) A person is guilty of computer trespass in the first degree if the person, without authorization, intentionally gains access to a computer system or electronic data base of another; and

(a) The access is made with the intent to commit another crime; or

(b) The violation involves a computer or data base maintained by a government agency.

(2) Computer trespass in the first degree is a class C felony. [1984 c 273 § 1.]

9A.52.120 Computer trespass in the second degree. (1) A person is guilty of computer trespass in the second degree if the person, without authorization, intentionally gains access to a computer system or electronic data base of another under circumstances not constituting the offense in the first degree.

(2) Computer trespass in the second degree is a gross misdemeanor. [1984 c 273 § 2.]

9A.52.130 Computer trespass—Commission of other crime. A person who, in the commission of a computer trespass, commits any other crime may be punished for that other crime as well as for the computer trespass and may be prosecuted for each crime separately. [1984 c 273 § 3.]

Physical damage to computer programs: RCW 9A.48.100.

Chapter 9A.56
THEFT AND ROBBERY

Sections

9A.56.010	Definitions.
9A.56.020	Theft—Definition, defense.
9A.56.030	Theft in the first degree.
9A.56.040	Theft in the second degree.
9A.56.050	Theft in the third degree.
9A.56.060	Unlawful issuance of checks or drafts.
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9A.56.100	Theft and larceny equated.
9A.56.110	Extortion—Definition.
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9A.56.170	Possessing stolen property in the third degree.
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9A.56.230	Unlawful sale of cable television services.
9A.56.240	Forfeiture and disposal of device used to commit violation.
9A.56.250	Civil cause of action.
9A.56.260	Connection of channel converter.
9A.56.270	Shopping cart theft.

9A.56.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(2) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(3) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(4) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed.

(5) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(6) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(7) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, pledgee, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where such use is unauthorized by the partnership agreement;

(8) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(9) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(10) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(11) "Stolen" means obtained by theft, robbery, or extortion;

(12) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

(13) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(14) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle. [1987 c 140 § 1; 1986 c 257 § 2; 1985 c 382 § 1; 1984 c 273 § 6; 1975-'76 2nd ex.s. c 38 § 8; 1975 1st ex.s. c 260 § 9A.56.010.]

Severability—1986 c 257: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 257 § 37.]

Severability—1985 c 382: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 382 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.56.020 Theft—Definition, defense. (1) "Theft" means:

(a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him of such property or services; or

(b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him of such property or services; or

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him of such property or services.

(2) In any prosecution for theft, it shall be a sufficient defense that the property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable. [1975-'76 2nd ex.s. c 38 § 9; 1975 1st ex.s. c 260 § 9A.56.020.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.030 Theft in the first degree. (1) A person is guilty of theft in the first degree if he commits theft of:

(a) Property or services which exceed(s) one thousand five hundred dollars in value; or

(b) Property of any value taken from the person of another.

(2) Theft in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.56.030.]

Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.040 Theft in the second degree. (1) A person is guilty of theft in the second degree if he commits theft of:

(a) Property or services which exceed(s) two hundred and fifty dollars in value, but does not exceed one thousand five hundred dollars in value; or

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant; or

(c) An access device; or

(d) A motor vehicle, of a value less than one thousand five hundred dollars; or

(e) A firearm, of a value less than one thousand five hundred dollars.

(2) Theft in the second degree is a class C felony. [1987 c 140 § 2; 1982 1st ex.s. c 47 § 15; 1975 1st ex.s. c 260 § 9A.56.040.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.050 Theft in the third degree. (1) A person is guilty of theft in the third degree if he commits theft of property or services which does not exceed two hundred and fifty dollars in value.

(2) Theft in the third degree is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.56.050.]

Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.060 Unlawful issuance of checks or drafts.

(1) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he has not sufficient funds in, or credit with said bank or other depository, to meet said check or draft, in full upon its presentation, shall be guilty of unlawful issuance of bank check. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of such check or draft, and the uttering or delivery of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud.

(2) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft on a bank or other depository for the payment of money and who issues a stop-payment order directing the bank or depository on which the check is drawn not to honor said check, and who fails to make payment of money in the

amount of the check or draft or otherwise arrange a settlement agreed upon by the holder of the check within twenty days of issuing said check or draft shall be guilty of unlawful issuance of a bank check.

(3) When any series of transactions which constitute unlawful issuance of a bank check would, when considered separately, constitute unlawful issuance of a bank check in an amount of two hundred fifty dollars or less because of value, and the series of transactions are a part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining whether the unlawful issuance of a bank check is to be punished as a class C felony or a gross misdemeanor.

(4) Unlawful issuance of a bank check in an amount greater than two hundred fifty dollars is a class C felony.

(5) Unlawful issuance of a bank check in an amount of two hundred fifty dollars or less is a gross misdemeanor and shall be punished as follows:

(a) The court shall order the defendant to make full restitution;

(b) The defendant need not be imprisoned, but the court shall impose a minimum fine of five hundred dollars. Of the fine imposed, at least fifty dollars shall not be suspended or deferred. Upon conviction for a second offense within any twelve-month period, the court may suspend or defer only that portion of the fine which is in excess of five hundred dollars. [1982 c 138 § 1; 1979 ex.s. c 244 § 14; 1975 1st ex.s. c 260 § 9A.56.060.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

Maintenance by state treasurer of accounts in amount less than all warrants outstanding not a violation of RCW 9A.56.060(1): RCW 43.08.135.

9A.56.070 Taking motor vehicle without permission.

(1) Every person who shall without the permission of the owner or person entitled to the possession thereof intentionally take or drive away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, the property of another, shall be deemed guilty of a felony, and every person voluntarily riding in or upon said automobile or motor vehicle with knowledge of the fact that the same was unlawfully taken shall be equally guilty with the person taking or driving said automobile or motor vehicle and shall be deemed guilty of taking a motor vehicle without permission.

(2) Taking a motor vehicle without permission is a class C felony. [1975 1st ex.s. c 260 § 9A.56.070.]

9A.56.080 Theft of livestock. (1) Every person who, with intent to sell or exchange and to deprive or defraud the lawful owner thereof, wilfully takes, leads, or transports away, conceals, withholds, slaughters, or otherwise appropriates any horse, mule, cow, heifer, bull, steer, swine, or sheep is guilty of theft of livestock in the first degree.

(2) A person who commits what would otherwise be theft of livestock in the first degree but without intent to sell or exchange, and for the person's own use only, is guilty of theft of livestock in the second degree.

(3) Theft of livestock in the first degree is a class B felony.

(4) Theft of livestock in the second degree is a class C felony. [1986 c 257 § 32; 1977 ex.s. c 174 § 2; 1975 1st ex.s. c 260 § 9A.56.080.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Action by owner of damaged or stolen livestock: RCW 4.24.320.

9A.56.085 Minimum fine for theft of livestock. (1)

Whenever a person is convicted of a violation of RCW 9A.56.080, the convicting court shall order the person to pay the amount of two thousand dollars for each animal killed or possessed.

(2) For the purpose of this section, the term "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, or the levying of a fine.

(3) If two or more persons are convicted of any violation of this section, the amount required under this section shall be imposed upon them jointly and severally.

(4) The fine in this section shall be imposed in addition to and regardless of any penalty, including fines or costs, that is provided for any violation of this section. The amount imposed by this section shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. Nothing in this section may be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(5) A defaulted payment or any installment payment may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including vacation of a deferral of sentencing or of a suspension of sentence.

(6) The two thousand dollars additional penalty shall be remitted by the county treasurer to the state treasurer as provided under RCW 10.82.070. [1989 c 131 § 1.]

9A.56.095 Criminal possession of leased or rented machinery, equipment, or motor vehicle. (1) A person is guilty of criminal possession of leased or rented machinery, equipment or a motor vehicle if the value thereof exceeds one thousand five hundred dollars and if he:

(a) After renting machinery, equipment or a motor vehicle under an agreement in writing which provides for the return of said item to a particular place at a particular time, fails to return the item to said place within the time specified, is thereafter served by registered or certified mail addressed to him at his last known place of residence or business with a written demand to return said item within seventy-two hours from the time of the service of such demand, and wilfully neglects to return said item to any place of business of the lessor within five full business days from the date of service of said notice; or

(b) After leasing machinery, equipment or a motor vehicle under an agreement in writing which provides for periodic rental or lease payments for a period greater than six months duration, fails to pay the lessor of said item the periodic payments when due for a period of ninety days, is thereafter served by registered or certified mail addressed to him at his last known place of residence or business with a

written demand to return the item to any place of business of the lessor within seventy-two hours from the time of the service of said demand and wilfully neglects to return said item to any place of business of the lessor within five full business days from the date of service of said notice.

(2) "Wilfully neglects" as used in this section means omits, fails or forbears with intent to deprive the owner of or exert unauthorized control over the property, and specifically excludes the failure to return the item because of a bona fide contract dispute with the owner.

(3) It shall be a defense to any civil action arising out of or involving the arrest or detention of any person who rents or leases machinery, equipment or a motor vehicle that he failed to return the item to any place of business of the lessor within five full business days after receiving written demand therefor.

Criminal possession of leased or rented machinery, equipment or a motor vehicle is a class C felony. [1977 ex.s. c 236 § 1.]

9A.56.100 Theft and larceny equated. All offenses defined as larcenies outside of this title shall be treated as thefts as provided in this title. [1975 1st ex.s. c 260 § 9A.56.100.]

9A.56.110 Extortion—Definition. "Extortion" means knowingly to obtain or attempt to obtain by threat property or services of the owner, as defined in RCW 9A.56.010(8) and specifically includes sexual favors. [1983 1st ex.s. c 4 § 2; 1975-'76 2nd ex.s. c 38 § 10. Prior: 1975 1st ex.s. c 260 § 9A.56.110.]

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.56.120 Extortion in the first degree. (1) A person is guilty of extortion in the first degree if he commits extortion by means of a threat as defined in RCW 9A.04.110(25)(a), (b), or (c).

(2) Extortion in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.56.120.]

9A.56.130 Extortion in the second degree. (1) A person is guilty of extortion in the second degree if he commits extortion by means of a threat as defined in RCW 9A.04.110(25) (d) through (j).

(2) In any prosecution under this section based on a threat to accuse any person of a crime or cause criminal charges to be instituted against any person, it is a defense that the actor reasonably believed the threatened criminal charge to be true and that his sole purpose was to compel or induce the person threatened to take reasonable action to make good the wrong which was the subject of such threatened criminal charge.

(3) Extortion in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.56.130.]

9A.56.140 Possessing stolen property—Definition—Access devices, presumption. (1) "Possessing stolen property" means knowingly to receive, retain, possess,

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conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

(2) The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property.

(3) When a person not an issuer or agent thereof has in his possession or under his control stolen access devices issued in the names of two or more persons, he shall be presumed to know that they are stolen. This presumption may be rebutted by evidence raising a reasonable inference that the possession of such stolen access devices was without knowledge that they were stolen. [1987 c 140 § 3; 1975 1st ex.s. c 260 § 9A.56.140.]

9A.56.150 Possessing stolen property in the first degree. (1) A person is guilty of possessing stolen property in the first degree if he possesses stolen property which exceeds one thousand five hundred dollars in value.

(2) Possessing stolen property in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.56.150.]

9A.56.160 Possessing stolen property in the second degree. (1) A person is guilty of possessing stolen property in the second degree if:

(a) He possesses stolen property which exceeds two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value; or

(b) He possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(c) He possesses a stolen access device; or

(d) He possesses a stolen motor vehicle of a value less than one thousand five hundred dollars; or

(e) He possesses a stolen firearm.

(2) Possessing stolen property in the second degree is a class C felony. [1987 c 140 § 4; 1975 1st ex.s. c 260 § 9A.56.160.]

9A.56.170 Possessing stolen property in the third degree. (1) A person is guilty of possessing stolen property in the third degree if he possesses stolen property which does not exceed two hundred fifty dollars in value.

(2) Possessing stolen property in the third degree is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.56.170.]

9A.56.180 Obscuring the identity of a machine. (1) A person is guilty of obscuring the identity of a machine if he knowingly:

(a) Obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any vehicle, machine, engine, apparatus, appliance, or other device with intent to render it unidentifiable; or

(b) Possesses a vehicle, machine, engine, apparatus, appliance, or other device held for sale knowing that the serial number or other identification number or mark has been obscured.

(2) "Obscure" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.

(3) Obscuring the identity of a machine is a gross misdemeanor. [1975-'76 2nd ex.s. c 38 § 11; 1975 1st ex.s. c 260 § 9A.56.180.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.56.190 Robbery—Definition. A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear. [1975 1st ex.s. c 260 § 9A.56.190.]

9A.56.200 Robbery in the first degree. (1) A person is guilty of robbery in the first degree if in the commission of a robbery or of immediate flight therefrom, he:

- (a) Is armed with a deadly weapon; or
- (b) Displays what appears to be a firearm or other deadly weapon; or
- (c) Inflicts bodily injury.

(2) Robbery in the first degree is a class A felony. [1975 1st ex.s. c 260 § 9A.56.200.]

9A.56.210 Robbery in the second degree. (1) A person is guilty of robbery in the second degree if he commits robbery.

(2) Robbery in the second degree is a class B felony. [1975 1st ex.s. c 260 § 9A.56.210.]

9A.56.220 Theft of cable television services. (1) A person is guilty of theft of cable television services if:

- (a) With intent to avoid payment of the lawful charge for any communication service of a cable system, he or she:
 - (i) Tampers with the equipment of the cable system, whether by mechanical, electrical, acoustical, or other means; or
 - (ii) Knowingly misrepresents a material fact; or
 - (iii) Uses any other artifice, trick, deception, code, or other device; and
- (b) He or she wrongfully obtains cable communication services for himself or herself or another.

(2) RCW 9A.56.220 through 9A.56.250 do not apply to the interception or receipt by any individual or the assisting (including the manufacture or sale), of such interception or receipt of any satellite-transmitted programming for private use.

(3) Theft of cable television services is a gross misdemeanor. [1989 c 11 § 1; 1985 c 430 § 1.]

Severability—1989 c 11: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 11 § 33.]

Severability—1985 c 430: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1985 c 430 § 7.]

9A.56.230 Unlawful sale of cable television services.

(1) A person is guilty of unlawful sale of cable television services if, with intent to avoid payment of the lawful charge for any communications service of a cable system, he or she offers for sale or otherwise makes available any telecommunications decoder or descrambler that defeats a mechanism of electronic signal encryption, or that restricts delivery of individually addressed switching imposed by the cable system.

(2) Unlawful sale of cable television services is a gross misdemeanor. [1985 c 430 § 2.]

Severability—1985 c 430: See note following RCW 9A.56.220.

9A.56.240 Forfeiture and disposal of device used to commit violation. Upon conviction of theft or unlawful sale of cable television services and upon motion and hearing, the court shall order the forfeiture of any decoder, descrambler, or other device used in committing the violation of RCW 9A.56.220 or 9A.56.230 as contraband and dispose of it at the court's discretion. [1985 c 430 § 3.]

Severability—1985 c 430: See note following RCW 9A.56.220.

9A.56.250 Civil cause of action. (1) In addition to the criminal penalties provided in RCW 9A.56.220 and 9A.56.230, there is created a civil cause of action for theft of cable television services and for unlawful sale of cable television services.

(2) The prevailing party may recover actual damages, reasonable attorneys' fees, and costs.

(3) The superior court may grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain violations of RCW 9A.56.220 and 9A.56.230. [1985 c 430 § 4.]

Severability—1985 c 430: See note following RCW 9A.56.220.

9A.56.260 Connection of channel converter. No person may be charged with theft under RCW 9A.56.220 or subject to a civil cause of action under RCW 9A.56.250 for connecting a nondecoding or nondescrambling channel frequency converter, which includes cable-ready television sets, video recorders, or similar equipment, to a cable system. [1985 c 430 § 5.]

Severability—1985 c 430: See note following RCW 9A.56.220.

9A.56.270 Shopping cart theft. (1) It is unlawful to do any of the following acts, if a shopping cart has a permanently affixed sign as provided in subsection (2) of this section:

(a) To remove a shopping cart from the parking area of a retail establishment with the intent to deprive the owner of the shopping cart the use of the cart; or

(b) To be in possession of any shopping cart that has been removed from the parking area of a retail establishment with the intent to deprive the owner of the shopping cart the use of the cart.

(2) This section shall apply only when a shopping cart: (a) Has a sign permanently affixed to it that identifies the

owner of the cart or the retailer, or both; (b) notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; (c) notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is unlawful; and (d) lists a telephone number or address for returning carts removed from the premises or parking area to the owner or retailer.

(3) Any person who violates any provision of this section is guilty of a misdemeanor. [1985 c 382 § 2.]

Severability—1985 c 382: See note following RCW 9A.56.010.

Chapter 9A.60 FRAUD

Sections

9A.60.010	Definitions.
9A.60.020	Forgery.
9A.60.030	Obtaining a signature by deception or duress.
9A.60.040	Criminal impersonation.
9A.60.050	False certification.

False representations: Chapter 9.38 RCW.

Frauds and swindles: Chapter 9.45 RCW.

9A.60.010 Definitions. The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

(1) "Written instrument" means: (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or (b) any access device, as defined in RCW 9A.56.010(3), token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification;

(2) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;

(3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;

(4) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;

(5) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;

(6) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;

(7) "Forged instrument" means a written instrument which has been falsely made, completed or altered. [1987 c 140 § 5; 1975-'76 2nd ex.s. c 38 § 12; 1975 1st ex.s. c 260 § 9A.60.010.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.60.020 Forgery. (1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He falsely makes, completes, or alters a written instrument or;

(b) He possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged.

(2) Forgery is a class C felony. [1975-'76 2nd ex.s. c 38 § 13; 1975 1st ex.s. c 260 § 9A.60.020.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.60.030 Obtaining a signature by deception or duress. (1) A person is guilty of obtaining a signature by deception or duress if by deception or duress and with intent to defraud or deprive he causes another person to sign or execute a written instrument.

(2) Obtaining a signature by deception or duress is a class C felony. [1975-'76 2nd ex.s. c 38 § 14; 1975 1st ex.s. c 260 § 9A.60.030.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.60.040 Criminal impersonation. (1) A person is guilty of criminal impersonation if he:

(a) Assumes a false identity and does an act in his assumed character with intent to defraud another or for any other unlawful purpose; or

(b) Pretends to be a representative of some person or organization or a public servant and does an act in his pretended capacity with intent to defraud another or for any other unlawful purpose.

(2) Criminal impersonation is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.60.040.]

9A.60.050 False certification. (1) A person is guilty of false certification, if, being an officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, he knowingly certifies falsely that the execution of such instrument was acknowledged by any party thereto or that the execution thereof was proved.

(2) False certification is a gross misdemeanor. [1975-'76 2nd ex.s. c 38 § 15; 1975 1st ex.s. c 260 § 9A.60.050.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

Chapter 9A.61 DEFRAUDING A PUBLIC UTILITY

Sections

9A.61.010	Definitions.
9A.61.020	Defrauding a public utility.
9A.61.030	Defrauding a public utility in the first degree.
9A.61.040	Defrauding a public utility in the second degree.
9A.61.050	Defrauding a public utility in the third degree.
9A.61.060	Restitution and costs.
9A.61.070	Damages not precluded.

9A.61.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Customer" means the person in whose name a utility service is provided.

(2) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility.

(3) "Person" means an individual, partnership, firm, association, or corporation or government agency.

(4) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility.

(5) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing the normal or customary function.

(6) "Utility" means an electrical company, gas company, or water company as those terms are defined in RCW 80.04.010, and includes an electrical, gas, or water system operated by a public agency.

(7) "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation. [1989 c 109 § 1.]

9A.61.020 Defrauding a public utility. "Defrauding a public utility" means to commit, authorize, solicit, aid, abet, or attempt to:

(1) Divert, or cause to be diverted, utility services by any means whatsoever;

(2) Make, or cause to be made, a connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(3) Prevent a utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(4) Tamper with property owned or used by the utility to provide utility services; or

(5) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility. [1989 c 109 § 2.]

9A.61.030 Defrauding a public utility in the first degree. (1) A person is guilty of defrauding a public utility in the first degree if:

(a) The utility service diverted or used exceeds one thousand five hundred dollars in value; or

(b) Tampering has occurred in furtherance of other criminal activity.

(2) Defrauding a public utility in the first degree is a class B felony. [1989 c 109 § 3.]

9A.61.040 Defrauding a public utility in the second degree. (1) A person is guilty of defrauding a public utility in the second degree if the utility service diverted or used exceeds five hundred dollars in value.

(2) Defrauding a public utility in the second degree is a class C felony. [1989 c 109 § 4.]

9A.61.050 Defrauding a public utility in the third degree. (1) A person is guilty of defrauding a public utility in the third degree if:

(a) The utility service diverted or used is five hundred dollars or less in value; or

(b) A connection or reconnection has occurred without authorization or consent of the utility.

(2) Defrauding a public utility in the third degree is a gross misdemeanor. [1989 c 109 § 5.]

9A.61.060 Restitution and costs. In any prosecution under this section, the court may require restitution from the defendant as provided by chapter 9A.20 RCW, plus court costs plus the costs incurred by the utility on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses. [1989 c 109 § 6.]

9A.61.070 Damages not precluded. Restitution ordered or fines imposed under this chapter do not preclude a utility from collecting damages under RCW 80.28.240 to which it may be entitled. [1989 c 109 § 7.]

Chapter 9A.64 FAMILY OFFENSES

Sections

9A.64.010 Bigamy.

9A.64.020 Incest.

9A.64.030 Child selling—Child buying.

9A.64.010 Bigamy. (1) A person is guilty of bigamy if he intentionally marries or purports to marry another person when either person has a living spouse.

(2) In any prosecution under this section, it is a defense that at the time of the subsequent marriage or purported marriage:

(a) The actor reasonably believed that the prior spouse was dead; or

(b) A court had entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor did not know that such judgment was invalid; or

(c) The actor reasonably believed that he was legally eligible to marry.

(3) The limitation imposed by RCW 9A.04.080 on commencing a prosecution for bigamy does not begin to run until the death of the prior or subsequent spouse of the actor or until a court enters a judgment terminating or annulling the prior or subsequent marriage.

(4) Bigamy is a class C felony. [1986 c 257 § 14; 1975 1st ex.s. c 260 § 9A.64.010.]

Severability—1986 c 257: See note following RCW 9A.56.010.

9A.64.020 Incest. (1) A person is guilty of incest in the first degree if he engages in sexual intercourse with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(2) A person is guilty of incest in the second degree if he engages in sexual contact with a person whom he knows to be related to him, either legitimately or illegitimately, as

an ancestor, descendant, brother, or sister of either the whole or the half blood.

(3) As used in this section, "descendant" includes stepchildren and adopted children under eighteen years of age.

(4) As used in this section, "sexual contact" has the same meaning as in *RCW 9A.44.100(2).

(5) As used in this section, "sexual intercourse" has the same meaning as in RCW 9A.44.010(1).

(6) Incest in the first degree is a class B felony.

(7) Incest in the second degree is a class C felony. [1985 c 53 § 1; 1982 c 129 § 3; 1975 1st ex.s. c 260 § 9A.64.020.]

***Reviser's note:** The definition of "sexual contact" was moved from RCW 9A.44.100(2) to RCW 9A.44.010(2) by 1988 c 145 §§ 1 and 10.

Severability—1982 c 129: See note following RCW 9A.04.080.

9A.64.030 Child selling—Child buying. (1) It is unlawful for any person to sell or purchase a minor child.

(2) A transaction shall not be a purchase or sale under subsection (1) of this section if any of the following exists:

(a) The transaction is between the parents of the minor child; or

(b) The transaction is between a person receiving or to receive the child and an agency recognized under RCW 26.33.020; or

(c) The transaction is between the person receiving or to receive the child and a state agency or other governmental agency; or

(d) The transaction is pursuant to chapter 26.34 RCW; or

(e) The transaction is pursuant to court order; or

(f) The only consideration paid by the person receiving or to receive the child is intended to pay for the prenatal hospital or medical expenses involved in the birth of the child, or attorneys' fees and court costs involved in effectuating transfer of child custody.

(3) Child selling is a class C felony and child buying is a class C felony. [1985 c 7 § 3; 1980 c 85 § 3.]

Severability—1980 c 85: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 85 § 5.]

Chapter 9A.68

BRIBERY AND CORRUPT INFLUENCE

Sections

- 9A.68.010 Bribery.
- 9A.68.020 Requesting unlawful compensation.
- 9A.68.030 Receiving or granting unlawful compensation.
- 9A.68.040 Trading in public office.
- 9A.68.050 Trading in special influence.

Bribery or corruption offender as witness: RCW 9.18.080.

9A.68.010 Bribery. (1) A person is guilty of bribery if:

(a) With the intent to secure a particular result in a particular matter involving the exercise of the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity, he offers, confers, or

agrees to confer any pecuniary benefit upon such public servant; or

(b) Being a public servant, he requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will be used to secure or attempt to secure a particular result in a particular matter.

(2) It is no defense to a prosecution under this section that the public servant sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a class B felony. [1975 1st ex.s. c 260 § 9A.68.010.]

9A.68.020 Requesting unlawful compensation. (1) A public servant is guilty of requesting unlawful compensation if he requests a pecuniary benefit for the performance of an official action knowing that he is required to perform that action without compensation or at a level of compensation lower than that requested.

(2) Requesting unlawful compensation is a class C felony. [1975 1st ex.s. c 260 § 9A.68.020.]

9A.68.030 Receiving or granting unlawful compensation. (1) A person is guilty of receiving or granting unlawful compensation if:

(a) Being a public servant, he requests, accepts, or agrees to accept compensation for advice or other assistance in preparing a bill, contract, claim, or transaction regarding which he knows he is likely to have an official discretion to exercise; or

(b) He knowingly offers, pays, or agrees to pay compensation to a public servant for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction regarding which the public servant is likely to have an official discretion to exercise.

(2) Receiving or granting unlawful compensation is a class C felony. [1975 1st ex.s. c 260 § 9A.68.030.]

9A.68.040 Trading in public office. (1) A person is guilty of trading in public office if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant pursuant to an agreement or understanding that such actor will or may be appointed to a public office; or

(b) Being a public servant, he requests, accepts, or agrees to accept any pecuniary benefit from another person pursuant to an agreement or understanding that such person will or may be appointed to a public office.

(2) Trading in public office is a class C felony. [1975 1st ex.s. c 260 § 9A.68.040.]

9A.68.050 Trading in special influence. (1) A person is guilty of trading in special influence if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon another person pursuant to an agreement or understanding that such other person will offer or confer a benefit upon a public servant or procure another to do so

with intent thereby to secure or attempt to secure a particular result in a particular matter; or

(b) He requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter.

(2) Trading in special influence is a class C felony. [1975 1st ex.s. c 260 § 9A.68.050.]

Chapter 9A.72

PERJURY AND INTERFERENCE WITH OFFICIAL PROCEEDINGS

Sections

9A.72.010	Definitions.
9A.72.020	Perjury in the first degree.
9A.72.030	Perjury in the second degree.
9A.72.040	False swearing.
9A.72.050	Perjury and false swearing—Inconsistent statements—Degree of crime.
9A.72.060	Perjury and false swearing—Retraction.
9A.72.070	Perjury and false swearing—Irregularities no defense.
9A.72.080	Statement of what one does not know to be true.
9A.72.085	Unsworn statements, certification.
9A.72.090	Bribing a witness.
9A.72.100	Bribe receiving by a witness.
9A.72.110	Intimidating a witness.
9A.72.120	Tampering with a witness.
9A.72.130	Intimidating a juror.
9A.72.140	Jury tampering.
9A.72.150	Tampering with physical evidence.
9A.72.160	Intimidating a judge.

Committal of witness committing perjury: RCW 9A.72.090.

9A.72.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;

(b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is certified or declared to be true under penalty of perjury as provided in RCW 9A.72.085.

(3) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision;

(4) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(5) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(6) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding. [1981 c 187 § 1; 1975 1st ex.s. c 260 § 9A.72.010.]

9A.72.020 Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section.

(3) Perjury in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.72.020.]

9A.72.030 Perjury in the second degree. (1) A person is guilty of perjury in the second degree if, with intent to mislead a public servant in the performance of his duty, he makes a materially false statement, which he knows to be false under an oath required or authorized by law.

(2) Perjury in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.72.030.]

9A.72.040 False swearing. (1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law.

(2) False swearing is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.72.040.]

9A.72.050 Perjury and false swearing—Inconsistent statements—Degree of crime. (1) Where, in the course of one or more official proceedings, a person makes inconsistent material statements under oath, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and known by the defendant to be false. In such case it shall not be necessary for the prosecution to prove which material statement was false but only that one or the other was false and known by the defendant to be false.

(2) The highest offense of which a person may be convicted in such an instance as set forth in subsection (1) of this section shall be determined by hypothetically assuming each statement to be false. If perjury of different degrees would be established by the making of the two

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.72.120 Tampering with a witness. (1) A person is guilty of tampering with a witness if he attempts to induce a witness or person he has reason to believe is about to be called as a witness in any official proceeding or a person whom he has reason to believe may have information relevant to a criminal investigation to:

(a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or

(b) Absent himself from such proceedings.

(2) Tampering with a witness is a class C felony. [1982 1st ex.s. c 47 § 19; 1975 1st ex.s. c 260 § 9A.72.120.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.72.130 Intimidating a juror. (1) A person is guilty of intimidating a juror if a person directs a threat to a former juror because of the juror's vote, opinion, decision, or other official action as a juror, or if, by use of a threat, he attempts to influence a juror's vote, opinion, decision, or other official action as a juror.

(2) "Threat" as used in this section means

(a) to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) threats as defined in RCW 9A.04.110(25).

(3) Intimidating a juror is a class B felony. [1985 c 327 § 3; 1975 1st ex.s. c 260 § 9A.72.130.]

9A.72.140 Jury tampering. (1) A person is guilty of jury tampering if with intent to influence a juror's vote, opinion, decision, or other official action in a case, he attempts to communicate directly or indirectly with a juror other than as part of the proceedings in the trial of the case.

(2) Jury tampering is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.72.140.]

9A.72.150 Tampering with physical evidence. (1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or

(b) Knowingly presents or offers any false physical evidence.

(2) "Physical evidence" as used in this section includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.72.150.]

9A.72.160 Intimidating a judge. (1) A person is guilty of intimidating a judge if a person directs a threat to a judge because of a ruling or decision of the judge in any official proceeding, or if by use of a threat directed to a

judge, a person attempts to influence a ruling or decision of the judge in any official proceeding.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in RCW 9A.04.110(25).

(3) Intimidating a judge is a class B felony. [1985 c 327 § 1.]

Chapter 9A.76

OBSTRUCTING GOVERNMENTAL OPERATION

Sections

9A.76.010	Definitions.
9A.76.020	Obstructing a public servant.
9A.76.030	Refusing to summon aid for a peace officer.
9A.76.040	Resisting arrest.
9A.76.050	Rendering criminal assistance—Definition of term.
9A.76.060	Relative defined.
9A.76.070	Rendering criminal assistance in the first degree.
9A.76.080	Rendering criminal assistance in the second degree.
9A.76.090	Rendering criminal assistance in the third degree.
9A.76.100	Compounding.
9A.76.110	Escape in the first degree.
9A.76.120	Escape in the second degree.
9A.76.130	Escape in the third degree.
9A.76.140	Introducing contraband in the first degree.
9A.76.150	Introducing contraband in the second degree.
9A.76.160	Introducing contraband in the third degree.
9A.76.170	Bail jumping.
9A.76.180	Intimidating a public servant.
9A.76.200	Harming a police dog.

Withholding knowledge of felony: RCW 9.69.100.

9A.76.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Custody" means restraint pursuant to a lawful arrest or an order of a court, or any period of service on a work crew: PROVIDED, That custody pursuant to chapter 13.34 RCW and RCW 74.13.020 and 74.13.031 and chapter 13.32A RCW shall not be deemed custody for purposes of this chapter;

(2) "Detention facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020 as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court, except an order under chapter 13.34 RCW or chapter 13.32A RCW, or (e) in any work release, furlough, or other such facility or program;

(3) "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court. [1991 c 181 § 6; 1979 c 155 § 35; 1977 ex.s. c 291 § 53; 1975 1st ex.s. c 260 § 9A.76.010.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

9A.76.020 Obstructing a public servant. Every person who, (1) without lawful excuse shall refuse or knowingly fail to make or furnish any statement, report, or information lawfully required of him by a public servant, or (2) in any such statement or report shall make any knowingly untrue statement to a public servant, or (3) shall knowingly hinder, delay, or obstruct any public servant in the discharge of his official powers or duties; shall be guilty of a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.020.]

9A.76.030 Refusing to summon aid for a peace officer. (1) A person is guilty of refusing to summon aid for a peace officer if, upon request by a person he knows to be a peace officer, he unreasonably refuses or fails to summon aid for such peace officer.

(2) Refusing to summon aid for a peace officer is a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.030.]

9A.76.040 Resisting arrest. (1) A person is guilty of resisting arrest if he intentionally prevents or attempts to prevent a peace officer from lawfully arresting him.

(2) Resisting arrest is a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.040.]

9A.76.050 Rendering criminal assistance—Definition of term. As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense or has escaped from a detention facility, he:

- (1) Harbors or conceals such person; or
- (2) Warns such person of impending discovery or apprehension; or
- (3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or
- (4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or
- (5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or
- (6) Provides such person with a weapon. [1982 1st ex.s. c 47 § 20; 1975 1st ex.s. c 260 § 9A.76.050.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.76.060 Relative defined. As used in RCW 9A.76.070 and 9A.76.080, "relative" means a person:

- (1) Who is related as husband or wife, brother or sister, parent or grandparent, child or grandchild, step-child or step-parent to the person to whom criminal assistance is rendered; and
- (2) Who does not render criminal assistance to another person in one or more of the means defined in subsections (4), (5), or (6) of RCW 9A.76.050. [1975 1st ex.s. c 260 § 9A.76.060.]

9A.76.070 Rendering criminal assistance in the first degree. (1) A person is guilty of rendering criminal assistance in the first degree if he renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offense.

(2) Rendering criminal assistance in the first degree is:

(a) A gross misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060;

(b) A class C felony in all other cases. [1982 1st ex.s. c 47 § 21; 1975 1st ex.s. c 260 § 9A.76.070.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.76.080 Rendering criminal assistance in the second degree. (1) A person is guilty of rendering criminal assistance in the second degree if he renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense or to someone being sought for violation of parole, probation, or community supervision.

(2) Rendering criminal assistance in the second degree is:

(a) A misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060;

(b) A gross misdemeanor in all other cases. [1982 1st ex.s. c 47 § 22; 1975 1st ex.s. c 260 § 9A.76.080.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.76.090 Rendering criminal assistance in the third degree. (1) A person is guilty of rendering criminal assistance in the third degree if he renders criminal assistance to a person who has committed a gross misdemeanor or misdemeanor.

(2) Rendering criminal assistance in the third degree is a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.090.]

9A.76.100 Compounding. (1) A person is guilty of compounding if:

(a) He requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he will refrain from initiating a prosecution for a crime; or

(b) He confers, or offers or agrees to confer, any pecuniary benefit upon another pursuant to an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

(2) In any prosecution under this section, it is a defense if established by a preponderance of the evidence that the pecuniary benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

(3) Compounding is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.76.100.]

9A.76.110 Escape in the first degree. (1) A person is guilty of escape in the first degree if, being detained pursuant to a conviction of a felony or an equivalent juvenile offense, he escapes from custody or a detention facility.

(2) Escape in the first degree is a class B felony. [1982 1st ex.s. c 47 § 23; 1975 1st ex.s. c 260 § 9A.76.110.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Term of escaped prisoner recaptured: RCW 9.31.090.

9A.76.120 Escape in the second degree. (1) A person is guilty of escape in the second degree if:

(a) He escapes from a detention facility; or

(b) Having been charged with a felony or an equivalent juvenile offense, he escapes from custody.

(2) Escape in the second degree is a class C felony. [1982 1st ex.s. c 47 § 24; 1975 1st ex.s. c 260 § 9A.76.120.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Term of escaped prisoner recaptured: RCW 9.31.090.

9A.76.130 Escape in the third degree. (1) A person is guilty of escape in the third degree if he escapes from custody.

(2) Escape in the third degree is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.76.130.]

Term of escaped prisoner recaptured: RCW 9.31.090.

9A.76.140 Introducing contraband in the first degree. (1) A person is guilty of introducing contraband in the first degree if he knowingly provides any deadly weapon to any person confined in a detention facility.

(2) Introducing contraband in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.76.140.]

9A.76.150 Introducing contraband in the second degree. (1) A person is guilty of introducing contraband in the second degree if he knowingly and unlawfully provides contraband to any person confined in a detention facility with the intent that such contraband be of assistance in an escape or in the commission of a crime.

(2) Introducing contraband in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.76.150.]

9A.76.160 Introducing contraband in the third degree. (1) A person is guilty of introducing contraband in the third degree if he knowingly and unlawfully provides contraband to any person confined in a detention facility.

(2) Introducing contraband in the third degree is a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.160.]

9A.76.170 Bail jumping. (1) Any person having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before any court of this state, and who knowingly fails to appear as required is guilty of bail jumping.

(2) Bail jumping is:

(a) A class A felony if the person was held for, charged with, or convicted of murder in the first degree;

(b) A class B felony if the person was held for, charged with, or convicted of a class A felony other than murder in the first degree;

(c) A class C felony if the person was held for, charged with, or convicted of a class B or class C felony;

(d) A misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor. [1983 1st ex.s. c 4 § 3; 1975 1st ex.s. c 260 § 9A.76.170.]

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

9A.76.180 Intimidating a public servant. (1) A person is guilty of intimidating a public servant if, by use of a threat, he attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.

(2) For purposes of this section "public servant" shall not include jurors.

(3) "Threat" as used in this section means

(a) to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) threats as defined in RCW 9A.04.110(25).

(4) Intimidating a public servant is a class B felony. [1975 1st ex.s. c 260 § 9A.76.180.]

9A.76.200 Harming a police dog. (1) A person is guilty of harming a police dog if he maliciously injures, disables, shoots, or kills by any means any dog that the person knows or has reason to know to be a police dog, as defined in RCW 4.24.410, whether or not the dog is actually engaged in police work at the time of the injury.

(2) Harming a police dog is a class C felony. [1989 c 26 § 2; 1982 c 22 § 2.]

Chapter 9A.80

ABUSE OF OFFICE

Sections

9A.80.010 Official misconduct.

9A.80.010 Official misconduct. (1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:

(a) He intentionally commits an unauthorized act under color of law; or

(b) He intentionally refrains from performing a duty imposed upon him by law.

(2) Official misconduct is a gross misdemeanor. [1975-'76 2nd ex.s. c 38 § 17; 1975 1st ex.s. c 260 § 9A.80.010.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

Failure of duty by public officers: RCW 42.20.100.

Chapter 9A.82

CRIMINAL PROFITEERING ACT

(Formerly: Racketeering)

Sections

9A.82.001	Short title.
9A.82.010	Definitions.
9A.82.020	Extortionate extension of credit.
9A.82.030	Advancing money or property to be used for extortionate credit.
9A.82.040	Use of extortionate means to collect extensions of credit.
9A.82.045	Collection of unlawful debt.
9A.82.050	Trafficking in stolen property.
9A.82.060	Leading organized crime.
9A.82.070	Influencing outcome of sporting event.
9A.82.080	Use of proceeds of criminal profiteering—Controlling enterprise or realty—Conspiracy or attempt.
9A.82.085	Bars on certain prosecutions.
9A.82.090	Orders restraining criminal profiteering—When issued.
9A.82.100	Remedies and procedures.
9A.82.110	State public safety and education account—County antiprofitteering revolving funds.
9A.82.120	Criminal profiteering lien—Authority, procedures.
9A.82.130	Criminal profiteering lien—Trustee of real property.
9A.82.140	Criminal profiteering lien—Procedures after notice.
9A.82.150	Criminal profiteering lien—Conveyance of property by trustee, liability.
9A.82.160	Criminal profiteering lien—Trustee's failure to comply, evasion of procedures or lien.
9A.82.170	Financial institution records—Inspection and copying—Wrongful disclosure.
9A.82.900	Severability—1984 c 270.
9A.82.901	Effective date—1984 c 270 as amended by 1985 c 455.
9A.82.902	Effective date—1985 c 455.
9A.82.903	Repealed acts—Effective July 1, 1995.
9A.82.904	Severability—1985 c 455.

Special narcotics enforcement unit: RCW 43.43.655.

9A.82.001 Short title. This chapter shall be known as the criminal profiteering act. [1985 c 455 § 1.]

9A.82.010 Definitions. Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(2) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(3) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(4) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(5) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(6) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(7) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(8) "Dealer in property" means a person who buys and sells property as a business.

(9) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(10) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(11) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(12) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(13) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(14) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and 9A.56.080;

(f) Child selling or child buying, as defined in RCW 9A.64.030;

(g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;

(h) Gambling, as defined in RCW 9.46.220 and 9.46.230;

(i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

(j) Extortionate extension of credit, as defined in RCW 9A.82.020;

(k) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;

(l) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;

(m) Collection of an unlawful debt, as defined in RCW 9A.82.045;

(n) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;

(o) Trafficking in stolen property, as defined in RCW 9A.82.050;

(p) Leading organized crime, as defined in RCW 9A.82.060;

(q) Money laundering, as defined in RCW 9A.83.020;

(r) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;

(s) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

(t) Promoting pornography, as defined in RCW 9.68.140;

(u) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

(v) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

(w) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

(x) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

(y) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

(z) A pattern of equity skimming, as defined in RCW 61.34.020; or

(aa) Commercial telephone solicitation in violation of RCW 19.158.040(1).

(15) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(16) "Records" means any book, paper, writing, record, computer program, or other material.

(17) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph,

phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(18) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

(19)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest shall be considered to be located where the real property owned by the trustee is located.

(20) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(21)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under subsection (21)(a) (i) or (ii) of this section.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust. [1992 c 210 § 6; 1992 c 145 § 13; 1989 c 20 § 17; 1988 c 33 § 5; 1986 c 78 § 1; 1985 c 455 § 2; 1984 c 270 § 1.]

Reviser's note: This section was amended by 1992 c 145 § 13 and by 1992 c 210 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1989 c 20: See RCW 19.158.900 and 19.158.901.

Effective date—1988 c 33 § 5: "Section 5 of this act shall take effect July 1, 1988." [1988 c 33 § 8.]

Severability—1988 c 33: See RCW 61.34.900.

9A.82.020 Extortionate extension of credit. (1) A person who knowingly makes an extortionate extension of credit is guilty of a class B felony.

(2) In a prosecution under this section, if it is shown that all of the following factors are present in connection with the extension of credit, there is prima facie evidence that the extension of credit was extortionate:

(a) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable at the time the extension of credit was made through civil judicial processes against the debtor in the county in which the debtor, if a natural person, resided or in every county in which the debtor, if other than a natural person, was incorporated or qualified to do business.

(b) The extension of credit was made at a rate of interest in excess of an annual rate of forty-five percent calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(c) The creditor intended the debtor to believe that failure to comply with the terms of the extension of credit would be enforced by extortionate means.

(d) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded one hundred dollars. [1985 c 455 § 3; 1984 c 270 § 2.]

9A.82.030 Advancing money or property to be used for extortionate credit. A person who advances money or property, whether as a gift, loan, investment, or pursuant to a partnership or profit-sharing agreement or otherwise, to any person, with the knowledge that it is the intention of that person to use the money or property so advanced, directly or indirectly, for the purpose of making extortionate extensions of credit, is guilty of a class B felony. [1985 c 455 § 4; 1984 c 270 § 3.]

9A.82.040 Use of extortionate means to collect extensions of credit. A person who knowingly participates in any way in the use of any extortionate means to collect or attempt to collect any extensions of credit or to punish any person for the nonrepayment thereof, is guilty of a class B felony. [1985 c 455 § 5; 1984 c 270 § 4.]

9A.82.045 Collection of unlawful debt. It is unlawful for any person knowingly to collect any unlawful debt. A violation of this section is a class C felony. [1985 c 455 § 6.]

9A.82.050 Trafficking in stolen property. (1) A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.

(2) A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen

property, is guilty of trafficking in stolen property in the first degree.

(3) Trafficking in stolen property in the second degree is a class C felony. Trafficking in stolen property in the first degree is a class B felony. [1984 c 270 § 5.]

9A.82.060 Leading organized crime. (1) A person commits the offense of leading organized crime by:

(a) Intentionally organizing, managing, directing, supervising, or financing any three or more persons with the intent to engage in a pattern of criminal profiteering activity; or

(b) Intentionally inciting or inducing others to engage in violence or intimidation with the intent to further or promote the accomplishment of a pattern of criminal profiteering activity.

(2) Leading organized crime as defined in subsection (1)(a) of this section is a class A felony, and as defined in subsection (1)(b) of this section is a class B felony. [1985 c 455 § 7; 1984 c 270 § 6.]

9A.82.070 Influencing outcome of sporting event. Whoever knowingly gives, promises, or offers to any professional or amateur baseball, football, hockey, polo, tennis, horse race, or basketball player or boxer or any player or referee or other official who participates or expects to participate in any professional or amateur game or sport, or to any manager, coach, or trainer of any team or participant or prospective participant in any such game, contest, or sport, any benefit with intent to influence the person to lose or try to lose or cause to be lost or to limit the person's or person's team's margin of victory or defeat, or in the case of a referee or other official to affect the decisions or the performance of the official's duties in any way, in a baseball, football, hockey, or basketball game, boxing, tennis, horse race, or polo match, or any professional or amateur sport or game, in which the player or participant or referee or other official is taking part or expects to take part, or has any duty or connection therewith, is guilty of a class C felony. [1984 c 270 § 7.]

9A.82.080 Use of proceeds of criminal profiteering—Controlling enterprise or realty—Conspiracy or attempt. (1) It is unlawful for a person who has knowingly received any of the proceeds derived, directly or indirectly, from a pattern of criminal profiteering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(2) It is unlawful for a person knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through a pattern of criminal profiteering activity.

(3) It is unlawful for a person knowingly to conspire or attempt to violate subsection (1) or (2) of this section.

(4) A violation of subsection (1) or (2) of this section is a class B felony. A violation of subsection (3) of this section is a class C felony. [1985 c 455 § 8; 1984 c 270 § 8.]

9A.82.085 Bars on certain prosecutions. In a criminal prosecution alleging a violation of RCW 9A.82.060 or 9A.82.080, the state is barred from joining any offense other than the offenses alleged to be part of the pattern of criminal profiteering activity. When a defendant has been tried criminally for a violation of RCW 9A.82.060 or 9A.82.080, the state is barred from subsequently charging the defendant with an offense that was alleged to be part of the pattern of criminal profiteering activity for which he or she was tried. [1985 c 455 § 9.]

9A.82.090 Orders restraining criminal profiteering—When issued. During the pendency of any criminal case charging a violation of RCW 9A.82.060 or a violation of RCW 9A.82.080, the superior court may, in addition to its other powers, issue an order pursuant to RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation of RCW 9A.82.060 or a violation of RCW 9A.82.080, the superior court may, in addition to its other powers of disposition, issue an order pursuant to RCW 9A.82.100. [1985 c 455 § 10; 1984 c 270 § 9.]

9A.82.100 Remedies and procedures. (1)(a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity or by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(b) The attorney general or county prosecuting attorney may file an action: (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080.

(c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

(3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real

property pursuant to Title 7 RCW. In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f).

(4) Following a determination of liability, orders may include, but are not limited to:

(a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.

(b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the Constitutions of the United States and this state permit.

(c) Ordering dissolution or reorganization of any enterprise.

(d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080 or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund or the antiprofitereering revolving fund of the county.

(f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering then to the state general fund or antiprofitereering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

(g) Ordering payment to the state general fund or antiprofitereering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.

(5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the state general fund or

antiprofitereering revolving fund of the county, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:

(a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any appreciation or income attributable to the investment.

(b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate the commission of the offense.

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.

(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered.

(8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

(9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

(10) A person other than the attorney general or county prosecuting attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

(11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any

available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

(12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

(13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.

(14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.

(15) In an action brought under subsection (1) (a) and (b)(i) of this section, either party has the right to a jury trial. [1989 c 271 § 111; 1985 c 455 § 11; 1984 c 270 § 10.]

Application—1989 c 271 §§ 101 through 111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

9A.82.110 State public safety and education account—County antiprofitereering revolving funds. (1) Any payments or forfeiture to the state general fund ordered under RCW 9A.82.100 (4) or (5) shall be deposited in the public safety and education account.

(2) In an action brought by the attorney general on behalf of the state under RCW 9A.82.100(1)(b)(i) in which the state prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the public safety and education account.

(3) It is the intent of the legislature that the money deposited in the public safety and education account pursuant to this chapter be appropriated to promote crime victims' compensation.

(4)(a) The county legislative authority may establish an antiprofitereering revolving fund to be administered by the county prosecuting attorney under the conditions and for the purposes provided by this subsection. Disbursements from the fund shall be on authorization of the county prosecuting attorney. No appropriation is required for disbursements.

(b) Any prosecution and investigation costs, including attorney's fees, recovered for the state by the county prosecuting attorney as a result of enforcement of civil and criminal statutes pertaining to any offense included in the definition of criminal profiteering, whether by final judg-

ment, settlement, or otherwise, shall be deposited, as directed by a court of competent jurisdiction, in the fund established by this subsection. In an action brought by a prosecuting attorney on behalf of the county under RCW 9A.82.100(1)(b)(i) in which the county prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the public safety and education account in the state general fund.

(c) The county legislative authority may prescribe a maximum level of moneys in the antiprofitereing revolving fund. Moneys exceeding the prescribed maximum shall be transferred to the county current expense fund.

(d) The moneys in the fund shall be used by the county prosecuting attorney for the investigation and prosecution of any offense, within the jurisdiction of the county prosecuting attorney, included in the definition of criminal profiteering, including civil enforcement.

(e) If a county has not established an antiprofitereing revolving fund, any payments or forfeitures ordered to the county under this chapter shall be deposited to the county current expense fund. [1985 c 455 § 12; 1984 c 270 § 11.]

9A.82.120 Criminal profiteering lien—Authority, procedures. (1) The state, upon filing a criminal action under RCW 9A.82.060 or 9A.82.080 or a civil action under RCW 9A.82.100, may file in accordance with this section a criminal profiteering lien. A filing fee or other charge is not required for filing a criminal profiteering lien.

(2) A criminal profiteering lien shall be signed by the attorney general or the county prosecuting attorney representing the state in the action and shall set forth the following information:

(a) The name of the defendant whose property or other interests are to be subject to the lien;

(b) In the discretion of the attorney general or county prosecuting attorney filing the lien, any aliases or fictitious names of the defendant named in the lien;

(c) If known to the attorney general or county prosecuting attorney filing the lien, the present residence or principal place of business of the person named in the lien;

(d) A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding;

(e) The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed;

(f) A statement that the notice is being filed pursuant to this section;

(g) The amount that the state claims in the action or, with respect to property or other interests that the state has requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited;

(h) If known to the attorney general or county prosecuting attorney filing the lien, a description of property that is subject to forfeiture to the state or property in which the defendant has an interest that is available to satisfy a judgment entered in favor of the state; and

(i) Such other information as the attorney general or county prosecuting attorney filing the lien deems appropriate.

(3) The attorney general or the county prosecuting attorney filing the lien may amend a lien filed under this

section at any time by filing an amended criminal profiteering lien in accordance with this section that identifies the prior lien amended.

(4) The attorney general or the county prosecuting attorney filing the lien shall, as soon as practical after filing a criminal profiteering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a criminal profiteering lien filed in accordance with this section.

(5)(a) A criminal profiteering lien is perfected against interests in personal property in the same manner [as] a security interest in like property pursuant to RCW 62A.9-302, 62A.9-303, 62A.9-304, 62A.9-305, and 62A.9-306 or as otherwise required to perfect a security interest in like property under applicable law. In the case of perfection by filing, the state shall file, in lieu of a financing statement in the form prescribed by RCW 62A.9-402, a notice of lien in substantially the following form:

NOTICE OF LIEN

Pursuant to RCW 9A.82.120, the state of Washington claims a criminal profiteering lien on all real and personal property of:

Name:
 Address:

State of Washington

 By (authorized signature)

On receipt of such a notice from the state, a filing officer shall, without payment of filing fee, file and index the notice as if it were a financing statement naming the state as secured party and the defendant as debtor.

(b) A criminal profiteering lien is perfected against interests in real property by filing the lien in the office where a mortgage on the real estate would be filed or recorded. The filing officer shall file and index the criminal profiteering lien, without payment of a filing fee, in the same manner as a mortgage.

(6) The filing of a criminal profiteering lien in accordance with this section creates a lien in favor of the state in:

(a) Any interest of the defendant, in real property situated in the county in which the lien is filed, then maintained, or thereafter acquired in the name of the defendant identified in the lien;

(b) Any interest of the defendant, in personal property situated in this state, then maintained or thereafter acquired in the name of the defendant identified in the lien; and

(c) Any property identified in the lien to the extent of the defendant's interest therein.

(7) The lien created in favor of the state in accordance with this section, when filed or otherwise perfected as provided in subsection (5) of this section, has, with respect to any of the property described in subsection (6) of this section, the same priority determined pursuant to the laws of this state as a mortgage or security interest given for value (but not a purchase money security interest) and perfected in the same manner with respect to such property; except that any lien perfected pursuant to Title 60 RCW by any person

who, in the ordinary course of his business, furnishes labor, services, or materials, or rents, leases, or otherwise supplies equipment, without knowledge of the criminal profiteering lien, is superior to the criminal profiteering lien.

(8) Upon entry of judgment in favor of the state, the state may proceed to execute thereon as in the case of any other judgment, except that in order to preserve the state's lien priority as provided in this section the state shall, in addition to such other notice as is required by law, give at least thirty days' notice of the execution to any person possessing at the time the notice is given, an interest recorded subsequent to the date the state's lien was perfected.

(9) Upon the entry of a final judgment in favor of the state providing for forfeiture of property to the state, the title of the state to the property:

(a) In the case of real property or a beneficial interest in real property, relates back to the date of filing the criminal profiteering lien or, if no criminal profiteering lien is filed, then to the date of recording of the final judgment or the abstract thereof; or

(b) In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the state, or the date of filing of a criminal profiteering lien in accordance with this section, whichever is earlier, but if the property was not seized and no criminal profiteering lien was filed then to the date the final judgment was filed with the department of licensing and, if the personal property is an aircraft, with the federal aviation administration.

(10) This section does not limit the right of the state to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under RCW 9A.82.100 or appropriate to protect the interests of the state or available under other applicable law.

(11) In a civil or criminal action under this chapter, the superior court shall provide for the protection of bona fide interests in property, including community property, subject to liens of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture pursuant to RCW 9A.82.100(4)(f). [1985 c 455 § 13; 1984 c 270 § 12.]

9A.82.130 Criminal profiteering lien—Trustee of real property. (1) A trustee who is personally served in the manner provided for service of legal process with written notice that a lien notice has been recorded or a civil proceeding or criminal proceeding has been instituted under this chapter against any person for whom the trustee holds legal or record title to real property, shall immediately furnish to the attorney general or county prosecuting attorney the following:

(a) The name and address of the person, as known to the trustee;

(b) To the extent known to the trustee, the name and address of all other persons for whose benefit the trustee holds title to the real property; and

(c) If requested by the attorney general or county prosecuting attorney, a copy of the trust agreement or other

instrument under which the trustee holds legal or record title to the real property.

(2) The recording of a lien notice shall not constitute a lien on the record title to real property owned by a trustee at the time of recording except to the extent that trustee is named in and served with the lien notice as provided in subsection (1) of this section. The attorney general or county prosecuting attorney may bring a civil proceeding in superior court against the trustee to recover from the trustee the amounts set forth in RCW 9A.82.150. In addition to amounts recovered under RCW 9A.82.150, the attorney general or county prosecuting attorney also may recover its investigative costs and attorneys' fees.

(3) The recording of a lien notice does not affect the use to which real property or a beneficial interest owned by the person named in the lien notice may be put or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership except the sale of the property, until a judgment of forfeiture is entered.

(4) This section does not apply to any conveyance by a trustee under a court order unless the court order is entered in an action between the trustee and the beneficiary.

(5) Notwithstanding that a trustee is served with notice as provided in subsection (1) of this section, this section does not apply to a conveyance by a trustee required under the terms of any trust agreement in effect before service of such notice on the trustee. [1985 c 455 § 14; 1984 c 270 § 13.]

9A.82.140 Criminal profiteering lien—Procedures after notice. (1) The term of a lien notice shall be six years from the date the lien notice is recorded. If a renewal lien notice is filed by the attorney general or county prosecuting attorney, the term of the renewal lien notice shall be for six years from the date the renewal lien notice is recorded. The attorney general or county prosecuting attorney is entitled to only one renewal of the lien notice.

(2) The attorney general or county prosecuting attorney filing the lien notice may release in whole or in part any lien notice or may release any specific property or beneficial interest from the lien notice upon such terms and conditions as the attorney general or county prosecuting attorney considers appropriate and shall release any lien upon the dismissal of the action which is the basis of the lien or satisfaction of the judgment of the court in the action or other final disposition of the claim evidenced by the lien. A release of a lien notice executed by the attorney general or county prosecuting attorney shall be recorded in the official records in which the lien notice covering that property was recorded. No charge or fee may be imposed for recording any release of a lien notice.

(3)(a) A person named in the lien notice may move the court in which the civil proceeding giving rise to the lien notice is pending for an order extinguishing the lien notice.

(b) Upon the motion of a person under (a) of this subsection, the court immediately shall enter an order setting a date for hearing, which shall be not less than five nor more than ten days after the motion is filed. The order and a copy of the motion shall be served on the attorney general or county prosecuting attorney within three days after the entry of the court's order. At the hearing, the court shall take

evidence on the issue of whether any property or beneficial interest owned by the person is covered by the lien notice or otherwise subject to forfeiture under RCW 9A.82.120. If the person shows by a preponderance of the evidence that the lien notice is not applicable to the person or that any property or beneficial interest owned by the person is not subject to forfeiture under RCW 9A.82.120, the court shall enter a judgment extinguishing the lien notice or releasing the property or beneficial interest from the lien notice.

(c) The court may enter an order releasing from the lien notice any specific real property or beneficial interest if, at the time the lien notice is recorded, there is pending an arms length sale of the real property or beneficial interest in which the parties are under no undue compulsion to sell or buy and are able, willing, and reasonably well informed and the sale is for the fair market value of the real property or beneficial interest and the recording of the lien notice prevents the sale of the property or interest. The proceeds resulting from the sale of the real property or beneficial interest shall be deposited with the court, subject to the further order of the court.

(d) At any time after filing of a lien, the court may release from the lien any property upon application by the defendant and posting of security equal to the value of the property to be released. [1985 c 455 § 15; 1984 c 270 § 14.]

9A.82.150 Criminal profiteering lien—Conveyance of property by trustee, liability. (1) If a trustee conveys title to real property for which, at the time of the conveyance, the trustee has been personally served with notice as provided in RCW 9A.82.130(1) of a lien under this chapter, the trustee shall be liable to the state for the greater of:

(a) The amount of proceeds received by the person named in the lien notice as a result of the conveyance;

(b) The amount of proceeds received by the trustee as a result of the conveyance and distributed by the trustee to the person named in the lien notice; or

(c) The fair market value of the interest of the person named in the lien notice in the real property so conveyed.

(2) If the trustee conveys the real property for which a lien notice has been served on the trustee at the time of the conveyance and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or beneficiary's designee, the trustee's liability shall not exceed the amount of the proceeds so held so long as the trustee continues to hold the proceeds. [1985 c 455 § 16; 1984 c 270 § 15.]

9A.82.160 Criminal profiteering lien—Trustee's failure to comply, evasion of procedures or lien. A trustee who knowingly fails to comply with RCW 9A.82.130(1) is guilty of a gross misdemeanor. A trustee who conveys title to real property after service of the notice as provided in RCW 9A.82.130(1) with the intent to evade the provisions of RCW 9A.82.100 or 9A.82.120 with respect to such property is guilty of a class C felony. [1985 c 455 § 17; 1984 c 270 § 16.]

9A.82.170 Financial institution records—Inspection and copying—Wrongful disclosure. (1) Upon request of

the attorney general or prosecuting attorney, a subpoena for the production of records of a financial institution may be signed and issued by a superior court judge if there is reason to believe that an act of criminal profiteering or a violation of RCW 9A.82.060 or 9A.82.080 has occurred or is occurring and that the records sought will materially aid in the investigation of such activity or appears reasonably calculated to lead to the discovery of information that will do so. The subpoena shall be served on the financial institution as in civil actions. The court may, upon motion timely made and in any event before the time specified for compliance with the subpoena, condition compliance upon advancement by the attorney general or prosecuting attorney of the reasonable costs of producing the records specified in the subpoena.

(2) A response to a subpoena issued under this section is sufficient if a copy or printout, duly authenticated by an officer of the financial institution as a true and correct copy or printout of its records, is provided, unless otherwise provided in the subpoena for good cause shown.

(3) Except as provided in this subsection, a financial institution served with a subpoena under this section shall not disclose to the customer the fact that a subpoena seeking records relating to the customer has been served. A judge of the superior court may order the attorney general, prosecuting attorney, or financial institution to advise the financial institution's customer of the subpoena. Unless ordered to do so by the court, disclosure of the subpoena by the financial institution or any of its employees to the customer is a misdemeanor.

(3) [(4)] A financial institution shall be reimbursed in an amount set by the court for reasonable costs incurred in providing information pursuant to this section.

(4) [(5)] This section does not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges.

(5) [(6)] Disclosure by the attorney general, county prosecuting attorney, or any peace officer or other person designated by the attorney general or the county prosecuting attorney, of information obtained under this section, except in the proper discharge of official duties, is punishable as a misdemeanor.

(6) [(7)] Upon filing of any civil or criminal action, the nondisclosure requirements of any subpoena or order under this section shall terminate, and the attorney general or prosecuting attorney filing the action shall provide to the defendant copies of all subpoenas or other orders issued under this section.

(7) [(8)] A financial institution shall not be civilly liable for harm resulting from its compliance with the provisions of this chapter. [1985 c 455 § 18; 1984 c 270 § 17.]

9A.82.900 Severability—1984 c 270. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 270 § 20.]

9A.82.901 Effective date—1984 c 270 as amended by 1985 c 455. Sections 12, 13, 14, 15, and 16, chapter 270, Laws of 1984 as amended by sections 13, 14, 15, 16,

and 17 of this 1985 act shall take effect on July 1, 1986, and the remainder of chapter 270, Laws of 1984 shall take effect on July 1, 1985. [1985 c 455 § 20; 1984 c 270 § 21.]

9A.82.902 Effective date—1985 c 455. With the exception of sections 13, 14, 15, 16, and 17 of this act, this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985. [1985 c 455 § 21.]

9A.82.903 Repealed acts—Effective July 1, 1995. The following acts or parts of acts as they now exist or are hereafter amended are each repealed effective July 1, 1995.

(1) Section 1, chapter 270, Laws of 1984, section 2, chapter 455, Laws of 1985 and RCW 9A.82.010;

(2) Section 2, chapter 270, Laws of 1984, section 3, chapter 455, Laws of 1985 and RCW 9A.82.020;

(3) Section 3, chapter 270, Laws of 1984, section 4, chapter 455, Laws of 1985 and RCW 9A.82.030;

(4) Section 4, chapter 270, Laws of 1984, section 5, chapter 455, Laws of 1985 and RCW 9A.82.040;

(5) Section 6, chapter 455, Laws of 1985 and RCW 9A.82.045;

(6) Section 5, chapter 270, Laws of 1984 and RCW 9A.82.050;

(7) Section 6, chapter 270, Laws of 1984, section 7, chapter 455, Laws of 1985 and RCW 9A.82.060;

(8) Section 7, chapter 270, Laws of 1984 and RCW 9A.82.070;

(9) Section 8, chapter 270, Laws of 1984, section 8, chapter 455, Laws of 1985 and RCW 9A.82.080;

(10) Section 9, chapter 455, Laws of 1985 and RCW 9A.82.085;

(11) Section 9, chapter 270, Laws of 1984, section 10, chapter 455, Laws of 1985 and RCW 9A.82.090;

(12) Section 10, chapter 270, Laws of 1984, section 11, chapter 455, Laws of 1985 and RCW 9A.82.100;

(13) Section 11, chapter 270, Laws of 1984, section 12, chapter 455, Laws of 1985 and RCW 9A.82.110;

(14) Section 12, chapter 270, Laws of 1984, section 13, chapter 455, Laws of 1985 and RCW 9A.82.120;

(15) Section 13, chapter 270, Laws of 1984, section 14, chapter 455, Laws of 1985 and RCW 9A.82.130;

(16) Section 14, chapter 270, Laws of 1984, section 15, chapter 455, Laws of 1985 and RCW 9A.82.140;

(17) Section 15, chapter 270, Laws of 1984, section 16, chapter 455, Laws of 1985 and RCW 9A.82.150;

(18) Section 16, chapter 270, Laws of 1984, section 17, chapter 455, Laws of 1985 and RCW 9A.82.160;

(19) Section 17, chapter 270, Laws of 1984, section 18, chapter 455, Laws of 1985 and RCW 9A.82.170;

(20) Section 20, chapter 270, Laws of 1984 and RCW 9A.82.900;

(21) Section 21, chapter 270, Laws of 1984, section 20, chapter 455, Laws of 1985 and RCW 9A.82.901; and

(22) Section 1, chapter 455, Laws of 1985 and RCW 9A.82.001. [1985 c 455 § 22.]

9A.82.904 Severability—1985 c 455. If any provision of this act or its application to any person or circumstance is

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 455 § 23.]

Chapter 9A.83 MONEY LAUNDERING

Sections

9A.83.010 Definitions.

9A.83.020 Money laundering.

9A.83.030 Seizure and forfeiture of proceeds and property.

9A.83.040 Release from liability.

9A.83.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Conducts a financial transaction" includes initiating, concluding, or participating in a financial transaction.

(2) "Financial institution" means a bank, savings bank, credit union, or savings and loan institution.

(3) "Financial transaction" means a purchase, sale, loan, pledge, gift, transfer, transmission, delivery, trade, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, or any other acquisition or disposition of property, by whatever means effected.

(4) "Knows the property is proceeds of specified unlawful activity" means believing based upon the representation of a law enforcement officer or his or her agent, or knowing that the property is proceeds from some form, though not necessarily which form, of specified unlawful activity.

(5) "Proceeds" means any interest in property directly or indirectly acquired through or derived from an act or omission, and any fruits of this interest, in whatever form.

(6) "Property" means anything of value, whether real or personal, tangible or intangible.

(7) "Specified unlawful activity" means an offense committed in this state that is a class A or B felony under Washington law or that is listed in RCW 9A.82.010(14), or an offense committed in any other state that is punishable under the laws of that state by more than one year in prison, or an offense that is punishable under federal law by more than one year in prison. [1992 c 210 § 1.]

9A.83.020 Money laundering. (1) A person is guilty of money laundering when that person conducts or attempts to conduct a financial transaction involving the proceeds of specified unlawful activity and:

(a) Knows the property is proceeds of specified unlawful activity; or

(b) Knows that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, and acts recklessly as to whether the property is proceeds of specified unlawful activity; or

(c) Knows that the transaction is designed in whole or in part to avoid a transaction reporting requirement under federal law.

(2) In consideration of the constitutional right to counsel afforded by the Fifth and Sixth amendments to the United States Constitution and Article 1, Section 22 of the Constitution of Washington, an additional proof requirement is

imposed when a case involves a licensed attorney who accepts a fee for representing a client in an actual criminal investigation or proceeding. In these situations, the prosecution is required to prove that the attorney accepted proceeds of specified unlawful activity with intent:

(a) To conceal or disguise the nature, location, source, ownership, or control of the proceeds, knowing the property is proceeds of specified unlawful activity; or

(b) To avoid a transaction reporting requirement under federal law.

The proof required by this subsection is in addition to the requirements contained in subsection (1) of this section.

(3) An additional proof requirement is imposed when a case involves a financial institution and one or more of its employees. In these situations, the prosecution is required to prove that proceeds of specified unlawful activity were accepted with intent:

(a) To conceal or disguised [disguise] the nature, location, source, ownership, or control of the proceeds, knowing the property is proceeds of specified unlawful activity; or

(b) To avoid a transaction reporting requirement under federal law.

The proof required by this subsection is in addition to the requirements contained in subsection (1) of this section.

(4) Money laundering is a class B felony.

(5) A person who violates this section is also liable for a civil penalty of twice the value of the proceeds involved in the financial transaction and for the costs of the suit, including reasonable investigative and attorneys' fees.

(6) Proceedings under this chapter shall be in addition to any other criminal penalties, civil penalties, or forfeitures authorized under state law. [1992 c 210 § 2.]

9A.83.030 Seizure and forfeiture of proceeds and property. (1) Proceeds traceable to or derived from specified unlawful activity or a violation of RCW 9A.83.020 are subject to seizure and forfeiture. The attorney general or county prosecuting attorney may file a civil action for the forfeiture of proceeds. Unless otherwise provided for under this section, no property rights exist in these proceeds. All right, title, and interest in the proceeds shall vest in the governmental entity of which the seizing law enforcement agency is a part upon commission of the act or omission giving rise to forfeiture under this section.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by a superior court that has jurisdiction over the property. Any agency seizing real property shall file a lis pendens concerning the property. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later. Real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant issued pursuant to RCW 69.50.502; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter.

(3) A seizure under subsection (2) of this section commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized proceeds to be served within fifteen days after the seizure on the owner of the property seized and the person in charge thereof and any person who has a known right or interest therein, including a community property interest. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the property seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The provisions of RCW 69.50.505(e) shall apply to any such hearing. The seizing law enforcement agency shall promptly return property to the claimant upon the direction of the administrative law judge or court.

(6) Disposition of forfeited property shall be made in the manner provided for in RCW 69.50.505(g) through (i) and (m). [1992 c 210 § 3.]

9A.83.040 Release from liability. No liability is imposed by this chapter upon any authorized state, county, or municipal officer engaged in the lawful performance of his duties, or upon any person who reasonably believes that he is acting at the direction of such officer and that the officer is acting in the lawful performance of his duties. [1992 c 210 § 4.]

Chapter 9A.84
PUBLIC DISTURBANCE

Sections

- 9A.84.010 Riot.
9A.84.020 Failure to disperse.
9A.84.030 Disorderly conduct.
9A.84.040 False reporting.

9A.84.010 Riot. (1) A person is guilty of the crime of riot if, acting with three or more other persons, he knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property.

(2) The crime of riot is:

(a) A class C felony, if the actor is armed with a deadly weapon;

(b) A gross misdemeanor in all other cases. [1975 1st ex.s. c 260 § 9A.84.010.]

9A.84.020 Failure to disperse. (1) A person is guilty of failure to disperse if:

(a) He congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and

(b) He refuses or fails to disperse when ordered to do so by a peace officer or other public servant engaged in enforcing or executing the law.

(2) Failure to disperse is a misdemeanor. [1975 1st ex.s. c 260 § 9A.84.020.]

9A.84.030 Disorderly conduct. (1) A person is guilty of disorderly conduct if he:

(a) Uses abusive language and thereby intentionally creates a risk of assault; or

(b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or

(c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority.

(2) Disorderly conduct is a misdemeanor. [1975 1st ex.s. c 260 § 9A.84.030.]

9A.84.040 False reporting. (1) A person is guilty of false reporting if with knowledge that the information reported, conveyed or circulated is false, he initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency knowing that such false report is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause public inconvenience or alarm.

(2) False reporting is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.84.040.]

Chapter 9A.88

INDECENT EXPOSURE—PROSTITUTION
(Formerly: Public indecency—Prostitution)

Sections

- 9A.88.010 Indecent exposure.
9A.88.030 Prostitution.
9A.88.050 Prostitution—Sex of parties immaterial—No defense.
9A.88.060 Promoting prostitution—Definitions.
9A.88.070 Promoting prostitution in the first degree.
9A.88.080 Promoting prostitution in the second degree.
9A.88.090 Permitting prostitution.
9A.88.110 Patronizing a prostitute.

Obscenity: Chapter 9.68 RCW.

9A.88.010 Indecent exposure. (1) A person is guilty of indecent exposure if he intentionally makes any open and obscene exposure of his person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm.

(2) Indecent exposure is a misdemeanor unless such person exposes himself to a person under the age of fourteen years in which case indecent exposure is a gross misdemeanor or on the first offense and, if such person has previously been convicted under this subsection or of a sex offense as defined in RCW 9.94A.030, then such person is guilty of a class C felony punishable under chapter 9A.20 RCW. [1990 c 3 § 904; 1987 c 277 § 1; 1975 1st ex.s. c 260 § 9A.88.010.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9A.88.030 Prostitution. (1) A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) For purposes of this section, "sexual conduct" means "sexual intercourse" or "sexual contact," both as defined in chapter 9A.44 RCW.

(3) Prostitution is a misdemeanor. [1988 c 145 § 16; 1979 ex.s. c 244 § 15; 1975 1st ex.s. c 260 § 9A.88.030.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

9A.88.050 Prostitution—Sex of parties immaterial—No defense. In any prosecution for prostitution, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is no defense that:

(1) Such persons were of the same sex; or

(2) The person who received, agreed to receive, or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was female. [1975 1st ex.s. c 260 § 9A.88.050.]

9A.88.060 Promoting prostitution—Definitions. The following definitions are applicable in RCW 9A.88.070 through 9A.88.090:

(1) "Advances prostitution." A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he causes or aids a person to commit or

engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) "Profits from prostitution." A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity. [1975 1st ex.s. c 260 § 9A.88.060.]

9A.88.070 Promoting prostitution in the first degree. (1) A person is guilty of promoting prostitution in the first degree if he knowingly:

(a) Advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or

(b) Advances or profits from prostitution of a person less than eighteen years old.

(2) Promoting prostitution in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.88.070.]

9A.88.080 Promoting prostitution in the second degree. (1) A person is guilty of promoting prostitution in the second degree if he knowingly:

(a) Profits from prostitution; or

(b) Advances prostitution.

(2) Promoting prostitution in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.88.080.]

9A.88.090 Permitting prostitution. (1) A person is guilty of permitting prostitution if, having possession or control of premises which he knows are being used for prostitution purposes, he fails without lawful excuse to make reasonable effort to halt or abate such use.

(2) Permitting prostitution is a misdemeanor. [1975 1st ex.s. c 260 § 9A.88.090.]

9A.88.110 Patronizing a prostitute. (1) A person is guilty of patronizing a prostitute if:

(a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or

(b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him or her; or

(c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

(2) For purposes of this section, "sexual conduct" has the meaning given in RCW 9A.88.030.

(3) Patronizing a prostitute is a misdemeanor. [1988 c 146 § 4.]

Severability—Effective dates—1988 c 146: See notes following RCW 9A.44.050.

Chapter 9A.98 LAWS REPEALED

Sections

9A.98.010 Acts or parts of acts repealed.

9A.98.020 Savings clause.

9A.98.010 Acts or parts of acts repealed. See 1975 1st ex.s. c 260 § 9A.92.010.

9A.98.020 Savings clause. The laws repealed by RCW 9A.98.010 are repealed except with respect to rights and duties which matured, penalties which were incurred, and proceedings which were begun before July 1, 1976. [1975 1st ex.s. c 260 § 9A.92.020.]

Title 10

CRIMINAL PROCEDURE

Chapters

- 10.01 General provisions.
- 10.04 District court procedure—Generally.
- 10.05 Deferred prosecution—Courts of limited jurisdiction.
- 10.10 Criminal appeals from district courts.
- 10.14 Harassment.
- 10.16 Preliminary hearings.
- 10.19 Bail and appearance bonds.
- 10.22 Compromise of misdemeanors.
- 10.25 Jurisdiction and venue.
- 10.27 Grand juries—Criminal investigations.
- 10.29 State-wide Special Inquiry Judge Act.
- 10.31 Warrants and arrests.
- 10.34 Fugitives of this state.
- 10.37 Accusations and their requisites.
- 10.40 Arraignment.
- 10.43 Former acquittal or conviction.
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Chapter 10.01

GENERAL PROVISIONS

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Right to

bail: State Constitution Art. 1 § 20.

trial by jury: State Constitution Art. 1 § 21.

Rights of accused persons: State Constitution Art. 1 § 22.

Sexual psychopaths, procedures as to: Chapter 71.06 RCW.

10.01.030 Pleadings—Forms abolished. All the forms of pleading in criminal actions heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed herein. [Code 1881 § 1002; 1873 p 224 § 185; 1869 p 240 § 180; RRS § 2022.]

10.01.040 Statutes—Repeal or amendment—Saving clause presumed. No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of

any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein. [1901 ex.s. c 6 § 1; RRS § 2006.]

10.01.050 Convictions—Necessary before punishment. No person charged with any offense against the law shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person. [Code 1881 § 770; 1854 p 76 § 6; RRS § 2118.]

10.01.060 Conviction—Requisites—Waiver of jury trial. No person informed against or indicted for a crime shall be convicted thereof, unless by admitting the truth of the charge in his plea, by confession in open court, or by the verdict of a jury, accepted and recorded by the court: PROVIDED HOWEVER, That except in capital cases, where the person informed against or indicted for a crime is represented by counsel, such person may, with the assent of the court, waive trial by jury and submit to trial by the court. [1951 c 52 § 1; 1909 c 249 § 57; 1891 c 28 § 91; Code 1881 § 767; 1873 p 180 § 3; 1869 p 198 § 3; 1859 p 105 § 3; 1854 p 76 § 3; RRS § 2309.]

Self-incriminating testimony: State Constitution Art. 1 § 9.

10.01.070 Corporations—Amenable to criminal process—How. Whenever an indictment or information shall be filed in any superior court against a corporation charging it with the commission of a crime, a summons shall be issued by the clerk of such court, signed by one of the judges thereof, commanding the sheriff forthwith to notify the accused thereof, and commanding it to appear before such court at such time as shall be specified in said summons. Such summons and a copy of the indictment or information shall be at once delivered by such clerk to said sheriff and by the sheriff forthwith served and returned in the manner provided for service of summons upon such corporation in a civil action. Whenever a complaint against a corporation, charging it with the commission of a crime, shall be made before any district or municipal judge, a like summons, signed by such judge, shall be issued, which, together with a copy of said complaint, shall be delivered to the sheriff at once and by the sheriff forthwith served as herein provided. [1987 c 202 § 147; 1911 c 29 § 1; RRS § 2011-1.]

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

10.01.090 Corporations—Judgment against. If the corporation shall be found guilty and a fine imposed, it shall be entered and docketed by the clerk, or district or municipal court as a judgment against the corporation, and it shall be of the same force and effect and be enforced against such corporation in the same manner as a judgment in a civil action. [1987 c 202 § 148; 1911 c 29 § 3; RRS § 2011-3.]

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

10.01.100 Corporations—Penalties—Fines in lieu of other punishments. Every corporation guilty of a violation of any law of the state of Washington, where the prescribed penalty is, for any reason, incapable of execution or enforcement against such corporation, shall be punished by a fine of not more than ten thousand dollars, if such offense is a felony; or, by a fine of not more than one thousand dollars if such offense is a gross misdemeanor; or, by a fine of not more than five hundred dollars if such offense is a misdemeanor. [1925 ex.s. c 101 § 1; RRS § 2011-4.]

10.01.113 Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals. See RCW 4.88.330.

10.01.120 Pardons—Reprieves—Commutations. Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life at hard labor; and in all cases in which the governor is authorized to grant pardons or commute sentence of death, he may, upon the petition of the person convicted, commute a sentence or grant a pardon, upon such conditions, and with such restrictions, and under such limitations as he may think proper; and he may issue his warrant to all proper officers to carry into effect such pardon or commutation, which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he may think proper. [Code 1881 § 1136; 1854 p 128 § 174; RRS § 2223.]

Governor's powers: State Constitution Art. 3 §§ 9, 11.

Record of pardons, etc., governor to keep: RCW 43.06.020.

10.01.130 Witnesses' fees. No fees shall be allowed to witnesses in criminal causes unless they shall have reported their attendance at the close of each day's session to the clerk in attendance thereon. [1895 c 10 § 1; RRS § 498, part. FORMER PART OF SECTION: 1895 c 10 § 2; RRS § 498, part, now codified as RCW 10.01.140.]

Rules of court: Cf. CrR 6.12.

Witness fees: Chapters 2.40, 12.16 RCW.

10.01.140 Mileage allowance—Jurors—Witnesses. No allowance of mileage shall be made to a juror or witness who has not verified his claim of mileage under oath before the clerk of the court on which he is in attendance. [1895 c 10 § 2; RRS § 498, part. Formerly RCW 10.01.130, part.]

10.01.150 Charges arising from official acts of state officers or employees—Defense by attorney general.

Whenever a state officer or employee is charged with a criminal offense arising out of the performance of an official act which was fully in conformity with established written rules, policies, and guidelines of the state or state agency, the employing agency may request the attorney general to defend the officer or employee. If the agency finds, and the attorney general concurs, that the officer's or employee's conduct was fully in accordance with established written rules, policies, and guidelines of the state or a state agency and the act performed was within the scope of employment, then the request shall be granted and the costs of defense shall be paid by the requesting agency: PROVIDED, HOWEVER, If the agency head is the person charged, then approval must be obtained from both the attorney general and the state auditor. If the court finds that the officer or employee was performing an official act, or was within the scope of employment, and that his actions were in conformity with the established rules, regulations, policies, and guidelines of the state and the state agency, the cost of any monetary fine assessed shall be paid from the tort claims revolving fund. [1975 1st ex.s. c 144 § 1.]

10.01.160 Costs—What constitutes—Payment by defendant—Procedure—Remission. (1) The court may require a convicted defendant, or defendant granted a deferred prosecution under chapter 10.05 RCW, to pay costs.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a convicted defendant to pay. Costs for administering a deferred prosecution may not exceed one hundred fifty dollars.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170. [1991 c 247 § 4; 1987 c 363 § 1; 1985 c 389 § 1; 1975-'76 2nd ex.s. c 96 § 1.]

Commitment for failure to pay fine and costs: RCW 10.70.010, 10.82.030. Defendant liable for costs: RCW 10.64.015.

Fine and costs—Collection procedure, commitment for failure to pay, execution against defendant's property: Chapter 10.82 RCW.

10.01.170 Fine or costs—Payment within specified time or installments. When a defendant is sentenced to pay a fine or costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence the fine or costs shall be payable forthwith. [1975-'76 2nd ex.s. c 96 § 2.]

Payment of fine and costs in installments: RCW 9.92.070.

10.01.180 Fine or costs—Default in payment—Contempt of court—Enforcement, collection procedures.

(1) A defendant sentenced to pay a fine or costs who defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW. The court may issue a warrant of arrest for his appearance.

(2) When a fine or assessment of costs is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or costs from those assets, and his failure to do so may be held to be contempt.

(3) If a term of imprisonment for contempt for nonpayment of a fine or costs is ordered, the term of imprisonment shall be set forth in the commitment order, and shall not exceed one day for each twenty-five dollars of the fine or costs, thirty days if the fine or assessment of costs was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

(4) If it appears to the satisfaction of the court that the default in the payment of a fine or costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or costs or the unpaid portion thereof in whole or in part.

(5) A default in the payment of a fine or costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or costs has actually been collected. [1989 c 373 § 13; 1975-'76 2nd ex.s. c 96 § 3.]

Severability—1989 c 373: See RCW 7.21.900.

Fine and costs—Collection procedure, commitment for failure to pay, execution against defendant's property: Chapter 10.82 RCW.

10.01.190 Prosecutorial powers of attorney general. In any criminal proceeding instituted or conducted by the attorney general, the attorney general and assistants are deemed to be prosecuting attorneys and have all prosecutorial powers vested in prosecuting attorneys of the state of Washington by statute or court rule. [1981 c 335 § 4.]

Purpose—1981 c 335: See RCW 43.10.230.

10.01.200 Registration of sex offenders—Notice to defendants. The court shall provide written notification to any defendant charged with a sex offense of the registration requirements of RCW 9A.44.130. Such notice shall be

included on any guilty plea forms and judgment and sentence forms provided to the defendant. [1990 c 3 § 404.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Sex offense defined: RCW 9A.44.130.

Chapter 10.04

DISTRICT COURT PROCEDURE—GENERALLY

Sections

- 10.04.020 Arrest—Offense committed in view of district judge.
- 10.04.040 Cash bail in lieu of recognizance.
- 10.04.050 Jury—If demanded.
- 10.04.070 Plea of guilty.
- 10.04.100 Verdict of guilty—Proceedings upon.
- 10.04.101 Assessment of punishment by courts organized under 1961 justice of the peace act.
- 10.04.110 Judgment—Entry—Execution—Remittance of district court fees, fines, penalties, and forfeitures.
- 10.04.120 Stay of execution.
- 10.04.800 Proposed forms for criminal actions.

Rules of court: See *Criminal Rules for Courts of Limited Jurisdiction (CrRLJ)*.

10.04.020 Arrest—Offense committed in view of district judge. When any offense is committed in view of any district judge, the judge may, by verbal direction to any deputy, or if no deputy is present, to any citizen, cause such deputy or citizen to arrest such offender, and keep such offender in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant. [1987 c 202 § 149; Code 1881 § 1888; Code 1881 § 1889, part; 1873 p 382 § 186; 1854 p 260 § 173; RRS § 1926, part.]

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

10.04.040 Cash bail in lieu of recognizance. District courts or committing magistrates may accept money as bail from persons charged withailable offenses, and for the appearance of witnesses in all cases provided by law for the recognizance of witnesses. The amount of such bail or recognizance in each case shall be determined by the court in its discretion, and may from time to time be increased or decreased as circumstances may justify. The money to be received and accounted for in the same manner as provided by law for the superior courts. [1987 c 202 § 150; 1919 c 76 § 1; RRS § 1957 1/2.]

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

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

10.04.050 Jury—If demanded. In all trials for offenses within the jurisdiction of a district judge, the defendant or the state may demand a jury, which shall consist of six, or a less number, agreed upon by the state and accused, to be impaneled and sworn as in civil cases; or the trial may be by the judge. When the complaint is for a crime or misdemeanor in the exclusive jurisdiction of the superior court, the justice hears the case as a committing magistrate, and no jury shall be allowed. [1987 c 202 § 151;

1891 c 11 § 1; Code 1881 § 1890; 1875 p 51 § 2; 1873 p 382 § 188; 1854 p 260 § 174, part; RRS § 1927.]

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

Charging juries: State Constitution Art. 4 § 16.

Convicted persons liable for costs and jury fees: RCW 10.46.190.

Right to trial by jury: State Constitution Art. 1 § 21.

10.04.070 Plea of guilty. The defendant may plead guilty to any offense charged. [Code 1881 § 1892; 1873 p 383 § 190; 1854 p 260 § 174, part; RRS § 1929.]

10.04.100 Verdict of guilty—Proceedings upon. The judge, if the prisoner is found guilty, shall assess the prisoner's punishment; or if, in the judge's opinion, the punishment the judge is authorized to assess is not adequate to the offense, he or she may so find, and in such case the judge shall order such defendant to enter recognizance to appear in the superior court of the county, and shall also recognize the witnesses, and proceed as in proceedings by a committing magistrate. [1987 c 202 § 152; 1891 c 11 § 2; Code 1881 § 1891; 1873 p 382 § 189; 1854 p 260 § 174; RRS § 1928.]

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

10.04.101 Assessment of punishment by courts organized under 1961 justice of the peace act. See RCW 3.66.065.

10.04.110 Judgment—Entry—Execution—Remittance of district court fees, fines, penalties, and forfeitures. In all cases of conviction, unless otherwise provided in this chapter, the judge shall enter judgment for the fine and costs against the defendant, and may commit him to jail until the amount of such fine and costs owing are paid, or the payment thereof be secured as provided by RCW 10.04.120. The amount of such fine and costs owing shall be computed as provided for superior court cases in RCW 10.82.030 and 10.82.040. Further proceedings therein shall be had as in like cases in the superior court: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 153; 1969 ex.s. c 199 § 10; 1967 c 200 § 6; 1891 c 11 § 6; Code 1881 § 1896; 1873 p 383 § 194; 1854 p 261 § 176; RRS § 1933.]

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

Convicted persons liable for jury fees: RCW 10.46.190.

10.04.120 Stay of execution. Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties, to be approved by the district judge, to enter into recognizance before the district judge for the payment of the fine and costs; the entry of such recognizance shall be made on the docket of the district judge, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the district judge shall proceed as in like cases in the superior court. [1987 c 202 § 154; Code 1881 § 1897; 1873 p 383 § 195; 1854 p 261 § 176; RRS § 1934.]

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

10.04.800 Proposed forms for criminal actions. The magistrates' association may propose to the supreme court suggested forms for criminal actions for inclusion in the justice court criminal rules. [1987 c 202 § 155.]

Rules of Court: CrRLJ 2.1, 4.2.

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

Chapter 10.05

DEFERRED PROSECUTION—COURTS OF LIMITED JURISDICTION

Sections

10.05.010	Eligibility—Time for petition.
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10.05.020	Requirements of petition—Rights of petitioner—Court findings.
10.05.030	Arraignment continued—Referral to treatment facility.
10.05.040	Investigation and examination by treatment facility.
10.05.050	Report to court by treatment facility—Recommended treatment plan—Commitment to provide treatment.
10.05.060	Docket and abstract procedure upon approval of treatment plan.
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10.05.080	Evidence, uses and admissibility.
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10.05.100	Conviction of similar offense.
10.05.110	Trial delay not grounds for dismissal.
10.05.120	Dismissal of charges, when—Records removed.
10.05.130	Services provided for indigent defendants.
10.05.140	Conditions of granting.
10.05.150	Alcoholism program requirements.
10.05.160	Appeal of order granting deferred prosecution.
10.05.170	Supervision as condition—Levy of assessment.

10.05.010 Eligibility—Time for petition. In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once in any five-year period. Separate offenses committed more than seven days apart may not be consolidated in a single program. [1985 c 352 § 4; 1982 1st ex.s. c 47 § 26; 1975 1st ex.s. c 244 § 1.]

Legislative finding—1985 c 352: "The legislature finds that the deferred prosecution program is an alternative to punishment for persons who will benefit from a treatment program if the treatment program is provided under circumstances that do not unreasonably endanger public safety or the traditional goals of the criminal justice system. This alternative to punishment is dependent for success upon appropriate treatment and the willingness and ability of the person receiving treatment to cooperate fully with the treatment program. The legislature finds that some persons have sought deferred prosecution but have been unable or unwilling to cooperate with treatment requirements and escaped punishment because of the difficulties in resuming prosecution after significant delay due to the absence of witnesses at a later date and the congestion in courts at a later date. The legislature further finds that the deferred prosecution statutes

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require clarification. The purpose of sections 4 through 19 of this act is to provide specific standards and procedures for judges and prosecutors to use in carrying out the original intent of the deferred prosecution statutes." [1985 c 352 § 3.]

Severability—1985 c 352: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 352 § 22.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

10.05.015 Statement of availability. At the time of arraignment a person charged with a violation of RCW 46.61.502 or 46.61.504 may be given a statement by the court that explains the availability, operation, and effects of the deferred prosecution program. [1985 c 352 § 5.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.020 Requirements of petition—Rights of petitioner—Court findings. (1) The petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental problems for which the person is in need of treatment and unless treated the probability of future reoccurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved alcoholism *treatment facility as designated in chapter 70.96A RCW if the petition alleges alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction, or by an approved mental health center if the petition alleges a mental problem.

(2) Before entry of an order deferring prosecution, a petitioner shall be advised of his rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgement of his rights; (b) a stipulation to the admissibility of the facts contained in the written police report; and (c) an acknowledgement that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he may, if he proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he seek treatment and, further, that he may seek treatment from public and private agencies at any time without regard to whether or not he is found guilty of the offense charged. He shall also be advised that the court will not accept a petition for deferred prosecution from a person who sincerely believes that he is innocent of the charges or sincerely believes that he does not, in fact, suffer from alcoholism, drug addiction, or mental problems.

(3) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing or trial on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; and (c) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included

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in the order granting deferred prosecution. [1985 c 352 § 6; 1975 1st ex.s. c 244 § 2.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.030 Arraignment continued—Referral to treatment facility. The arraigning judge upon consideration of the petition and with the concurrence of the prosecuting attorney may continue the arraignment and refer such person for a diagnostic investigation and evaluation to an approved alcoholism *treatment facility as designated in chapter 70.96A RCW, if the petition alleges an alcohol problem, an approved drug treatment center as designated in chapter 71.24 RCW, if the petition alleges a drug problem, or to an approved mental health center, if the petition alleges a mental problem. [1975 1st ex.s. c 244 § 3.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

10.05.040 Investigation and examination by *treatment facility. The facility to which such person is referred shall conduct an investigation and examination to determine:

(1) Whether the person suffers from the problem described;

(2) Whether the problem is such that if not treated there is a probability that similar misconduct will occur in the future;

(3) Whether extensive and long term treatment is required;

(4) Whether effective treatment for the person's problem is available; and

(5) Whether the person is amenable to treatment. [1985 c 352 § 7; 1975 1st ex.s. c 244 § 4.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.050 Report to court by *treatment facility—Recommended treatment plan—Commitment to provide treatment. The facility shall make a written report to the court stating its findings and recommendations after the examination required by RCW 10.05.040. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

(1) The type;

(2) Nature;

(3) Length;

(4) A treatment time schedule; and

(5) Approximate cost of the treatment.

The report with the treatment plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment plan shall be given to the prosecutor by petitioner's counsel at the request of the prosecutor. The evaluation facility making the written report shall append to the report a commitment by the *treatment facility that it will provide the treatment in accordance with this chapter. The facility shall agree to provide the court with a statement every three months for the first year and every six months for the second year regarding (a) the

petitioner's cooperation with the treatment plan proposed and (b) the petitioner's progress or failure in treatment. These statements shall be made as a declaration by the person who is personally responsible for providing the treatment. [1985 c 352 § 8; 1975 1st ex.s. c 244 § 5.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.060 Docket and abstract procedure upon approval of treatment plan. If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be attached to the docket, which shall then be removed from the regular court dockets and filed in a special court deferred prosecution file. If the charge be one that an abstract of the docket showing the charge and the date of petitioner's acceptance is required to be sent to the department of licensing, an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the petitioner's acceptance for deferred prosecution on the department's driving record of the petitioner. The entry is not a conviction for purposes of Title 46 RCW. The department shall maintain the record for five years from date of entry of the order granting deferred prosecution. [1990 c 250 § 13; 1985 c 352 § 9; 1979 c 158 § 4; 1975 1st ex.s. c 244 § 6.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.070 Petitioner arraigned when treatment rejected. When treatment is either not recommended or not approved by the judge, or the petitioner declines to accept the treatment plan, the petitioner shall be arraigned on the charge. [1985 c 352 § 10; 1975 1st ex.s. c 244 § 7.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.080 Evidence, uses and admissibility. If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition and/or investigation is inadmissible in any trial on the charges, but shall be available for use after a conviction in determining a sentence. [1985 c 352 § 11; 1975 1st ex.s. c 244 § 8.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.090 Procedure upon breach of treatment plan. If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan, the facility, center, institution, or agency administering the treatment shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of

record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan and the petitioner shall have the right to present evidence on his or her own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to RCW 10.05.020. [1985 c 352 § 12; 1975 1st ex.s. c 244 § 9.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.100 Conviction of similar offense. If a petitioner is subsequently convicted of a similar offense while in a deferred prosecution program, upon notice the court shall remove the petitioner's docket from the deferred prosecution file and the court shall enter judgment pursuant to RCW 10.05.020. [1985 c 352 § 13; 1975 1st ex.s. c 244 § 10.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.110 Trial delay not grounds for dismissal. Delay in bringing a case to trial caused by a petitioner requesting deferred prosecution as provided for in this chapter shall not be grounds for dismissal. [1985 c 352 § 14; 1975 1st ex.s. c 244 § 11.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.120 Dismissal of charges, when—Records removed. Upon proof of successful completion of the two-year treatment program, the court shall dismiss the charges pending against the petitioner.

Five years from the date of the court's approval of a deferred prosecution program for an individual petitioner, those entries that remain in the department of licensing records relating to such petitioner shall be removed. A deferred prosecution may be considered for enhancement purposes when imposing mandatory penalties and suspensions under RCW 46.61.515 for subsequent offenses within a five-year period. [1985 c 352 § 15; 1983 c 165 § 45; 1975 1st ex.s. c 244 § 12.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

10.05.130 Services provided for indigent defendants. Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment. [1975 1st ex.s. c 244 § 13.]

10.05.140 Conditions of granting. As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the

public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. The court may terminate the deferred prosecution program upon violation of this section. [1991 c 247 § 1; 1985 c 352 § 16.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.150 Alcoholism program requirements. A deferred prosecution program for alcoholism shall be for a two-year period and shall include, but not be limited to, the following requirements:

(1) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;

(2) Participation in an intensive inpatient or intensive outpatient program in a state-approved alcoholism *treatment facility;

(3) Participation in a minimum of two meetings per week of an alcoholism self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;

(4) Participation in an alcoholism self-help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;

(5) Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;

(6) Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;

(7) The decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;

(8) All treatment within the purview of this section shall occur within or be approved by a state-approved alcoholism *treatment facility as described in chapter 70.96A RCW;

(9) Signature of the petitioner agreeing to the terms and conditions of the treatment program. [1985 c 352 § 17.]

***Reviser's note:** Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.160 Appeal of order granting deferred prosecution. The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

(1) Prior deferred prosecution has been granted to the defendant within five years;

(2) Failure of the court to obtain proof of insurance or a treatment plan conforming to the requirements of this chapter;

(3) Failure of the court to comply with the requirements of RCW 10.05.100;

(4) Failure of the evaluation facility to provide the information required in RCW 10.05.040 and 10.05.050, if the defendant has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may

consider the use of another *treatment facility. [1985 c 352 § 18.]

*Reviser's note: Chapter 70.96A RCW was amended by 1990 c 151, changing "treatment facility" to "treatment program."

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.170 Supervision as condition—Levy of assessment. As a condition of granting deferred prosecution, the court may order supervision of the petitioner during the period of deferral and may levy a monthly assessment upon the petitioner as provided in RCW 10.64.120. In a jurisdiction with a probation department, the court may appoint the probation department to supervise the petitioner. In a jurisdiction without a probation department, the court may appoint an appropriate person or agency to supervise the petitioner. A supervisor appointed under this section shall be required to do at least the following:

(1) If the charge for which deferral is granted relates to operation of a motor vehicle, at least once every six months request from the department of licensing an abstract of the petitioner's driving record; and

(2) At least once every month make contact with the petitioner or with any agency to which the petitioner has been directed for treatment as a part of the deferral. [1991 c 247 § 2; 1985 c 352 § 19.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Chapter 10.10

CRIMINAL APPEALS FROM DISTRICT COURTS

Sections

10.10.010 Court rules.

10.10.060 Appeal—Costs—Default.

Rules of court: Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).

10.10.010 Court rules. Every person convicted before a district judge of any offense may appeal from the judgment as provided by court rules. [1987 c 202 § 156; 1891 c 29 § 6, part; RRS § 1919, part. Prior: Code 1881 § 1898, part; 1877 p 203 § 7, part; 1873 p 384 § 196, part; 1854 p 261 § 177. Formerly RCW 10.10.010, 10.10.020, and 10.10.030.]

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

10.10.060 Appeal—Costs—Default. The appellant in a criminal action shall not be required to advance any fees in claiming his appeal nor in prosecuting the same; but if convicted in the appellate court, or if sentenced for failing to prosecute his appeal, he may be required as a part of the sentence to pay the costs of the prosecution. If the appellant shall fail to enter and prosecute his appeal he shall be defaulted of his recognizance, if any was taken, and the superior court may award sentence against him for the offense whereof he was convicted in like manner as if he had been convicted thereof in that court; and if he be not then in custody process may be issued to bring him into court to receive sentence. [1891 c 29 § 7; RRS § 1920.

Prior: Code 1881 § 1900; 1873 p 384 § 198, part; 1854 p 261 § 179. Formerly RCW 10.10.060 and 10.10.080.]

Chapter 10.14 HARASSMENT

Sections

10.14.010 Legislative finding, intent.

10.14.020 Definitions.

10.14.030 Course of conduct—Determination of purpose.

10.14.040 Protection order—Petition.

10.14.050 Administrator for courts—Forms, information.

10.14.060 Proceeding in forma pauperis.

10.14.070 Hearing—Service.

10.14.080 Antiharassment protection orders—Ex parte temporary—Hearing—Longer term, renewal.

10.14.085 Hearing reset after ex parte order—Service by publication—Circumstances.

10.14.090 Representation or appearance.

10.14.100 Service of order.

10.14.105 Order following service by publication.

10.14.110 Notice to law enforcement agencies—Enforceability.

10.14.115 Enforcement of order—Knowledge prerequisite to penalties—Reasonable efforts to serve copy of order.

10.14.120 Disobedience of order—Penalties.

10.14.125 Service by publication—Costs.

10.14.130 Exclusion of certain actions.

10.14.140 Other remedies.

10.14.150 Jurisdiction.

10.14.160 Where action may be brought.

10.14.170 Criminal penalty.

10.14.180 Modification of order.

10.14.190 Constitutional rights.

10.14.900 Severability—1987 c 280.

10.14.010 Legislative finding, intent. The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator. [1987 c 280 § 1.]

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

(1) "Unlawful harassment" means a knowing and wilful course of conduct directed at a specific person which seriously alarms, annoys, or harasses such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." [1987 c 280 § 2.]

10.14.030 Course of conduct—Determination of purpose. In determining whether the course of conduct

serves any legitimate or lawful purpose, the court should consider whether:

- (1) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;
- (2) The respondent has been given clear notice that all further contact with the petitioner is unwanted;
- (3) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;
- (4) The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to:
 - (a) Protect property or liberty interests;
 - (b) Enforce the law; or
 - (c) Meet specific statutory duties or requirements;
- (5) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;
- (6) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order. [1987 c 280 § 3.]

10.14.040 Protection order—Petition. There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

- (1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.
- (2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.
- (3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.
- (4) No filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought. Forms and instructional brochures shall be provided free of charge.
- (5) A person is not required to post a bond to obtain relief in any proceeding under this section. [1987 c 280 § 4.]

10.14.050 Administrator for courts—Forms, information. The administrator for the courts shall develop and prepare, in consultation with interested persons, model forms and instructional brochures required under RCW 10.14.040(3). [1987 c 280 § 5.]

10.14.060 Proceeding in forma pauperis. Persons seeking relief under this chapter may file an application for leave to proceed in forma pauperis on forms supplied by the court. If the court determines that a petitioner lacks the funds to pay the costs of filing, the petitioner shall be granted leave to proceed in forma pauperis and no filing fee or any other court related fees shall be charged by the court to the petitioner for relief sought under this chapter. If the petitioner is granted leave to proceed in forma pauperis, then

no fees for service may be charged to the petitioner. [1987 c 280 § 6.]

10.14.070 Hearing—Service. Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 10.14.080 and 10.14.085. [1992 c 143 § 10; 1987 c 280 § 7.]

10.14.080 Antiharassment protection orders—Ex parte temporary—Hearing—Longer term, renewal. (1) Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted.

(2) An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 10.14.085. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication is permitted. Except as provided in RCW 10.14.070 and 10.14.085, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(3) At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

(4) An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a permanent antiharassment protection order. The court shall not enter an order that is effective for more than one year if the order restrains the respondent from contacting the respondent's minor children. If the petitioner seeks relief for a period longer than one year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to chapter 26.09 or 26.10 RCW.

(5) At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in subsection (4) of this section.

(6) The court, in granting an ex parte temporary antiharassment protection order or a civil antiharassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

- (a) Restraining the respondent from making any attempts to contact the petitioner;
- (b) Restraining the respondent from making any attempts to keep the petitioner under surveillance; and
- (c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace.

(7) A petitioner may not obtain an ex parte temporary antiharassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil antiharassment protection order unless good cause for such failure can be shown.

(8) The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section. [1992 c 143 § 11; 1987 c 280 § 8.]

10.14.085 Hearing reset after ex parte order—Service by publication—Circumstances. (1) If the respondent was not personally served with the petition, notice of hearing, and ex parte order before the hearing, the court shall reset the hearing for twenty-four days from the date of entry of the order and may order service by publication instead of personal service under the following circumstances:

(a) The sheriff or municipal officer files an affidavit stating that the officer was unable to complete personal service upon the respondent. The affidavit must describe the number and types of attempts the officer made to complete service;

(b) The petitioner files an affidavit stating that the petitioner believes that the respondent is hiding from the server to avoid service. The petitioner's affidavit must state the reasons for the belief that the petitioner [respondent] is avoiding service;

(c) The server has deposited a copy of the summons, in substantially the form prescribed in subsection (3) of this section, notice of hearing, and the ex parte order of protection in the post office, directed to the respondent at the respondent's last known address, unless the server states that the server does not know the respondent's address; and

(d) The court finds reasonable grounds exist to believe that the respondent is concealing himself or herself to avoid service, and that further attempts to personally serve the respondent would be futile or unduly burdensome.

(2) The court shall reissue the temporary order of protection not to exceed another twenty-four days from the date of reissuing the ex parte protection order and order to provide service by publication.

(3) The publication shall be made in a newspaper of general circulation in the county where the petition was brought and in the county of the last known address of the respondent once a week for three consecutive weeks. The newspaper selected must be one of the three most widely circulated papers in the county. The publication of summons shall not be made until the court orders service by publication under this section. Service of the summons shall be considered complete when the publication has been made for three consecutive weeks. The summons must be signed by the petitioner. The summons shall contain the date of the first publication, and shall require the respondent upon whom service by publication is desired, to appear and answer the petition on the date set for the hearing. The summons shall also contain a brief statement of the reason for the petition and a summary of the provisions under the ex parte order. The summons shall be essentially in the following form:

In the court of the state of Washington for the county of

. , Petitioner
vs. No.
. , Respondent

The state of Washington to (respondent):

You are hereby summoned to appear on the day of , 19. . . , at a.m./p.m., and respond to the petition. If you fail to respond, an order of protection will be issued against you pursuant to the provisions of chapter 10.14 RCW, for a minimum of one year from the date you are required to appear. A temporary order of protection has been issued against you, restraining you from the following: (Insert a brief statement of the provisions of the ex parte order). A copy of the petition, notice of hearing, and ex parte order has been filed with the clerk of this court.

.
Petitioner

[1992 c 143 § 12.]

10.14.090 Representation or appearance. (1) Nothing in this chapter shall preclude either party from

representation by private counsel or from appearing on his or her own behalf.

(2) The court may require the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee. If the petitioner has been granted leave to proceed in forma pauperis, the court may require the respondent to pay the filing fee and costs, including services fees, to the county or municipality incurring the expense. [1992 c 143 § 14; 1987 c 280 § 9.]

10.14.100 Service of order. (1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (5) and (7) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner.

(4) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(6) Except in cases where the petitioner is granted leave to proceed in forma pauperis, municipal police departments serving documents as required under this chapter may collect the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(7) If the court previously entered an order allowing service by publication of the notice of hearing and temporary order of protection pursuant to RCW 10.14.085, the court may permit service by publication of the order of protection issued under RCW 10.14.080. Service by publication must comply with the requirements of RCW 10.14.085. [1992 c 143 § 15; 1987 c 280 § 10.]

10.14.105 Order following service by publication. Following completion of service by publication as provided in RCW 10.14.085, if the respondent fails to appear at the hearing, the court may issue an order of protection as provided in RCW 10.14.080. That order must be served pursuant to RCW 10.14.100, and forwarded to the appropriate law enforcement agency pursuant to RCW 10.14.110. [1992 c 143 § 13.]

10.14.110 Notice to law enforcement agencies—Enforceability. (1) A copy of an antiharassment protection order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The law enforcement agency shall expunge expired orders from the computer system. Entry into the law

enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The information entered into the computer-based system shall include notice to law enforcement whether the order was personally served or served by publication. [1992 c 143 § 16; 1987 c 280 § 11.]

10.14.115 Enforcement of order—Knowledge prerequisite to penalties—Reasonable efforts to serve copy of order. (1) When the court issues an order of protection pursuant to RCW 10.14.080, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 10.14.120 and 10.14.170 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the officer determines that the respondent did not or probably did not know about the protection order, the officer shall make reasonable efforts to obtain a copy of the protection order and serve it on the respondent during the investigation. [1992 c 143 § 17.]

10.14.120 Disobedience of order—Penalties. Any willful disobedience by the respondent of any temporary antiharassment protection order or civil antiharassment protection order issued under this chapter subjects the respondent to criminal penalties under this chapter. Any respondent who willfully disobeys the terms of any order issued under this chapter may also, in the court's discretion, be found in contempt of court and subject to penalties under chapter 7.21 RCW. [1989 c 373 § 14; 1987 c 280 § 12.]

Severability—1989 c 373: See RCW 7.21.900.

10.14.125 Service by publication—Costs. The court may permit service by publication under this chapter only if the petitioner pays the cost of publication unless the county legislative authority allocates funds for service of process by publication for petitioners who are granted leave to proceed in forma pauperis. [1992 c 143 § 18.]

10.14.130 Exclusion of certain actions. Protection orders authorized under this chapter shall not be issued for any action specifically covered by chapter 10.99 or 26.50 RCW. [1987 c 280 § 13.]

10.14.140 Other remedies. Nothing in this chapter shall preclude a petitioner's right to utilize other existing civil remedies. [1987 c 280 § 14.]

10.14.150 Jurisdiction. The district courts shall have jurisdiction and cognizance of any civil actions and proceedings brought under this chapter. Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where a district court judge makes findings of fact and conclusions of law showing that meritorious reasons exist [exist] for the transfer. The municipal and

district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170. [1991 c 33 § 2; 1987 c 280 § 15.]

Effective date—1991 c 33: See note following RCW 3.66.020.

10.14.160 Where action may be brought. For the purposes of this chapter an action may be brought in:

- (1) The judicial district of the county in which the alleged acts of unlawful harassment occurred;
- (2) The judicial district of the county where any respondent resides at the time the petition is filed; or
- (3) The judicial district of the county where a respondent may be served if it is the same county or judicial district where a respondent resides. [1992 c 127 § 1; 1987 c 280 § 16.]

10.14.170 Criminal penalty. Any respondent who willfully disobeys any civil antiharassment protection order issued pursuant to this chapter shall be guilty of a gross misdemeanor. [1987 c 280 § 17.]

10.14.180 Modification of order. Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order under this chapter. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified order or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system. [1987 c 280 § 18.]

10.14.190 Constitutional rights. Nothing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly. [1987 c 280 § 19.]

10.14.900 Severability—1987 c 280. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 280 § 22.]

Chapter 10.16

PRELIMINARY HEARINGS

Sections

- 10.16.080 Discharge of defendant—F frivolous complaints.
- 10.16.100 Abstract of costs forwarded with transcript.
- 10.16.110 Statement of prosecuting attorney if no information filed—Court action.
- 10.16.145 Witnesses—Recognizances with sureties.
- 10.16.150 Recognizances for minors.
- 10.16.160 Witnesses—Failure to furnish recognizance—Commitment—Deposition—Discharge.

Magistrates: Chapter 2.20 RCW.

Municipal judges as magistrates: RCW 35.20.020, 35.20.250.

10.16.080 Discharge of defendant—F frivolous complaints. If it should appear upon the whole examination

that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged, and if in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint. [Code 1881 § 1925; 1873 p 395 § 223; 1854 p 107 § 31; RRS § 1954.]

10.16.100 Abstract of costs forwarded with transcript. In all cases where any magistrate shall order a defendant to recognize for his or her appearance before a district or superior court, the magistrate shall forward with the papers in the case, an abstract of the costs that have accrued in the case, and such costs shall be subject to the final determination of the case. [1987 c 202 § 163; Code 1881 § 1937; 1873 p 397 § 236; 1854 p 109 § 44; RRS § 1966.]

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

10.16.110 Statement of prosecuting attorney if no information filed—Court action. It shall be the duty of the prosecuting attorney of the proper county to inquire into and make full examination of all the facts and circumstances connected with any case of preliminary examination, as provided by law, touching the commission of any offense wherein the offender shall be committed to jail, or become recognized or held to bail; and if the prosecuting attorney shall determine in any such case that an information ought not to be filed, he shall make, subscribe and file with the clerk of the court a statement in writing containing his reasons, in fact and in law, for not filing an information in such case, and such statement shall be filed at and during the session of court at which the offender shall be held for his appearance: PROVIDED, That in such case such court may examine such statement, together with the evidence filed in the case, and if upon such examination the court shall not be satisfied with such statement, the prosecuting attorney shall be directed by the court to file the proper information and bring the case to trial. [1890 p 102 § 6; RRS § 2053. Formerly RCW 10.16.110 and 10.16.120.]

10.16.145 Witnesses—Recognizances with sureties. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his appearance at court. [Code 1881 § 1930; 1873 p 396 § 229; 1854 p 108 § 37; RRS § 1960. Formerly codified in RCW 10.16.140, part.]

Rules of court: This section probably superseded by CrR 6.13. See comment after CrR 6.13.

10.16.150 Recognizances for minors. When any minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such minor in a sum not exceeding fifty dollars which shall be valid and binding in law, notwithstanding the disability of minority. [1973 1st ex.s. c 154 § 19; Code

1881 § 1931; 1873 p 396 § 230; 1854 p 108 § 38; RRS § 1961.]

Rules of court: This section probably superseded by CrR 6.13. See comment after CrR 6.13.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

10.16.160 Witnesses—Failure to furnish recognizance—Commitment—Deposition—Discharge. All witnesses required to recognize with or without sureties shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such orders or be otherwise discharged according to law: PROVIDED, That when the magistrate is satisfied that any witness required to recognize with sureties is unable to comply with such order, the magistrate shall immediately take the deposition of such witness and discharge the witness from custody upon the witness' own recognizance. The testimony of the witness shall be reduced to writing by a district judge or some competent person under the judge's direction, and only the exact words of the witness shall be taken; the deposition, except the cross-examination, shall be in the narrative form, and upon the cross-examination the questions and answers shall be taken in full. The defendant must be present in person when the deposition is taken, and shall have an opportunity to cross-examine the witnesses; the defendant may make any objections to the admission of any part of the testimony, and all objections shall be noted by the district judge; but the district judge shall not decide as to the admissibility of the evidence, but shall take all the testimony offered by the witness. The deposition must be carefully read to the witness, and any corrections the witness may desire to make thereto shall be made in presence of the defendant by adding the same to the deposition as first taken; it must be signed by the witness, certified by the district judge, and transmitted to the clerk of the superior court, in the same manner as depositions in civil actions. And if the witness is not present when required to testify in the case, either before the grand jury or upon the trial in the superior court, the deposition shall be submitted to the judge of such superior court, upon the objections noted by the district judge, and such judge shall suppress so much of said deposition as such judge shall find to be inadmissible, and the remainder of the deposition may be read as evidence in the case, either before the grand jury or upon the trial in the court. [1987 c 202 § 164; 1891 c 11 § 15; Code 1881 § 1932; 1877 p 203 § 8; 1873 p 396 § 232; 1854 p 108 § 39; RRS § 1962. Formerly RCW 10.16.160, 10.16.170 and 10.16.180.]

Rules of court: This section modified if not superseded by CrR 6.13. See comment after CrR 6.13.

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

Chapter 10.19

BAIL AND APPEARANCE BONDS

Sections

- 10.19.040 Officers authorized to take recognizance and approve bail.
- 10.19.060 Certification and filing of recognizances.
- 10.19.065 Taking and entering recognizances.
- 10.19.090 Forfeiture, exoneration of recognizances—Judgment—Execution.

- 10.19.100 Stay of execution of forfeiture judgment—Bond.
- 10.19.105 Forfeiture judgment vacated on defendant's production—When.
- 10.19.110 Recognizances before district judge or magistrate—Forfeiture—Action.
- 10.19.120 Actions not barred by defect of form or formality.
- 10.19.130 Failure to appear before court after release on personal recognizance—Penalty.
- 10.19.140 Return of bond to surety, when.
- 10.19.150 Liability of surety, limitation.
- 10.19.160 Surrender of person under surety's bond.

Bail

arresting officer's duties regarding: RCW 10.31.030.

pending appeal to supreme court: RCW 10.73.040.

traffic offenses, nonresidents: RCW 46.64.035.

Fugitives, bail: Chapter 10.88 RCW.

Recognizance

for stay of execution: RCW 10.82.020, 10.82.025.

to keep the peace as incidence of conviction of crime: RCW 10.64.070, 10.64.075.

Recognizances relative to preliminary hearings: Chapter 10.16 RCW.

10.19.040 Officers authorized to take recognizance and approve bail. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and justify and approve the bail; he may administer an oath and examine the bail as to its sufficiency. [Code 1881 § 1034; 1873 p 229 § 214; 1854 p 114 § 78; RRS § 2087. FORMER PART OF SECTION: 1891 c 11 § 13; Code 1881 § 1927; 1873 p 395 § 225; 1854 p 108 § 33; RRS § 1957, now codified in RCW 10.16.070.]

10.19.060 Certification and filing of recognizances. Every recognizance taken by any peace officer must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and, from the time of filing, it has the same effect as if taken in open court. [Code 1881 § 1035; 1873 p 230 § 215; 1854 p 114 § 79; RRS § 2088.]

10.19.065 Taking and entering recognizances. Recognizances in criminal proceedings may be taken in open court and entered on the order book. [Code 1881 § 1033; 1854 p 114 § 77; RRS § 2086.]

10.19.090 Forfeiture, exoneration of recognizances—Judgment—Execution. In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments. If the surety is not notified by the court in writing of the unexplained failure of the defendant to appear within thirty days of the date for appearance, then the forfeiture shall be null and void and the recognizance exonerated. [1986 c 322 § 2; Code 1881 § 1137; 1873 p 230 § 217; 1867 p 103 § 1; RRS § 2231.]

Severability—1986 c 322: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1986 c 322 § 6.]

10.19.100 Stay of execution of forfeiture judgment—Bond. The parties, or either of them, against whom such judgment may be entered in the superior or supreme courts, may stay said execution for sixty days by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment at the expiration of sixty days, unless the same shall be vacated before the expiration of that time. [1891 c 28 § 86; Code 1881 § 1138; 1873 p 242 § 281; 1867 p 103 § 2; RRS § 2232. FORMER PART OF SECTION: 1891 c 28 § 87; Code 1881 § 1139; 1867 p 103 § 3; RRS § 2233, now codified as RCW 10.19.105.]

10.19.105 Forfeiture judgment vacated on defendant's production—When. If a bond be given and execution stayed, as provided in RCW 10.19.100, and the person for whose appearance such recognizance was given shall be produced in court before the expiration of said period of sixty days, the judge may vacate such judgment upon such terms as may be just and equitable, otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors. [1891 c 28 § 87; Code 1881 § 1139; 1867 p 103 § 3; RRS § 2233. Formerly RCW 10.19.100, part.]

10.19.110 Recognizances before district judge or magistrate—Forfeiture—Action. All recognizances taken and forfeited before any district judge or magistrate, shall be forthwith certified to the clerk of the superior court of the county; and it shall be the duty of the prosecuting attorney to proceed at once by action against all the persons bound in such recognizances, and in all forfeited recognizances whatever, or such of them as the prosecuting attorney may elect to proceed against. [1987 c 202 § 165; Code 1881 § 1166; 1873 p 230 § 215; 1854 p 128 § 175; RRS § 2234. FORMER PART OF SECTION: Code 1881 § 1936; 1873 p 397 § 235; 1863 p 390 § 216; 1859 p 141 § 185; 1854 p 109 § 43; RRS § 1965, now codified as RCW 10.16.190.]

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

10.19.120 Actions not barred by defect of form or formality. No action brought on any recognizance, bail, or appearance bond given in any criminal proceeding whatever shall be barred or defeated, nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety at the time when such default shall happen, or by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof at what court or before what district judge the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded. [1987 c 202 § 166; 1891 c 28 § 88; Code 1881 § 1167; 1854 p 129 § 176; RRS § 2235. FORMER PART OF SECTION: Code 1881 § 749; 1854 p 219 § 489; RRS § 777, now codified as RCW 19.72.170.]

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

10.19.130 Failure to appear before court after release on personal recognizance—Penalty. Any person, having been released on personal recognizance with the requirement of a subsequent personal appearance before any court of this state, who wilfully fails to appear when so required by the court shall be guilty of a crime. Unless otherwise shown, failure to appear when required shall be presumed to be wilful. The penalty for wilful failure to appear shall be a fine of not more than ten thousand dollars or imprisonment for not more than five years, or both. The penalty imposed under this section shall not exceed the maximum penalty for the original crime charged or, if there has been no charge, the offense for which the person was arrested. [1975 1st ex.s. c 2 § 1.]

10.19.140 Return of bond to surety, when. If a forfeiture has been entered against a person in a criminal case and the person is returned to custody or produced in court within twelve months from the forfeiture, then the full amount of the bond, less any and all costs determined by the court to have been incurred by law enforcement in transporting, locating, apprehending, or processing the return of the person to the jurisdiction of the court, shall be remitted to the surety if the surety was directly responsible for producing the person in court or directly responsible for apprehension of the person by law enforcement. [1986 c 322 § 3.]

Severability—1986 c 322: See note following RCW 10.19.090.

10.19.150 Liability of surety, limitation. The liability of the surety is limited to the amount of the bond when acting within the scope of the surety's duties in issuing the bond. [1986 c 322 § 4.]

Severability—1986 c 322: See note following RCW 10.19.090.

10.19.160 Surrender of person under surety's bond. The surety on the bond may return to custody a person in a criminal case under the surety's bond if the surrender is accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for the surrender. The surrender shall be made to the facility in which the person was originally held in custody or the county or city jail affiliated with the court issuing the warrant resulting in bail. [1986 c 322 § 5.]

Severability—1986 c 322: See note following RCW 10.19.090.

Chapter 10.22

COMPROMISE OF MISDEMEANORS

Sections

- 10.22.010 When permitted—Exceptions.
- 10.22.020 Procedure—Costs.
- 10.22.030 Compromise in all other cases forbidden.

10.22.010 When permitted—Exceptions. When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in RCW 10.22.020, except when it was committed:

(1) By or upon an officer while in the execution of the duties of his office.

(2) Riotously;
 (3) With an intent to commit a felony; or
 (4) By one family or household member against another as defined in RCW 10.99.020(1) and was a crime of domestic violence as defined in RCW 10.99.020(2). [1989 c 411 § 3; Code 1881 § 1040; 1854 p 115 § 84; RRS § 2126. FORMER PART OF SECTION: Code 1881 § 1935; 1873 p 397 § 234; 1854 p 109 § 42; RRS § 1964, now codified as RCW 10.16.135.]

10.22.020 Procedure—Costs. In such case, if the party injured appear in the court in which the cause is pending at any time before the final judgment therein, and acknowledge, in writing, that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be discontinued and the defendant to be discharged. The reasons for making the order must be set forth therein and entered in the minutes. Such order is a bar to another prosecution for the same offense. [1891 c 28 § 63; Code 1881 §§ 1041, 1042; 1873 p 230 § 220; 1854 p 115 § 84; RRS § 2127.]

10.22.030 Compromise in all other cases forbidden. No offense can be compromised, nor can any proceedings for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter. [1891 c 28 § 64; Code 1881 § 1043; RRS § 2128.]

Chapter 10.25 JURISDICTION AND VENUE

Sections

- 10.25.065 Perjury committed outside state in statement, etc., authorized by RCW 9A.72.085—Punishable in county where related act, etc., occurred.
 10.25.070 Change of venue—Procedure.
 10.25.130 Costs when case transferred to another county.
 10.25.140 Change of venue by selection in and moving jury from another county.

10.25.065 Perjury committed outside state in statement, etc., authorized by RCW 9A.72.085—Punishable in county where related act, etc., occurred. Perjury committed outside of the state of Washington in a statement, declaration, verification, or certificate authorized by RCW 9A.72.085 is punishable in the county in this state in which occurs the act, transaction, matter, action, or proceeding, in relation to which the statement, declaration, verification, or certification was given or made. [1981 c 187 § 4.]

10.25.070 Change of venue—Procedure. The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is

satisfied the ground upon which the application is made does exist. [1891 c 28 § 7; Code 1881 § 1072; 1854 p 117 § 98; RRS § 2018.]

10.25.130 Costs when case transferred to another county. When a criminal case is transferred to another county pursuant to this chapter the county from which such case is transferred shall pay to the county in which the case is tried all costs accrued for per diem and mileage for jurors and witnesses and all other costs properly charged to a convicted defendant. [1961 c 303 § 2.]

10.25.140 Change of venue by selection in and moving jury from another county. When a change of venue is ordered and the court, upon motion to transfer a jury or in the absence of such motion, determines that it would be more economical to move the jury than to move the pending action and that justice will be served, a change of venue shall be accomplished by the selection of a jury in the county to which the venue would otherwise have been transferred and the selected jury moved to the county where the indictment or information was filed. [1981 c 205 § 1.]

Chapter 10.27

GRAND JURIES—CRIMINAL INVESTIGATIONS

Sections

- 10.27.010 Short title—Purpose.
 10.27.020 Definitions.
 10.27.030 Summoning grand jury.
 10.27.040 Selection of grand jury members.
 10.27.050 Special inquiry judge—Selection.
 10.27.060 Discharge of panel, juror—Grounds.
 10.27.070 Oath—Officers—Witnesses.
 10.27.080 Persons authorized to attend—Restrictions on attorneys.
 10.27.090 Secrecy enjoined—Exceptions—Use and availability of evidence.
 10.27.100 Inquiry as to offenses—Duties—Investigation.
 10.27.110 Duration of sessions—Extensions.
 10.27.120 Self-incrimination—Right to counsel.
 10.27.130 Self-incrimination—Refusal to testify or give evidence—Procedure.
 10.27.140 Witnesses—Attendance.
 10.27.150 Indictments—Issuance.
 10.27.160 Grand jury report.
 10.27.170 Special inquiry judge—Petition for order.
 10.27.180 Special inquiry judge—Disqualification from subsequent proceedings.
 10.27.190 Special inquiry judge—Direction to public attorney to participate in proceedings in another county—Procedure.

Interpreters—Legal proceedings: Chapter 2.42 RCW.

Juries: Chapter 2.36 RCW.

10.27.010 Short title—Purpose. This chapter shall be known as the criminal investigatory act of 1971 and is enacted on behalf of the people of the state of Washington to serve law enforcement in combating crime and corruption. [1971 ex.s. c 67 § 1.]

10.27.020 Definitions. For the purposes of this chapter:

(1) The term "court" shall mean any superior court in the state of Washington.

(2) The term "public attorney" shall mean the prosecuting attorney of the county in which a grand jury or special grand jury is impaneled; the attorney general of the state of Washington when acting pursuant to RCW 10.27.070(9) and, the special prosecutor appointed by the governor, pursuant to RCW 10.27.070(10), and their deputies or special deputies.

(3) The term "indictment" shall mean a written accusation found by a grand jury.

(4) The term "principal" shall mean any person whose conduct is being investigated by a grand jury or special inquiry judge.

(5) The term "witness" shall mean any person summoned to appear before a grand jury or special inquiry judge to answer questions or produce evidence.

(6) A "grand jury" consists of twelve persons, is impaneled by a superior court and constitutes a part of such court. The functions of a grand jury are to hear, examine and investigate evidence concerning criminal activity and corruption and to take action with respect to such evidence. The grand jury shall operate as a whole and not by committee.

(7) A "special inquiry judge" is a superior court judge designated by a majority of the superior court judges of a county to hear and receive evidence of crime and corruption. [1988 c 188 § 16; 1971 ex.s. c 67 § 2.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

10.27.030 Summoning grand jury. No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause. [1971 ex.s. c 67 § 3.]

10.27.040 Selection of grand jury members. Members of the grand jury shall be selected in the manner provided in chapter 2.36 RCW. [1988 c 188 § 17; 1971 ex.s. c 67 § 4.]

Legislative findings—Severability—Effective date—1988 c 188: See notes following RCW 2.36.010.

10.27.050 Special inquiry judge—Selection. In every county a superior court judge as designated by a majority of the judges shall be available to serve as a special inquiry judge to hear evidence concerning criminal activity and corruption. [1971 ex.s. c 67 § 5.]

10.27.060 Discharge of panel, juror—Grounds. Neither the grand jury panel nor any individual grand juror may be challenged, but the court may:

(1) At any time before a grand jury is sworn discharge the panel and summon another if it finds that the original panel does not substantially conform to the requirements of chapter 2.36 RCW; or

(2) At any time after a grand juror is drawn, refuse to swear him, or discharge him after he has been sworn, upon a finding that he is disqualified from service pursuant to

chapter 2.36 RCW, or incapable of performing his duties because of bias or prejudice, or guilty of misconduct in the performance of his duties such as to impair the proper functioning of the grand jury. [1971 ex.s. c 67 § 6.]

10.27.070 Oath—Officers—Witnesses. (1) When the grand jury is impaneled, the court shall appoint one of the jurors to be foreman, and also another of the jurors to act as foreman in case of the absence of the foreman.

(2) The grand jurors must be sworn pursuant to the following oath: "You, as grand jurors for the county of, do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge and you will submit things truly as they come to your knowledge, according to your charge the laws of this state and your understanding; you shall indict no person through envy, hatred, malice or political consideration; neither will you leave any person unindicted through fear, favor, affection, reward or the hope thereof or political consideration. The counsel of the state, his advice, and that of your fellows you shall keep secret."

(3) After a grand jury has been sworn, the court must deliver or cause to be delivered to each grand juror a printed copy of all the provisions of this chapter, and the court may give the grand jurors any oral or written instructions, or both, relating to the proper performance of their duties at any time it deems necessary or appropriate.

(4) The court shall appoint a reporter to record the proceedings before the grand jury or special inquiry judge, and shall swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090. In addition, the foreman of the grand jury may, in his discretion, select one of the grand jurors to act as secretary to keep records of the grand jury's business.

(5) The court, whenever necessary, shall appoint an interpreter, and shall swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(6) When a person held in official custody is a witness before a grand jury or special inquiry judge, a public servant, assigned to guard him during his appearance may accompany him. The court shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(7) Proceedings of a grand jury shall not be valid unless at least twelve of its members are present. The foreman or acting foreman of the grand jury shall conduct proceedings in an orderly manner and shall administer an oath or affirmation in the manner prescribed by law to any witness who shall testify before the grand jury.

(8) The legal advisers of a grand jury are the court and public attorneys, and a grand jury may not seek or receive legal advice from any other source. When necessary or appropriate, the court or public attorneys or both must instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions shall be recorded by the reporter.

(9) (a) Upon request of the prosecuting attorney of the county in which a grand jury or special inquiry judge is impaneled, the attorney general shall assist such prosecuting

attorney in attending such grand jury or special inquiry judge.

(b) Whenever directed by the court, the attorney general shall supersede the prosecuting attorney in attending the grand jury and in which event the attorney general shall be responsible for the prosecution of any indictment returned by the grand jury.

(c) When the attorney general is conducting a criminal investigation pursuant to powers otherwise granted to him, he shall attend all grand juries or special inquiry judges in relation thereto and shall prosecute any indictments returned by a grand jury.

(10) After consulting with the court and receiving its approval, the grand jury may request the governor to appoint a special prosecutor to attend the grand jury. The grand jury shall in the request nominate three persons approved by the court. From those nominated, the governor shall appoint a special prosecutor, who shall supersede the prosecuting attorney and the attorney general and who shall be responsible for the prosecution of any indictments returned by the grand jury attended by him.

(11) A public attorney shall attend the grand jurors when requested by them, and he may do so on his own motion within the limitations of RCW 10.27.020(2), 10.27.070(9) and 10.27.070(10) hereof, for the purpose of examining witnesses in their presence, or of giving the grand jurors legal advice regarding any matter cognizable by them. He shall also, when requested by them, draft indictments and issue process for the attendance of witnesses.

(12) Subject to the approval of the court, the corporation counsel or city attorney for any city or town in the county where any grand jury has been convened may appear as a witness before the grand jury to advise the grand jury of any criminal activity or corruption within his jurisdiction. [1971 ex.s. c 67 § 7.]

10.27.080 Persons authorized to attend—Restrictions on attorneys. No person shall be present at sessions of the grand jury or special inquiry judge except the witness under examination and his attorney, public attorneys, the reporter, an interpreter, a public servant guarding a witness who has been held in custody, if any, and, for the purposes provided for in RCW 10.27.170, any corporation counsel or city attorney. The attorney advising the witness shall only advise such witness concerning his right to answer or not answer any questions and the form of his answer and shall not otherwise engage in the proceedings. No person other than grand jurors shall be present while the grand jurors are deliberating or voting. Any person violating either of the above provisions may be held in contempt of court. [1971 ex.s. c 67 § 8.]

10.27.090 Secrecy enjoined—Exceptions—Use and availability of evidence. (1) Every member of the grand jury shall keep secret whatever he or any other grand juror has said, and how he or any other grand juror has voted, except for disclosure of indictments, if any, as provided in RCW 10.27.150.

(2) No grand juror shall be permitted to state or testify in any court how he or any other grand juror voted on any

question before them or what opinion was expressed by himself or any other grand juror regarding such question.

(3) No grand juror, public or private attorney, city attorney or corporation counsel, reporter, interpreter or public servant who held a witness in custody before a grand jury or special inquiry judge, or witness, principal or other person shall disclose the testimony of a witness examined before the grand jury or special inquiry judge or other evidence received by it, except when required by the court to disclose the testimony of the witness examined before the grand jury or special inquiry judge for the purpose of ascertaining whether it is consistent with that of the witness given before the court, or to disclose his testimony given before the grand jury or special inquiry judge by any person upon a charge against such person for perjury in giving his testimony or upon trial therefor, or when permitted by the court in furtherance of justice.

(4) The public attorney shall have access to all grand jury and special inquiry judge evidence and may introduce such evidence before any other grand jury or any trial in which the same may be relevant.

(5) The court upon a showing of good cause may make any or all grand jury or special inquiry judge evidence available to any other public attorney, prosecuting attorney, city attorney or corporation counsel upon proper application and with the concurrence of the public attorney attending such grand jury. Any witness' testimony, given before a grand jury or a special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the court. The court may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence:

(a) when given or presented before a special inquiry judge, if doing so is in the furtherance of justice; or

(b) when given or presented before a grand jury, if the court finds that doing so is necessary to prevent an injustice and that there is no reason to believe that doing so would endanger the life or safety of any witness or his family. The cost of any such transcript made available shall be borne by the applicant. [1971 ex.s. c 67 § 9.]

10.27.100 Inquiry as to offenses—Duties—Investigation. The grand jurors shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information filed in such case, and all other indictable offenses within the county which are presented to them by a public attorney or otherwise come to their knowledge. If a grand juror knows or has reason to believe that an indictable offense, triable within the county, has been committed, he shall declare such a fact to his fellow jurors who may begin an investigation. In such investigation the grand juror may be sworn as a witness. [1971 ex.s. c 67 § 10.]

10.27.110 Duration of sessions—Extensions. The length of time which a grand jury may sit after being convened shall not exceed sixty days. Before expiration of the sixty day period and any extensions, and upon showing of good cause, the court may order the grand jury panel

extended for a period not to exceed sixty days. [1971 ex.s. c 67 § 11.]

10.27.120 Self-incrimination—Right to counsel. Any individual called to testify before a grand jury or special inquiry judge, whether as a witness or principal, if not represented by an attorney appearing with the witness before the grand jury or special inquiry judge, must be told of his privilege against self-incrimination. Such an individual has a right to representation by an attorney to advise him as to his rights, obligations and duties before the grand jury or special inquiry judge, and must be informed of this right. The attorney may be present during all proceedings attended by his client unless immunity has been granted pursuant to RCW 10.27.130. After immunity has been granted, such an individual may leave the grand jury room to confer with his attorney. [1971 ex.s. c 67 § 12.]

10.27.130 Self-incrimination—Refusal to testify or give evidence—Procedure. If in any proceedings before a grand jury or special inquiry judge, a person refuses, or indicates in advance a refusal, to testify or provide evidence of any other kind on the ground that he may be incriminated thereby, and if a public attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order. The hearing shall be subject to the provisions of RCW 10.27.080 and 10.27.090, unless the witness shall request that the hearing be public.

If, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but he shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to this section. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the grand jury. [1971 ex.s. c 67 § 13.]

10.27.140 Witnesses—Attendance. (1) Except as provided in this section, no person has the right to appear as a witness in a grand jury or special inquiry judge proceeding.

(2) A public attorney may call as a witness in a grand jury or special inquiry judge proceeding any person believed by him to possess information or knowledge relevant thereto and may issue legal process and subpoena to compel his attendance and the production of evidence.

(3) The grand jury or special inquiry judge may cause to be called as a witness any person believed by it to possess relevant information or knowledge. If the grand jury or special inquiry judge desires to hear any such witness who was not called by a public attorney, it may direct a public attorney to issue and serve a subpoena upon such witness and the public attorney must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the public attorney may apply to the court which impaneled the grand jury for an order vacating

or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the court may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(4) The proceedings to summon a person and compel him to testify or provide evidence shall as far as possible be the same as proceedings to summon witnesses and compel their attendance. Such persons shall receive only those fees paid witnesses in superior court criminal trials. [1971 ex.s. c 67 § 14.]

10.27.150 Indictments—Issuance. After hearing, examining and investigating the evidence before it, a grand jury may, in its discretion, issue an indictment against a principal. A grand jury shall find an indictment only when from all the evidence at least three-fourths of the jurors are convinced that there is probable cause to believe a principal is guilty of a criminal offense. When an indictment is found by a grand jury the foreman or acting foreman shall present it to the court. [1971 ex.s. c 67 § 15.]

10.27.160 Grand jury report. The grand jury may prepare its conclusions, recommendations and suggestions in the form of a grand jury report. Such report shall be released to the public only upon a determination by a majority of the judges of the superior court of the county court that (1) the findings in the report deal with matters of broad public policy affecting the public interest and do not identify or criticize any individual; (2) the release of the report would be consistent with the public interest and further the ends of justice; and (3) release of the report would not prejudice any pending criminal investigation or trial. [1971 ex.s. c 67 § 16.]

10.27.170 Special inquiry judge—Petition for order. When any public attorney, corporation counsel or city attorney has reason to suspect crime or corruption, within the jurisdiction of such attorney, and there is reason to believe that there are persons who may be able to give material testimony or provide material evidence concerning such suspected crime or corruption, such attorney may petition the judge designated as a special inquiry judge pursuant to RCW 10.27.050 for an order directed to such persons commanding them to appear at a designated time and place in said county and to then and there answer such questions concerning the suspected crime or corruption as the special inquiry judge may approve, or provide evidence as directed by the special inquiry judge. [1971 ex.s. c 67 § 17.]

10.27.180 Special inquiry judge—Disqualification from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify or provide evidence at such inquiry in response to an order, summons or subpoena. [1971 ex.s. c 67 § 18.]

10.27.190 Special inquiry judge—Direction to public attorney to participate in proceedings in another

county—Procedure. Upon petition of a public attorney to the special inquiry judge that there is reason to suspect that there exists evidence of crime and corruption in another county, and with the concurrence of the special inquiry judge and prosecuting attorney of the other county, the special inquiry judge may direct the public attorney to attend and participate in special inquiry judge proceedings in the other county held to inquire into crime and corruption which relates to crime or corruption under investigation in the initiating county. The proceedings of such special inquiry judge may be transcribed, certified and filed in the county of the public attorney's jurisdiction at the expense of that county. [1971 ex.s. c 67 § 19.]

Chapter 10.29

STATE-WIDE SPECIAL INQUIRY JUDGE ACT

Sections

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10.29.130	Disqualification of judge from subsequent proceedings.
10.29.900	Severability—1980 c 146.

Organized crime advisory board: RCW 43.43.858.

Special inquiry judge: RCW 10.27.050, 10.27.170 through 10.27.190.

10.29.010 Short title. This chapter shall be known and may be cited as the State-wide Special Inquiry Judge Act. [1980 c 146 § 1.]

10.29.020 Intent. It is the intent of the legislature in enacting this chapter to strengthen and enhance the ability of the state to detect and eliminate organized criminal activity. [1980 c 146 § 2.]

10.29.030 Appointment of state-wide special inquiry judge—Procedure—Term—Confidentiality. (1) The organized crime advisory board shall have the authority, by a three-fourths vote at a regularly constituted meeting, to petition the Washington state supreme court for an order appointing a special inquiry judge as prescribed by this section. Such vote may be on its own motion or pursuant to a request from the prosecuting attorney of any county. In the event of such request from a prosecuting attorney the board shall vote on the question promptly. A petition filed under this section shall state the general crimes or wrongs to be inquired into and shall state the reasons why said crimes or wrongs are such that a state-wide special inquiry judge should be authorized to investigate. The supreme court may order the appointment of a state-wide special inquiry judge, in accordance with the petition, for a term of six calendar

months. Upon petition by the special prosecutor, and with the approval of the majority of the members of the organized crime advisory board, the supreme court, by order, may extend the term of the state-wide special inquiry judge for three months. The term of the state-wide special inquiry judge may subsequently be extended in the same manner for additional three-month periods.

(2) If the petition is granted, the supreme court shall designate a judge of a superior court to act as a special inquiry judge. The supreme court shall ensure that sufficient visiting judges are made available to the superior court from which the appointment is made in order to compensate for any loss of judicial time.

(3) All of the information and data collected and processed by the organized crime advisory board and the petition filed with the supreme court shall be confidential and not subject to examination or publication pursuant to chapter 42.17 RCW (Initiative Measure No. 276), as now existing or hereafter amended, except as provided by rules of the supreme court of Washington in the case of the petition. [1980 c 146 § 3.]

10.29.040 Scope of investigation and proceeding—Request for additional authority. The scope of the investigation and of the special inquiry judge proceeding shall be limited to the general crimes and wrongs specified in the petition filed under RCW 10.29.030. The special prosecutor or special inquiry judge, however, may request authority to investigate other crimes by submitting a list of such crimes to the organized crime advisory board which may grant authorization to proceed by a three-fourths vote of the membership. [1980 c 146 § 4.]

10.29.050 Powers and duties of state-wide special inquiry judge. A state-wide special inquiry judge shall have the following powers and duties:

(1) To hear and receive evidence of crime and corruption.

(2) To appoint a reporter to record the proceedings; and to swear the reporter not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(3) Whenever necessary, to appoint an interpreter, and to swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(4) When a person held in official custody is a witness before a state-wide special inquiry judge, a public servant, assigned to guard him during his appearance may accompany him. The state-wide special inquiry judge shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(5) To cause to be called as a witness any person believed by him to possess relevant information or knowledge. If the state-wide special inquiry judge desires to hear any such witness who was not called by the special prosecutor, it may direct the special prosecutor to issue and serve a subpoena upon such witness and the special prosecutor must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the special prosecutor may apply to the state-wide special inquiry judge for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon

such application, the state-wide special inquiry judge may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(6) Upon a showing of good cause may make available any or all evidence obtained to any other public attorney, prosecuting attorney, city attorney, or corporation counsel upon proper application and with the concurrence of the special prosecutor. Any witness' testimony, given before a state-wide special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the state-wide special inquiry judge. The state-wide special inquiry judge may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence when given or presented before a special inquiry judge, if doing so is in the furtherance of justice.

(7) Have authority to perform such other duties as may be required to effectively implement this chapter, in accord with rules adopted by the supreme court relating to these proceedings.

(8) Have authority to hold in contempt of court any person who shall disclose the name or testimony of a witness examined before a state-wide special inquiry judge except when required by a court to disclose the testimony given before such state-wide special inquiry judge in a subsequent criminal proceeding. [1980 c 146 § 5.]

10.29.060 Disclosures by witness—Penalty. Any witness who shall disclose the fact that he or she has been called as a witness before a state-wide special inquiry judge or who shall disclose the nature of the testimony given shall be guilty of a misdemeanor. [1980 c 146 § 6.]

10.29.070 Rules. The supreme court shall develop and adopt rules to govern the procedures of a state-wide special inquiry judge proceeding including rules assuring the confidentiality of all proceedings, testimony, and the identity of persons called as witnesses. The adoption of such rules shall be subject to the approval of such rules by the senate and house judiciary committees. [1980 c 146 § 7.]

10.29.080 Special prosecutor—Selection—Qualifications—Removal. If the supreme court appoints a state-wide special inquiry judge under RCW 10.29.030, the organized crime advisory board shall submit to the governor the name of an individual who, with the consent of the governor, shall serve as special prosecutor for the state-wide special inquiry judge proceeding. Any individual whose name is submitted under this section to the governor shall be licensed to practice law in the state of Washington and shall have at least five years' professional experience as one or more of the following: (1) Prosecuting attorney; (2) deputy prosecuting attorney; (3) United States attorney; or (4) assistant United States attorney. No such person shall have resided during the five years immediately preceding the appointment in a county in which the state-wide special inquiry judge will likely be required to investigate crimes. A special prosecutor appointed under this section shall be removed only upon a majority recommendation of the

organized crime advisory board and the consent of the governor. [1980 c 146 § 8.]

10.29.090 Operating budget—Contents—Audit. Within ten days of his or her appointment, a special prosecutor selected under this chapter shall submit to the organized crime advisory board an operating budget to fund the activities of his or her office. The budget may include, but shall not be limited to, funds for the hiring of assistant special prosecutors, investigators, and clerical staff. Upon the approval of the budget by a majority of the members of the board, the costs and expenses of the prosecutor's operating budget shall be paid for by the state out of the organized crime prosecution revolving fund. Further operating budgets shall be proposed, approved, and funded pursuant to this section if the term of a state-wide special inquiry judge is extended pursuant to RCW 10.29.030.

Vouchers and other budget and accounting records of a special inquiry judge proceeding including such records of the special prosecutor shall be subject to audit by the state auditor but shall not be public records within the meaning of chapter 42.17 RCW. [1980 c 146 § 9.]

Organized crime prosecution revolving fund: RCW 43.43.866.

10.29.100 Vacancy in office. Whenever a state-wide special inquiry judge or special prosecutor appointed under this chapter dies or in any other way is rendered incapable of continuing the duties of his or her office, a successor shall be appointed to serve for the remainder of the judge's or prosecutor's term in the manner provided for by RCW 10.29.030 and 10.29.080 for the appointment of state-wide special inquiry judges and special prosecutors. [1980 c 146 § 10.]

10.29.110 Duties of special prosecutor or designee. The special prosecutor or his designee shall:

(1) Attend all proceedings of the state-wide special inquiry judge;

(2) Have the authority to issue subpoenas for witnesses state-wide;

(3) Examine witnesses, present evidence, draft reports as directed by the state-wide special inquiry judge, and draft and file informations under RCW 10.29.120. [1980 c 146 § 11.]

10.29.120 Advising county prosecuting attorney—Filing and prosecution of informations—Expenses of prosecutions. (1) The special prosecutor shall advise the county prosecuting attorney in any affected county of the nature of the state-wide special inquiry judge investigation and of any informations arising from such proceedings unless such disclosures will create a substantial likelihood of a conflict of interest for the county prosecuting attorney.

(2) The special prosecutor may file and prosecute an information in the county where proper venue lies, after having advised the county prosecuting attorney as provided in this section and determined that such prosecuting attorney does not intend to do so, or pursuant to an agreement between them that the special prosecutor shall do so.

(3) Informations filed and prosecuted pursuant to this chapter shall meet the requirements of chapter 10.37 RCW.

(4) The expenses of prosecutions initiated and maintained by the special prosecutor shall be paid as part of the state-wide special inquiry judge program as provided in RCW 10.29.090. [1980 c 146 § 12.]

10.29.130 Disqualification of judge from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify, or provide evidence at such inquiry in response to an order, summons, or subpoena. [1980 c 146 § 13.]

10.29.900 Severability—1980 c 146. If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 146 § 19.]

Chapter 10.31

WARRANTS AND ARRESTS

Sections

- 10.31.030 Service—How—Warrant not in possession, procedure—Bail.
- 10.31.040 Officer may break and enter.
- 10.31.050 Officer may use force.
- 10.31.060 Arrest by telegraph or teletype.
- 10.31.100 Arrest without warrant.

Rules of court: Warrant upon indictment or information—CrR 2.2.

Search and seizure: Chapter 10.79 RCW.

10.31.030 Service—How—Warrant not in possession, procedure—Bail. The officer making an arrest must inform the defendant that he acts under authority of a warrant, and must also show the warrant: PROVIDED, That if the officer does not have the warrant in his possession at the time of arrest he shall declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement: PROVIDED, FURTHER, That any officer making an arrest under this section shall, if the person arrested wishes to deposit bail, take such person directly and without delay before a judge or before an officer authorized to take the recognizance and justify and approve the bail, including the deposit of a sum of money equal to bail. Bail shall be the amount fixed by the warrant. Such judge or authorized officer shall hold bail for the legal authority within this state which issued such warrant if other than such arresting authority. [1970 ex.s. c 49 § 3; 1891 c 28 § 43; Code 1881 § 1030; 1873 p 229 § 210; 1854 p 114 § 74; RRS § 2083.]

Severability—1970 ex.s. c 49: See note following RCW 9.69.100.
Bail: Chapter 10.19 RCW.

10.31.040 Officer may break and enter. To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or any other inclosure, if, after notice of his office and purpose, he be refused admittance. [Code 1881 § 1170; 1854 p 129 § 179; RRS § 2082.]

10.31.050 Officer may use force. If after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest. [Code 1881 § 1031; 1873 p 229 § 211; 1854 p 114 § 75; RRS § 2084.]

10.31.060 Arrest by telegraph or teletype. Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any justice of the supreme court, or any judge of either the court of appeals or superior court may indorse thereon an order signed by him and authorizing the service thereof by telegraph or teletype, and thereupon such warrant and order may be sent by telegraph or teletype to any marshal, sheriff, constable or policeman, and on the receipt of the telegraphic or teletype copy thereof by any such officer, he shall have the same authority and be under the same obligations to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest, with the proper direction for the service thereof, duly indorsed thereon, had been placed in his hands, and the said telegraphic or teletype copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original; but prior to indictment and conviction, no such order shall be made by any officer, unless in his judgment there is probable cause to believe the said accused person or persons guilty of the offense charged: PROVIDED, That the making of such order by any officer aforesaid, shall be prima facie evidence of the regularity thereof, and of all the proceedings prior thereto. The original warrant and order, or a copy thereof, certified by the officer making the order, shall be preserved in the telegraph office or police agency from which the same is sent, and in telegraphing or teletyping the same, the original or the said certified copy may be used. [1971 c 81 § 48; 1967 c 91 § 1; Code 1881 § 2357; 1865 p 75 § 16; RRS § 2081. Formerly RCW 10.31.060 through 10.31.090.]

10.31.100 Arrest without warrant. A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (8) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270 shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.060,

26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) The person is eighteen years or older and within the preceding four hours has assaulted that person's spouse, former spouse, or a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.12.100 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of

indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(10) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) or (8) if the police officer acts in good faith and without malice. [1988 c 190 § 1. Prior: 1987 c 280 § 20; 1987 c 277 § 2; 1987 c 154 § 1; 1987 c 66 § 1; prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

Severability—1987 c 280: See RCW 10.14.900.

Effective date—Severability—1984 c 263: See RCW 26.50.901, 26.50.902.

Arrest procedure involving traffic violations: Chapter 46.64 RCW.

Domestic violence, peace officers—Immunity: RCW 26.50.140.

Uniform Controlled Substances Act: Chapter 69.50 RCW.

Chapter 10.34

FUGITIVES OF THIS STATE

Sections

10.34.010 Officer may arrest defendant in any county.

10.34.020 Escape—Retaking prisoner—Authority.

10.34.030 Escape—Retaking in foreign state—Extradition agents.

Escape: Chapter 9A.76 RCW.

Extradition and fresh pursuit: Chapter 10.88 RCW.

Return of parole violators from outside state: RCW 9.95.280 through 9.95.300.

10.34.010 Officer may arrest defendant in any county. If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority as in his own county. [Code 1881 § 1922; 1873 p 394 § 220; 1854 p 107 § 28; RRS § 1950.]

10.34.020 Escape—Retaking prisoner—Authority. If a person arrested escape or be rescued, the person from whose custody he made his escape, or was rescued, may immediately pursue and retake him at any time, and within any place in the state. To retake the person escaping or rescued, the person pursuing has the same power to command assistance as given in cases of arrest. [Code 1881 § 1032; 1873 p 229 § 212; 1854 p 114 § 76; RRS § 2085.]

10.34.030 Escape—Retaking in foreign state—Extradition agents. The governor may appoint agents (1) to make a demand upon the executive authority of any state

or territory for the surrender of any fugitive from justice, or any other person charged with a felony or any other crime in this state or (2) to accept the voluntary surrender of any such person who has waived extradition. Whenever an application shall be made to the governor for the appointment of an agent he may require the official submitting the same to provide whatever information is necessary prior to approval of the application.

The accounts of the agents appointed by the governor under this section shall in all cases be paid from the state treasury out of funds appropriated for that purpose upon claims approved by the office of the governor. The office of the governor may prescribe the amounts to be reimbursed to such agents, in the manner in which legislative bodies of political subdivisions of the state may prescribe the amounts to be reimbursed to officers and employees thereof, as set forth in RCW 42.24.090: PROVIDED, That these expenses shall be reasonable, and shall be computed on the basis of actual expenditures incurred, and not on an hourly or per diem basis. [1967 c 91 § 2; 1891 c 28 § 98; Code 1881 § 971; 1873 p 217 § 157; 1854 p 102 § 5; RRS § 2241.]

Chapter 10.37

ACCUSATIONS AND THEIR REQUISITES

Sections

- 10.37.010 Pleadings required in criminal proceedings.
- 10.37.015 Charge by information or indictment—Exceptions.
- 10.37.040 Indictment—Form.
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- 10.37.070 Animals—Description of.
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- 10.37.100 Judgment, how pleaded.
- 10.37.110 Larceny or embezzlement—Specification.
- 10.37.120 Libel—Innuendos—Publication.
- 10.37.130 Obscene literature—Description.
- 10.37.140 Perjury—Subomation of perjury—Description of matter.
- 10.37.150 Presumptions of law need not be stated.
- 10.37.160 Statute—Exact words need not be used.
- 10.37.170 Statute, private—Description.
- 10.37.190 Words and phrases—How used.

Rules of court: Rights of dependents—CrR 3.1 through 3.6.
Ownership of property, proof of: RCW 10.58.060.

10.37.010 Pleadings required in criminal proceedings. No pleading other than an indictment, information or complaint shall be required on the part of the state in any criminal proceedings in any court of the state, and when such pleading is in the manner and form as provided by law the defendant shall be required to plead thereto as prescribed by law without any further action or proceedings of any kind on the part of the state. [1925 ex.s. c 150 § 3; RRS § 2050-1. FORMER PARTS OF SECTION: (i) 1927 c 103 § 1; Code 1881 § 764; RRS § 2023, now codified as RCW 10.37.015. (ii) 1909 c 87 § 1; 1891 c 117 § 1; 1890 p 100 § 1; RRS § 2024, now codified as RCW 10.37.026. (iii) 1891 c 28 § 19; Code 1881 § 1003; 1873 p 224 § 186; 1869 p 240 § 181; RRS § 2054, now codified as RCW 10.37.025.]

10.37.015 Charge by information or indictment—Exceptions. No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor or gross misdemeanor before a district or municipal judge, or before a court martial. [1987 c 202 § 167; 1927 c 103 § 1; Code 1881 § 764; RRS § 2023. Formerly RCW 10.37.010, part.]

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

10.37.040 Indictment—Form. The indictment may be substantially in the following form:

State of Washington	}	Superior Court of the State of Washington for the County of
v.		
A. B.		

A. B. is accused by the grand jury of the, by this indictment, of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like; or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law], committed as follows:

The said A. B. on the day of, 19. . ., in the county of, aforesaid, [here set forth the act charged as a crime.]

Dated at, in the county aforesaid, the day of, A.D. 19. . .

(Signed) C. D., Prosecuting Attorney.

(Indorsed) A true bill.

(Signed) E. F., Foreman of the Grand Jury.

[1891 c 28 § 21; Code 1881 § 1005; 1873 p 225 § 188; 1869 p 240 § 183; RRS § 2056.]

10.37.050 Indictment or information—Sufficiency. The indictment or information is sufficient if it can be understood therefrom—

(1) That it is entitled in a court having authority to receive [it;]

(2) That it was found by a grand jury of the county in which the court was held;

(3) That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown;

(4) That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein;

(5) That the crime was committed at some time previous to the finding of the indictment or filing of the information, and within the time limited by law for the commencement of an action therefor;

(6) That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

(7) The act or omission charged as the crime is stated with such a degree of certainty as to enable the court to

pronounce judgment upon a conviction according to the right of the case. [1891 c 28 § 29; Code 1881 § 1014; 1873 p 226 § 197; 1869 p 242 § 192; RRS § 2065. FORMER PARTS OF SECTION: (i) 1891 c 28 § 20; Code 1881 § 1004; 1873 p 224 § 187; 1869 p 240 § 182; RRS § 2055, now codified as RCW 10.37.052. (ii) 1891 c 28 § 22; Code 1881 § 1006; 1873 p 225 § 189; 1854 p 112 § 61; 1869 p 241 § 184; RRS § 2057, now codified as RCW 10.37.054. (iii) 1891 c 28 § 30; Code 1881 § 1015; 1873 p 227 § 198; 1869 p 242 § 193; RRS § 2066, now codified as RCW 10.37.056.]

10.37.052 Indictment or information—Requisites. The indictment or information must contain—

(1) The title of the action, specifying the name of the court to which the indictment or information is presented and the names of the parties;

(2) A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended. [1891 c 28 § 20; Code 1881 § 1004; 1873 p 224 § 187; 1869 p 240 § 182; RRS § 2055. Formerly RCW 10.37.050, part.]

10.37.054 Indictment or information—Certainty. The indictment or information must be direct and certain as it regards:

(1) The party charged;

(2) The crime charged; and

(3) The particular circumstances of the crime charged, when they are necessary to constitute a complete crime. [1891 c 28 § 22; Code 1881 § 1006; 1873 p 225 § 189; 1869 p 241 § 184; 1854 p 112 § 61; RRS § 2057. Formerly RCW 10.37.050, part.]

10.37.056 Indictment or information—Certain defects or imperfections deemed immaterial. No indictment or information is insufficient, nor can the trial, judgment or other proceedings thereon be affected, by reason of any of the following matters, which were formerly deemed defects or imperfections:

(1) For want of an allegation of the time or place of any material fact, when the time and place have been once stated;

(2) For the omission of any of the following allegations, namely: "With force and arms," "contrary to the form of the statute or the statutes," or "against the peace and dignity of the state;"

(3) For the omission to allege that the grand jury was impaneled, sworn, or charged;

(4) For any surplusage or repugnant allegation or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged; nor

(5) For any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits. [1891 c 28 § 30; Code 1881 § 1015; 1873 p 227 § 198; 1869 p 242 § 193; RRS § 2066. Formerly RCW 10.37.050, part.]

Ownership of property, proof of: RCW 10.58.060.

10.37.060 Indictment or information—Separation into counts—Consolidation. When there are several charges against any person, or persons, for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments or informations the whole may be joined in one indictment, or information, in separate counts; and, if two or more indictments are found, or two or more informations filed, in such cases, the court may order such indictments or informations to be consolidated. [1925 ex.s. c 109 § 1; 1891 c 28 § 24; Code 1881 § 1008; 1873 p 225 § 191; 1869 p 241 § 186; RRS § 2059.]

10.37.070 Animals—Description of. When the crime involves the taking of or injury to an animal the indictment or information is sufficiently certain in that respect if it describes the animal by the common name of its class. [1891 c 28 § 26; Code 1881 § 1011; 1873 p 226 § 194; 1869 p 241 § 189; RRS § 2062.]

Crimes relating to animals: Chapter 9.08 RCW.

Larceny: Chapter 9A.56 RCW.

10.37.080 Forgery—Description of instrument. When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial. [1891 c 28 § 35; Code 1881 § 1020; 1873 p 227 § 203; 1854 p 113 § 68; RRS § 2071.]

Forgery: Chapter 9A.60 RCW.

10.37.090 Injury to person or intention concerning. When the crime involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material. [Code 1881 § 1010; 1873 p 226 § 193; 1869 p 241 § 188; RRS § 2061.]

10.37.100 Judgment, how pleaded. In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state in the indictment or information the facts conferring jurisdiction; but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial. [1891 c 28 § 32; Code 1881 § 1017; 1873 p 227 § 200; 1869 p 242 § 195; 1854 p 112 § 65; RRS § 2068.]

10.37.110 Larceny or embezzlement—Specification. In an indictment or information for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination

or kind thereof. [1891 c 28 § 38; Code 1881 § 1023; RRS § 2074.]

Larceny: Chapter 9A.56 RCW.

Ownership of property, proof of: RCW 10.58.060.

10.37.120 Libel—Innuendos—Publication. An indictment or information for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial. [1891 c 28 § 34; Code 1881 § 1019; 1873 p 227 § 202; 1869 p 243 § 197; RRS § 2070.]

Libel: Chapter 9.58 RCW.

10.37.130 Obscene literature—Description. An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof. [1891 c 28 § 39; Code 1881 § 1024; RRS § 2075.]

Obscenity: Chapter 9.68 RCW.

10.37.140 Perjury—Subornation of perjury—Description of matter. In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. [1891 c 28 § 36; Code 1881 § 1021; 1873 p 228 § 204; 1869 p 243 § 199; 1854 p 112 § 67; RRS § 2072.]

Perjury: Chapter 9A.72 RCW.

10.37.150 Presumptions of law need not be stated. Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment or information. [1891 c 28 § 31; Code 1881 § 1016; 1873 p 227 § 199; 1869 p 242 § 194; RRS § 2067.]

10.37.160 Statute—Exact words need not be used. Words used in a statute to define a crime need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used. [1891 c 28 § 28; Code 1881 § 1013; 1873 p 226 § 196; 1869 p 241 § 191; RRS § 2064.]

10.37.170 Statute, private—Description. In pleading a private statute, or right derived therefrom, it is sufficient to refer, in the indictment or information, to the statute by its

title and the day of its passage, and the court must thereupon take judicial notice thereof. [1891 c 28 § 33; Code 1881 § 1018; 1873 p 227 § 201; 1869 p 243 § 196; 1854 p 112 § 66; RRS § 2069.]

10.37.190 Words and phrases—How used. The words used in an indictment or information must be construed in their usual acceptance, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. [1891 c 28 § 27; Code 1881 § 1012; 1873 p 227 § 195; 1869 p 241 § 190; RRS § 2063.]

Chapter 10.40 ARRAIGNMENT

Sections

10.40.050	Entry and use of true name.
10.40.060	Pleading to arraignment.
10.40.070	Motion to set aside indictment.
10.40.075	Motion to set aside indictment—Grounds not allowed, when.
10.40.090	Sustaining motion—Effect of.
10.40.100	Overruling motion—Pleading over.
10.40.110	Demurrer to indictment or information.
10.40.120	Sustaining demurrer—When final.
10.40.125	Sustaining demurrer, etc.—When not final.
10.40.140	Overruling demurrer—Pleading over.
10.40.170	Plea of guilty.
10.40.180	Plea of not guilty.
10.40.190	Refusal to answer.
10.40.200	Deportation of aliens upon conviction—Advisement—Legislative intent.

Rules of court: Arraignment—CrR 4.1.

10.40.050 Entry and use of true name. If he alleges that another name is his true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted or informed against. [1891 c 28 § 49; Code 1881 § 1065; 1873 p 232 § 227; 1854 p 116 § 91; RRS § 2097.]

Action on discovery of true name: RCW 10.46.060.

10.40.060 Pleading to arraignment. In answer to the arraignment, the defendant may move to set aside the indictment or information, or he may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he demand it. [1891 c 28 § 50; Code 1881 § 1045; RRS § 2098.]

10.40.070 Motion to set aside indictment. The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained:

(1) When any person, other than the grand jurors, was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required or permitted by law;

(2) If the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law. [1983 c 3 § 12; 1957 c 10 § 1; Code 1881 § 1046; RRS § 2099.]

FORMER PART OF SECTION: Code 1881 § 1047; RRS § 2100, now codified as RCW 10.40.075.]

10.40.075 Motion to set aside indictment—Grounds not allowed, when. The ground of the motion to set aside the indictment mentioned in the fourth subdivision of RCW 10.40.070 is not allowed to a defendant who has been held to answer before indictment. [Code 1881 § 1047; RRS § 2100. Formerly RCW 10.40.070, part.]

10.40.090 Sustaining motion—Effect of. An order to set aside the indictment or information as provided in this chapter shall be no bar to a future prosecution for the same offense. [1891 c 28 § 54; Code 1881 § 1050; RRS § 2104.]

10.40.100 Overruling motion—Pleading over. If the motion to set aside the indictment [or information] be denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. [1891 c 28 § 52; Code 1881 § 1048; RRS § 2102.]

10.40.110 Demurrer to indictment or information. The defendant may demur to the indictment or information when it appears upon its face either—

- (1) That it does not substantially conform to the requirements of this code;
- (2) [That] more than one crime is charged;
- (3) That the facts charged do not constitute a crime;
- (4) That the indictment or information contains any matter which, if true, would constitute a defense or other legal bar to the action. [1891 c 28 § 55; Code 1881 § 1051; RRS § 2105.]

10.40.120 Sustaining demurrer—When final. If the demurrer is sustained because the indictment or information contains matter which is a legal defense or bar to the action, the judgment shall be final, and the defendant must be discharged. [1891 c 28 § 56; Code 1881 § 1052; RRS § 2106. FORMER PART OF SECTION: 1891 c 28 § 61; Code 1881 § 1060; RRS § 2114, now codified as RCW 10.40.125.]

10.40.125 Sustaining demurrer, etc.—When not final. The judgment for the defendant on a demurrer to the indictment or information, except where it is otherwise provided, or for an objection taken at the trial to its form or substance, or for variance between the indictment or information and the proof, shall not bar another prosecution for the same offense. [1891 c 28 § 61; Code 1881 § 1060; RRS § 2114. Formerly RCW 10.40.120, part.]

10.40.140 Overruling demurrer—Pleading over. If the demurrer is overruled the defendant has a right to put in a plea. If he fails to do so, judgment may be rendered against him on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense. [Code 1881 § 1053; RRS § 2107.]

10.40.170 Plea of guilty. The plea of guilty can only be put in by the defendant himself in open court. [Code

1881 § 1056; RRS § 2110. FORMER PART OF SECTION: Code 1881 § 1057; RRS § 2111, now codified as RCW 10.40.175.]

10.40.180 Plea of not guilty. The plea of not guilty is a denial of every material allegation in the indictment or information; and all matters of fact may be given in evidence under it, except a former conviction or acquittal. [1891 c 28 § 59; Code 1881 § 1058; RRS § 2112.]

10.40.190 Refusal to answer. If the defendant fail or refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered by the court. [1891 c 28 § 62; Code 1881 § 1061; 1873 p 232 § 224; 1854 p 116 § 88; RRS § 2115.]

10.40.200 Deportation of aliens upon conviction—Advisement—Legislative intent. (1) The legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is further the intent of the legislature that at the time of the plea no defendant be required to disclose his or her legal status to the court.

(2) Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall determine that the defendant has been advised of the following potential consequences of conviction for a defendant who is not a citizen of the United States: Deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. A defendant signing a guilty plea statement containing the advisement required by this subsection shall be presumed to have received the required advisement. If, after September 1, 1983, the defendant has not been advised as required by this section and the defendant shows that conviction of the offense to which the defendant pleaded guilty may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty and enter a plea of not guilty. Absent a written acknowledgement by the defendant of the advisement required by this subsection, the defendant shall be presumed not to have received the required advisement.

(3) With respect to pleas accepted prior to September 1, 1983, it is not the intent of the legislature that a defendant's failure to receive the advisement required by subsection (2) of this section should require the vacation of judgment and

withdrawal of the plea or constitute grounds for finding a prior conviction invalid. [1983 c 199 § 1.]

Notice to courts—Rules—Forms: "The office of the administrator for the courts shall notify all courts of the requirements contained in RCW 10.40.200. The judicial council shall recommend to the supreme court appropriate court rules to ensure compliance with the requirements of RCW 10.40.200. Until court rules are promulgated, the office of the administrator for the courts shall develop and distribute forms necessary for the courts to comply with RCW 10.40.200." [1983 c 199 § 2.]

Effective date—1983 c 199 § 1: "Section 1 of this act shall take effect on September 1, 1983." [1983 c 199 § 3.]

Chapter 10.43

FORMER ACQUITTAL OR CONVICTION

Sections

- 10.43.020 Offense embraces lower degree and included offenses.
- 10.43.030 Conviction or acquittal in other county.
- 10.43.040 Foreign conviction or acquittal.
- 10.43.050 Acquittal, when a bar.

Discharge of codefendant as bar to further prosecution: RCW 10.46.110.

Double jeopardy: State Constitution Art. 1 § 9.

10.43.020 Offense embraces lower degree and included offenses. When the defendant has been convicted or acquitted upon an indictment or information of an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein. [1891 c 28 § 74; Code 1881 § 1096; 1873 p 238 § 257; 1854 p 120 § 121; RRS § 2166.]

Bar as to prosecution for same crime in another degree, or attempt: RCW 10.43.050.

10.43.030 Conviction or acquittal in other county. Whenever, upon the trial of any person for a crime, it shall appear that the defendant has already been acquitted or convicted upon the merits, of the same crime, in a court having jurisdiction of such offense in another county of this state, such former acquittal or conviction is a sufficient defense. [1909 c 249 § 20; RRS § 2272.]

10.43.040 Foreign conviction or acquittal. Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, upon a criminal prosecution under the laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense. [1909 c 249 § 19; RRS § 2271.]

10.43.050 Acquittal, when a bar. No order of dismissal or directed verdict of not guilty on the ground of a variance between the indictment or information and the proof, or on the ground of any defect in such indictment or information, shall bar another prosecution for the same offense. Whenever a defendant shall be acquitted or convicted upon an indictment or information charging a crime consisting of different degrees, he cannot be proceeded

against or tried for the same crime in another degree, nor for an attempt to commit such crime, or any degree thereof. [1909 c 249 § 64; Code 1881 § 769; RRS § 2316.]

Offense embraces lower degree and included offenses: RCW 10.43.020.

Ownership of property—Proof of: RCW 10.58.060.

Chapter 10.46

SUPERIOR COURT TRIAL

Sections

- 10.46.020 Trial docket.
- 10.46.060 True name inserted in proceedings.
- 10.46.070 Conduct of trial—Generally.
- 10.46.080 Continuances.
- 10.46.085 Continuances not permitted in certain cases.
- 10.46.110 Discharging defendant to give evidence.
- 10.46.190 Liability of convicted person for costs—Jury fee.
- 10.46.200 Costs allowed to acquitted or discharged defendant.
- 10.46.210 Taxation of costs on acquittal or discharge—Generally—F frivolous complaints.
- 10.46.220 Cost bills in felony cases—Certification.
- 10.46.230 Cost bills in felony cases—Payment.

Criminal rules for superior court: Rules of court: Criminal Rules for Superior Court (CrR).

Superior court rules: State Constitution Art. 4 § 24.

10.46.020 Trial docket. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments and informations pending according to the date of their filing, specifying opposite to the title of each action whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail; and shall, in like manner, enter therein all indictments and informations on which issues of fact are joined, all cases brought to the court on change of venue from other counties, and all cases pending upon appeal from inferior courts. [1891 c 28 § 65; Code 1881 § 1044; 1873 p 231 § 222; 1854 p 115 § 86; RRS § 2134.]

10.46.060 True name inserted in proceedings. When a defendant is designated in the indictment or information by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted or informed against by the name mentioned in the indictment or information. [1891 c 28 § 23; Code 1881 § 1007; 1873 p 225 § 190; 1869 p 241 § 185; RRS § 2058.]

True name: RCW 10.40.050.

10.46.070 Conduct of trial—Generally. The court shall decide all questions of law which shall arise in the course of the trial, and the trial shall be conducted in the same manner as in civil actions. [1891 c 28 § 70; Code 1881 § 1088; 1873 p 237 § 249; 1854 p 119 § 111; RRS § 2158. FORMER PART OF SECTION: 1891 c 28 § 66, part; Code 1881 § 1078; 1873 p 236 § 239; 1854 p 118 § 101; RRS § 2137, part, now codified as RCW 10.49.020.]

Rules of court: This section superseded, in part, by CrR 6. See comment preceding CrR 6.1.

10.46.080 Continuances. A continuance may be granted in any case on the ground of the absence of evidence

on the motion of the defendant supported by affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it; and also the name and place of residence of the witness or witnesses; and the substance of the evidence expected to be obtained, and if the prosecuting attorney admit that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper the continuance shall not be granted. [Code 1881 § 1077; 1877 p 206 § 7; RRS § 2135.]

10.46.085 Continuances not permitted in certain cases. When a defendant is charged with a crime which constitutes a violation of RCW 9A.64.020 or chapter 9.68, 9.68A, or 9A.44 RCW, and the alleged victim of the crime is a person under the age of eighteen years, neither the defendant nor the prosecuting attorney may agree to extend the originally scheduled trial date unless the court within its discretion finds that there are substantial and compelling reasons for a continuance of the trial date and that the benefit of the postponement outweighs the detriment to the victim. The court may consider the testimony of lay witnesses and of expert witnesses, if available, regarding the impact of the continuance on the victim. [1989 c 332 § 7.]

Finding—1989 c 332: "The legislature finds that treatment of the emotional problems of child sexual abuse victims may be impaired by lengthy delay in trial of the accused and the resulting delay in testimony of the child victim. The trauma of the abusive incident is likely to be exacerbated by requiring testimony from a victim who has substantially completed therapy and is forced to relive the incident. The legislature finds that it is necessary to prevent, to the extent reasonably possible, lengthy and unnecessary delays in trial of a person charged with abuse of a minor." [1989 c 332 § 6.]

10.46.110 Discharging defendant to give evidence. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a codefendant. The order of discharge is a bar to another prosecution for the same offense. [Code 1881 § 1092; 1873 p 237 § 253; 1854 p 120 § 117; RRS § 2162.]

Conviction or acquittal—Several defendants: RCW 10.61.035.

10.46.190 Liability of convicted person for costs—Jury fee. Every person convicted of a crime or held to bail to keep the peace shall be liable to all the costs of the proceedings against him, including, when tried by a jury in the superior court, a jury fee as provided for in civil actions, and when tried by a jury before a committing magistrate, twenty-five dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines. The jury fee, when collected for a case tried by the superior court, shall be paid to the clerk, to be by him applied as the jury fee in civil cases is applied. [1977 ex.s. c 248 § 1; 1977 ex.s. c 53 § 1; 1961 c 304 § 8; Code 1881 § 2105; 1869 p 418 § 3; RRS § 2227.]

Disposition of fines and costs: Chapter 10.82 RCW.

Jury

*fees: RCW 4.44.110, 36.18.020.
in district court: RCW 10.04.050.
trials by: Chapter 10.49 RCW.*

10.46.200 Costs allowed to acquitted or discharged defendant. No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment is found against him, or for want of prosecution, shall be liable for any costs or fees of any officer or for any charge of subsistence while he was in custody, but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases. [Code 1881 § 1168; 1877 p 207 § 10; 1854 p 129 § 177; RRS § 2236.]

10.46.210 Taxation of costs on acquittal or discharge—Generally—F frivolous complaints. When any person shall be brought before a court or other committing magistrate of any county, city or town in this state, having jurisdiction of the alleged offense, charged with the commission of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city or town for or in which the said complaint is triable, but if the court or other magistrate trying said charge, shall decide the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law. [1987 c 202 § 168; Code 1881 § 2103; 1869 p 418 § 1; RRS § 2225.]

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

10.46.220 Cost bills in felony cases—Certification. In all convictions for felony, whether capital or punishable by imprisonment in the penitentiary, the clerk of the superior court shall forthwith, after sentence, tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the county in which the trial was had. After which the judge of the superior court shall allow and approve such bill or so much thereof, as is allowable by law. The clerk of the superior court shall thereupon, under his hand, and under the seal of the court, certify said triplicate cost bills, and shall file one with the papers of cause, and shall transmit one to the administrator for the courts and one to the county auditor of the county in which said felony was committed. [1979 c 129 § 1; 1883 p 35 § 1; Code 1881 § 2106; RRS § 2228.]

10.46.230 Cost bills in felony cases—Payment. Upon the receipt of the cost bill, as provided for in the preceding section, the county auditor shall draw warrants for the amounts due each person, as certified in said cost bill, which warrants shall be paid as other county warrants are paid. On receipt of the certified copy of said cost bill, the administrator for the courts shall examine and audit said bill and allow the payment by the state of statutorily required

witness fees in cases where conviction of a felony is obtained and the defendant is sentenced to pay a fine or is given a prison sentence even if the sentence is deferred or suspended. Payment shall be allowed by the administrator for the courts in such cases even when the conviction is subsequently reversed or if a new trial is granted. [1979 c 129 § 2; 1883 p 35 § 1; Code 1881 § 2107; 1873 p 250 § 316; RRS § 2229.]

Chapter 10.52

WITNESSES—GENERALLY

Sections

- 10.52.040 Compelling witness to attend and testify—Accused as witness.
 10.52.060 Confrontation of witnesses.
 10.52.090 Incriminating testimony not to be used.
 10.52.100 Identity of child victims of sexual assault not to be disclosed.

Discharging defendant to give evidence: RCW 10.46.110.

Salaried public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.

Witnesses: Rules of court: ER 610, CrR 6.12, CrRLJ 6.12.

10.52.040 Compelling witness to attend and testify—Accused as witness. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the state, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may, upon the motion of the prosecuting attorney or defense counsel, recognize witnesses, with or without sureties, to attend and testify at any hearing or trial in any criminal prosecution in any court of this state, or before the grand jury. In default of such recognizance, or in the event that surety is required and has not been obtained, the court shall require the appearance of the witness before the court and shall appoint counsel for the witness if he is indigent and then shall determine that the testimony of the witness would be material to either the prosecution or the defendant and that the witness would not attend the trial of the matter unless detained and, therefore, the court may direct that such witness shall be detained in the custody of the sheriff until the hearing or trial in which the witness is to testify: PROVIDED, That each witness detained for failure to obtain surety shall be paid, in addition to witness fees for actual appearance in court, for each day of his detention a sum equal to the daily jury fee paid to a juror serving in a superior court; and each witness in breach of recognizance and who is detained therefor shall be paid, in addition to witness fees for actual appearance in court, the sum of one dollar for each day of his detention. Any such witness shall be provided food and lodging while so detained. Any person accused of any crime in this state, by indictment, information, or otherwise, may, in the examination or trial of the cause, offer himself, or herself, as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when accused shall so testify, he or she shall be subject to all the rules of law relating to cross-examination of other witnesses: PROVIDED, That nothing in this code shall be construed to compel such accused

person to offer himself or herself as a witness in such case. [1984 c 76 § 17; 1969 ex.s. c 143 § 1; 1915 c 83 § 1; 1891 c 28 § 69; Code 1881 § 1067; 1873 p 233 § 229; 1871 p 105 § 2; 1854 p 116 § 93; RRS § 2148. Formerly RCW 10.52.040, 10.52.050, 10.52.070, 10.52.080.]

Rules of court: See CrR 6.13, 6.14.

Rights of accused persons: State Constitution Art. 1 § 9, 22 (Amendment 10).

10.52.060 Confrontation of witnesses. Every person accused of crime shall have the right to meet the witnesses produced against him face to face: PROVIDED, That whenever any witness whose deposition shall have been taken pursuant to law by a magistrate, in the presence of the defendant and his counsel, shall be absent, and cannot be found when required to testify upon any trial or hearing, so much of such deposition as the court shall deem admissible and competent shall be admitted and read as evidence in such case. [1909 c 249 § 54; RRS § 2306. Prior: Code 1881 § 765; 1873 p 180 § 2; 1869 p 198 § 2; 1859 p 104 § 2.]

Reviser's note: Caption for 1909 c 249 § 54 reads as follows: "SEC. 54. WITNESSES."

Rights of accused persons: State Constitution Art. 1 § 22 (Amendment 10).

10.52.090 Incriminating testimony not to be used. In every case where it is provided in *this act that a witness shall not be excused from giving testimony tending to criminate himself, no person shall be excused from testifying or producing any papers or documents on the ground that his testimony may tend to criminate or subject him to a penalty or forfeiture; but he shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning which he shall so testify, except for perjury or offering false evidence committed in such testimony. [1909 c 249 § 39; RRS § 2291.]

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

Rules of court: Ordering immunity from prosecution—Incriminating testimony not to be used—CrR 6.14.

Bribery or corrupt solicitation: State Constitution Art. 2 § 30.

Rights of accused persons: State Constitution Art. 1 § 9, 22 (Amendment 10).

*Witness not excused from giving testimony tending to incriminate himself in crimes concerning anarchy: RCW 9.05.050.
 bribery: RCW 9.18.080.*

10.52.100 Identity of child victims of sexual assault not to be disclosed. Child victims of sexual assault who are under the age of eighteen, have a right not to have disclosed to the public or press at any court proceeding involved in the prosecution of the sexual assault, the child victim's name, address, location, photographs, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. The court shall ensure that information identifying the child victim is not disclosed to the press or the public and that in the event of any improper disclosure the court shall make all necessary orders to restrict further dissemination of identifying information improperly obtained. Court proceedings include but are not limited to

pretrial hearings, trial, sentencing, and appellate proceedings. The court shall also order that any portion of any court records, transcripts, or recordings of court proceedings that contain information identifying the child victim shall be sealed and not open to public inspection unless those identifying portions are deleted from the documents or tapes. [1992 c 188 § 9.]

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

Chapter 10.55

WITNESSES OUTSIDE THE STATE (UNIFORM ACT)

Sections

10.55.010	Definitions.
10.55.020	Summoning witness in this state to testify in another state.
10.55.060	Witness from another state summoned to testify in this state.
10.55.100	Exemption of witness from arrest and service of process.
10.55.110	Uniformity of interpretation.
10.55.120	Short title.
10.55.130	Severability—1943 c 218.

10.55.010 Definitions. "Witness" as used in this chapter shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States and the District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness. [1943 c 218 § 1; Rem. Supp. 1943 § 2150-1.]

10.55.020 Summoning witness in this state to testify in another state. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certified under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence and of any other state through which the witness may be required to travel by ordinary course of travel, at a time and place specified in the

certificate. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. [1943 c 218 § 2; Rem. Supp. 1943 § 2150-2. Formerly RCW 10.55.020, 10.55.030, 10.55.040 and 10.55.050.]

10.55.060 Witness from another state summoned to testify in this state. If any person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness either for the prosecution or for the defense, in a criminal action pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. [1943 c 218 § 3; Rem. Supp. 1943 § 2150-3. Formerly RCW 10.55.060, 10.55.070, 10.55.080 and 10.55.090.]

10.55.100 Exemption of witness from arrest and service of process. If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. [1943 c 218 § 4; Rem. Supp. 1943 § 2150-4.]

10.55.110 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. [1943 c 218 § 5; Rem. Supp. 1943 § 2150-5.]

10.55.120 Short title. This chapter may be cited as "Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings." [1943 c 218 § 6; Rem. Supp. 1943 § 2150-6.]

10.55.130 Severability—1943 c 218. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1943 c 218 § 7; Rem. Supp. 1943 § 2150-7.]

Chapter 10.58 EVIDENCE

Sections

- 10.58.010 Rules—Generally.
- 10.58.020 Presumption of innocence—Conviction of lowest degree, when.
- 10.58.030 Confession as evidence.
- 10.58.040 Intent to defraud.
- 10.58.060 Ownership—Proof of.
- 10.58.080 View of place of crime permissible.

Evidence

generally: Title 5 RCW.

material to homicide, search and seizure: RCW 10.79.015.

10.58.010 Rules—Generally. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions. [Code 1881 § 1071; 1873 p 234 § 233; 1854 p 117 § 97; RRS § 2152.]

10.58.020 Presumption of innocence—Conviction of lowest degree, when. Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. [1909 c 249 § 56; 1891 c 28 § 91; Code 1881

§ 767; 1854 p 76 § 3; RRS § 2308. Formerly RCW 10.58.020 and 10.61.020.]

Conviction of attempts or lesser or included crimes: RCW 10.61.003, 10.61.006, 10.61.010.

10.58.030 Confession as evidence. The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony. [Code 1881 § 1070; 1873 p 234 § 232; 1854 p 117 § 96; RRS § 2151.]

10.58.040 Intent to defraud. Whenever an intent to defraud shall be made an element of an offense, it shall be sufficient if an intent appears to defraud any person, association or body politic or corporate whatsoever. [1909 c 249 § 40; RRS § 2292.]

10.58.060 Ownership—Proof of. In the prosecution of any offense committed upon, or in relation to, or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof. [Code 1881 § 963; 1854 p 99 § 133; RRS § 2156.]

Indictment or information, certain defects or imperfections deemed immaterial: RCW 10.37.056.

10.58.080 View of place of crime permissible. The court may order a view by any jury impaneled to try a criminal case. [Code 1881 § 1090; 1873 p 237 § 251; 1854 p 120 § 115; RRS § 2160.]

Chapter 10.61 VERDICTS

Sections

- 10.61.003 Degree offenses—Inferior degree—Attempt.
- 10.61.006 Other cases—Included offenses.
- 10.61.010 Conviction of lesser crime.
- 10.61.035 Conviction or acquittal—Several defendants.
- 10.61.060 Reconsideration of verdict.

Rules of court: Verdicts—CrR 6.16.

Former acquittal or conviction—Offense embraces other degrees and included offenses: RCW 10.43.020, 10.43.050.

10.61.003 Degree offenses—Inferior degree—Attempt. Upon an indictment or information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense. [1891 c 28 § 75; Code

1881 § 1097; 1854 p 120 § 122; RRS § 2167. Formerly RCW 10.61.010, part.] [SLC-RO-11]

Where doubt as to degree, conviction of lowest: RCW 10.58.020.

10.61.006 Other cases—Included offenses. In all other cases the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he is charged in the indictment or information. [1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123; RRS § 2168. Formerly RCW 10.61.010, part.] [SLC-RO-11]

10.61.010 Conviction of lesser crime. Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty. [1909 c 249 § 11; RRS § 2263. FORMER PARTS OF SECTION: (i) 1891 c 28 § 75; Code 1881 § 1097; 1854 p 120 § 122; RRS § 2167, now codified as RCW 10.61.003. (ii) 1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123; RRS § 2168, now codified as RCW 10.61.006.] [SLC-RO-11]

10.61.035 Conviction or acquittal—Several defendants. Upon an indictment or information against several defendants any one or more may be convicted or acquitted. [1891 c 28 § 37; Code 1881 § 1022; 1873 p 228 § 205; 1869 p 243 § 200; RRS § 2073. Formerly RCW 10.61.030, part.]

Rules of court: This section superseded in part by CrR 6.16. See comment after CrR 6.16.

Discharging defendant to give evidence: RCW 10.46.110.

10.61.060 Reconsideration of verdict. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider the verdict; and if after such reconsideration they return the same verdict it must be entered, but it shall be good cause for new trial. When there is a verdict of acquittal the court cannot require the jury to reconsider it. [1891 c 28 § 78; Code 1881 § 1100; 1873 p 239 § 261; 1854 p 121 § 125; RRS § 2170.]

Chapter 10.64

JUDGMENTS AND SENTENCES

Sections

10.64.015	Judgment to include costs—Exception.
10.64.025	Detention of defendant.
10.64.027	Conditions of release.
10.64.060	Form of sentence to penitentiary.
10.64.070	Recognizance to maintain good behavior or keep the peace.
10.64.075	Breach of recognizance conditions.
10.64.080	Judgments a lien on realty.
10.64.100	Final record—What to contain.
10.64.110	Fingerprint of defendant in felony convictions.
10.64.120	Referral assessments.

Rules of court: Judgments and sentencing—CrR 7.1 through 7.4.

*Assessments required of other convicted persons
offender supervision: RCW 9.94A.270.
parolees: RCW 72.04A.120.*

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

10.64.015 Judgment to include costs—Exception. When the defendant is found guilty, the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise. [Code 1881 § 1104; 1873 p 241 § 272; 1854 p 121 § 129; RRS § 2187. Formerly RCW 10.64.010, part.]
Requiring defendant to pay costs—Procedure: RCW 10.01.160, 10.01.170, chapter 10.82 RCW.

10.64.025 Detention of defendant. A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released. Any bail bond that was posted on behalf of a defendant shall, upon the defendant's conviction, be exonerated. [1989 c 276 § 2.]

Severability—1989 c 276: See note following RCW 9.95.062.

10.64.027 Conditions of release. In order to minimize the trauma to the victim, the court may attach conditions on release of a defendant under RCW 10.64.025 regarding the whereabouts of the defendant, contact with the victim, or other conditions. [1989 c 276 § 5.]

Severability—1989 c 276: See note following RCW 9.95.062.

10.64.060 Form of sentence to penitentiary. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at any one time; and in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order. [Code 1881 § 1127; 1873 p 243 § 285; 1854 p 124 § 149; RRS § 2208.]

Indeterminate sentences: Chapter 9.95 RCW.

Sentencing, 1981 act: Chapter 9.94A RCW.

10.64.070 Recognizance to maintain good behavior or keep the peace. Every court before whom any person shall be convicted upon an indictment or information for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize. [1891 c 28 § 83; Code 1881 § 1121; 1873 p 242 § 279; 1854 p 123 § 143; RRS § 2202. FORMER PART OF SECTION: Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203, now codified as RCW 10.64.075.]

10.64.075 Breach of recognizance conditions. In case of the breach of the conditions of any such recogni-

zance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace. [Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203. Formerly RCW 10.64.070, part.]

10.64.080 Judgments a lien on realty. Judgments for fines in all criminal actions rendered, are, and may be made liens upon the real estate of the defendant in the same manner, and with like effect as judgments in civil actions. [Code 1881 § 1111; RRS § 2188.]

10.64.100 Final record—What to contain. The clerk of the court shall make a final record of all the proceedings in a criminal prosecution within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment or information, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders, or decision, and bill of exceptions. [1891 c 28 § 85; Code 1881 § 1134; 1873 p 245 § 292; 1854 p 125 § 156; RRS § 2224.]

10.64.110 Fingerprint of defendant in felony convictions. Following June 15, 1977, there shall be affixed to the original of every judgment and sentence of a felony conviction in every court in this state and every order adjudicating a juvenile to be a delinquent based upon conduct which would be a felony if committed by an adult, a fingerprint of the defendant or juvenile who is the subject of the order. When requested by the clerk of the court, the actual affixing of fingerprints shall be done by a representative of the office of the county sheriff.

The clerk of the court shall attest that the fingerprints appearing on the judgment in sentence, order of adjudication of delinquency, or docket, is that of the individual who is the subject of the judgment or conviction, order, or docket entry. [1977 ex.s. c 259 § 1.]

10.64.120 Referral assessments. (1) Every judge of a court of limited jurisdiction shall have the authority to levy a monthly assessment not to exceed fifty dollars for services provided whenever a person is referred by the court to the probation department for evaluation or supervision services. The assessment may also be made by a sentencing judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court.

(2) It shall be the responsibility of the probation services office to implement local procedures approved by the court of limited jurisdiction to ensure collection and payment of such fees into the general fund of the city or county treasury.

(3) Revenues raised under this section shall be used to fund programs for probation services and shall be in addition to those funds provided in RCW 3.62.050. [1991 c 247 § 3; 1982 c 207 § 4.]

Chapter 10.66

DRUG TRAFFICKERS—OFF-LIMITS ORDERS

Sections

10.66.005	Findings.
10.66.010	Definitions.
10.66.020	When order may be issued.
10.66.030	Hearing—Summons.
10.66.040	Ex parte temporary order—Hearing—Notice.
10.66.050	Additional relief—PADT area.
10.66.060	Bond or security.
10.66.070	Appearance of party.
10.66.080	Notice of order to law enforcement agency.
10.66.090	Penalties.
10.66.100	Additional penalties.
10.66.110	Jurisdiction.
10.66.120	Venue.
10.66.130	Modification of order—Notice to law enforcement agency.
10.66.900	Severability—1989 c 271.

10.66.005 Findings. The legislature finds that drug abuse is escalating at an alarming rate. New protections need to be established to address this drug crisis which is threatening every stratum of our society. Prohibiting known drug traffickers from frequenting areas for continuous drug activity is one means of addressing this pervasive problem. [1989 c 271 § 213.]

10.66.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Applicant" means any person who owns, occupies, or has a substantial interest in property, or who is a neighbor to property which is adversely affected by drug trafficking, including:

(a) A "family or household member" as defined by RCW 10.99.020(1), who has a possessory interest in a residence as an owner or tenant, at least as great as a known drug trafficker's interest;

(b) An owner or lessor;

(c) An owner, tenant, or resident who lives or works in a designated PADT area; or

(d) A city or prosecuting attorney for any jurisdiction in this state where drug trafficking is occurring.

(2) "Drug" or "drugs" means a controlled substance as defined in chapter 69.50 RCW or an "imitation controlled substance" as defined in RCW 69.52.020.

(3) "Known drug trafficker" means any person who has been convicted of a drug offense in this state, another state, or federal court who subsequently has been arrested for a drug offense in this state. For purposes of this definition, "drug offense" means a felony violation of chapter 69.50 or 69.52 RCW or equivalent law in another jurisdiction that involves the manufacture, distribution, or possession with intent to manufacture or distribute, of a controlled substance or imitation controlled substance.

(4) "Off-limits orders" means an order issued by a superior or district court in the state of Washington that enjoins known drug traffickers from entering or remaining in a designated PADT area.

(5) "Protected against drug trafficking area" or "PADT area" means any specifically described area, public or private, contained in an off-limits order. The perimeters of a PADT area shall be defined using street names and

numbers and shall include all real property contained therein, where drug sales, possession of drugs, pedestrian or vehicular traffic attendant to drug activity, or other activity associated with drug offenses confirms a pattern associated with drug trafficking. The area may include the full width of streets, alleys and sidewalks on the perimeter, common areas, planting strips, parks and parking areas within the area described using the streets as boundaries. [1989 c 271 § 214.]

10.66.020 When order may be issued. A court may enter an off-limits order enjoining a known drug trafficker who has been associated with drug trafficking in an area that the court finds to be a PADT area, from entering or remaining in a designated PADT area for up to one year. This relief may be ordered pursuant to applications for injunctive relief or as part of a criminal proceeding as follows:

(1) In a civil action, including an action brought under this chapter;

(2) In a nuisance abatement action pursuant to chapter 7.43 RCW;

(3) In an eviction action to exclude known drug traffickers or tenants who were evicted for allowing drug trafficking to occur on the premises which were the subject of the eviction action;

(4) As a condition of pretrial release of a known drug trafficker awaiting trial on drug charges. The order shall be in effect until the time of sentencing or dismissal of the criminal charges; or

(5) As a condition of sentencing of any known drug trafficker convicted of a drug offense. The order may include all periods of community placement or community supervision. [1989 c 271 § 215.]

10.66.030 Hearing—Summons. Upon the filing of an application for an off-limits order under RCW 10.66.020 (1), (2), or (3), the court shall set a hearing fourteen days from the filing of the application, or as soon thereafter as the hearing can be scheduled. If the respondent has not already been served with a summons, the application shall be served on the respondent not less than five court days before the hearing. If timely service cannot be made, the court may set a new hearing date. [1989 c 271 § 216.]

10.66.040 Ex parte temporary order—Hearing—Notice. Upon filing an application for an off-limits order under this chapter, an applicant may obtain an ex parte temporary off-limits order, with or without notice, only upon a showing that serious or irreparable harm will result to the applicant if the temporary off-limits order is not granted. An ex parte temporary off-limits order shall be effective for a fixed period not to exceed fourteen days, but the court may reissue the order upon a showing of good cause. A hearing on a one-year off-limits order, as provided in this chapter, shall be set for fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the temporary off-limits order along with a copy of the application and notice of the date set for the full hearing. At the hearing, if the court finds that respondent is a known drug trafficker who has engaged in drug trafficking in a particular area, and that the area is associated with a

pattern of drug activities, the court shall issue a one-year off-limits order prohibiting the respondent from having any contact with the PADT area. At any time within three months before the expiration of the order, the applicant may apply for a renewal of the order by filing a new petition under this chapter. [1989 c 271 § 217.]

10.66.050 Additional relief—PADT area. In granting a temporary off-limits order or a one-year off-limits order, the court shall have discretion to grant additional relief as the court considers proper to achieve the purposes of this chapter. The PADT area defined in any off-limits order must be reasonably related to the area or areas impacted by the unlawful drug activity as described by the applicant in any civil action under RCW 10.66.020 (1), (2), or (3). The court in its discretion may allow a respondent, who is the subject of any order issued under *section 214 of this act as part of a civil or criminal proceeding, to enter an off-limits area or areas for health or employment reasons, subject to conditions prescribed by the court. Upon request, a certified copy of the order shall be provided to the applicant by the clerk of the court. [1989 c 271 § 218.]

***Reviser's note:** The reference to "section 214 of this act" appears to be erroneous as section 214 is a definition section. Section 215, codified as RCW 10.66.020, relates to the issuance of off-limits orders.

10.66.060 Bond or security. A temporary off-limits order or a one-year off-limits order may not issue under this chapter except upon the giving of a bond or security by the applicant. The court shall set the bond or security in the amount the court deems proper, but not less than one thousand dollars, for the payment of costs and damages that may be incurred by any party who is found to have been wrongfully restrained or enjoined. A bond or security shall not be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington. [1989 c 271 § 219.]

10.66.070 Appearance of party. Nothing in this chapter shall preclude a party from appearing in person or by counsel. [1989 c 271 § 220.]

10.66.080 Notice of order to law enforcement agency. A copy of an off-limits order granted under this chapter shall be forwarded by the court to the local law enforcement agency with jurisdiction over the PADT area specified in the order on or before the next judicial day following issuance of the order. Upon receipt of the order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system. [1989 c 271 § 221.]

10.66.090 Penalties. (1) Any person who willfully disobeys an off-limits order issued under this chapter shall be guilty of a gross misdemeanor.

(2) Any person who willfully disobeys an off-limits order in violation of the terms of the order and who also either:

(a) Enters or remains in a PADT area that is within one thousand feet of any school; or

(b) Is convicted of a second or subsequent violation of this chapter, is guilty of a class C felony. [1989 c 271 § 223.]

10.66.100 Additional penalties. Any person who willfully disobeys an off-limits order issued under this chapter shall be subject to criminal penalties as provided in this chapter and may also be found in contempt of court and subject to penalties under *chapter 7.20 RCW. [1989 c 271 § 222.]

***Reviser's note:** Chapter 7.20 RCW was repealed by 1989 c 373 § 28. For later enactment, see chapter 7.21 RCW.

10.66.110 Jurisdiction. The superior courts shall have jurisdiction of all civil actions and all felony criminal proceedings brought under this chapter. Courts of limited jurisdiction shall have jurisdiction of all misdemeanor and gross misdemeanor criminal actions brought under this chapter. [1989 c 271 § 224.]

10.66.120 Venue. For the purposes of this chapter, an action may be brought in any county in which any element of the alleged drug trafficking activities occurred. [1989 c 271 § 225.]

10.66.130 Modification of order—Notice to law enforcement agency. Upon application, notice to all parties, and a hearing, the court may modify the terms of an off-limits order. When an order is terminated, modified, or amended before its expiration date, the clerk of the court shall forward, on or before the next judicial day, a true copy of the amended order to the law enforcement agency specified in the order. Upon receipt of an order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system. [1989 c 271 § 226.]

10.66.900 Severability—1989 c 271. See note following RCW 9.94A.310.

Chapter 10.70

COMMITMENTS

(Formerly: Commitments and executions)

Sections

- 10.70.010 Commitment until fine and costs are paid.
- 10.70.020 Mittimus upon sentence to imprisonment.
- 10.70.140 Aliens committed—Notice to immigration authority.
- 10.70.150 Aliens committed—Copies of clerk's records.

Execution of death sentence: Chapter 10.95 RCW.

10.70.010 Commitment until fine and costs are paid. When the defendant is adjudged to pay a fine and costs, the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law. [Code 1881 § 1119; 1873 p 242 § 277; 1854 p 123 § 141; RRS § 2200.]

Commitment for failure to pay fine and costs—Execution against defendant's property: RCW 10.82.030.

Stay of execution for sixty days on recognizance: RCW 10.82.020, 10.82.025.

(1992 Ed.)

10.70.020 Mittimus upon sentence to imprisonment. When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, who shall execute it accordingly. [Code 1881 § 1126; 1873 p 243 § 284; 1854 p 124 § 148; RRS § 2207.]

10.70.140 Aliens committed—Notice to immigration authority. Whenever any person shall be committed to a state correctional facility, the county jail, or any other state or county institution which is supported wholly or in part by public funds, it shall be the duty of the warden, superintendent, sheriff or other officer in charge of such state or county institution to at once inquire into the nationality of such person, and if it shall appear that such person is an alien, to immediately notify the United States immigration officer in charge of the district in which such penitentiary, reformatory, jail or other institution is located, of the date of and the reasons for such alien commitment, the length of time for which committed, the country of which the person is a citizen, and the date on which and the port at which the person last entered the United States. [1992 c 7 § 29; 1925 ex.s. c 169 § 1; RRS § 2206-1.]

10.70.150 Aliens committed—Copies of clerk's records. Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing any alien to any state or county institution which is supported wholly or in part by public funds, it shall be the duty of the clerk of such court to furnish without charge a certified copy of the complaint, information or indictment and the judgment and sentence and any other record pertaining to the case of the convicted alien. [1925 ex.s. c 169 § 2; RRS § 2206-2.]

Chapter 10.73

CRIMINAL APPEALS

Sections

- 10.73.010 Appeal by defendant.
- 10.73.040 Bail pending appeal.
- 10.73.090 Collateral attack—One year time limit.
- 10.73.100 Collateral attack—When one year limit not applicable.
- 10.73.110 Collateral attack—One year time limit—Duty of court to advise defendant.
- 10.73.120 Collateral attack—One year time limit—Duty of department of corrections to advise.
- 10.73.130 Collateral attack—One year time limit—Applicability.
- 10.73.140 Collateral attack—Subsequent petitions.
- 10.73.900 Severability—1989 c 395.

Effect of appellate review by defendant: RCW 9.95.060, 9.95.062.

10.73.010 Appeal by defendant. Appeal by defendant, see Rules of Court.

10.73.040 Bail pending appeal. In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken

from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the state of Washington in the sum so fixed be executed on his behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds by *section ten of this act, such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section; but the court may by order require a new bond in a larger amount or with new sureties, and may commit the appellant until the order be complied with. [1893 c 61 § 31; RRS § 1747.]

*Reviser's note: The term "section ten of this act," refers to 1893 c 61 § 10, which was repealed by 1957 c 7 § 10.

10.73.090 Collateral attack—One year time limit.

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

- (a) The date it is filed with the clerk of the trial court;
- (b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or
- (c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final. [1989 c 395 § 1.]

10.73.100 Collateral attack—When one year limit not applicable. The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

- (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;
- (2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;
- (3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;
- (4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction; or

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard. [1989 c 395 § 2.]

10.73.110 Collateral attack—One year time limit—Duty of court to advise defendant. At the time judgment and sentence is pronounced in a criminal case, the court shall advise the defendant of the time limit specified in RCW 10.73.090 and 10.73.100. [1989 c 395 § 4.]

10.73.120 Collateral attack—One year time limit—Duty of department of corrections to advise. As soon as practicable after July 23, 1989, the department of corrections shall attempt to advise the following persons of the time limit specified in RCW 10.73.090 and 10.73.100: Every person who, on July 23, 1989, is serving a term of incarceration, probation, parole, or community supervision pursuant to conviction of a felony. [1989 c 395 § 5.]

10.73.130 Collateral attack—One year time limit—Applicability. RCW 10.73.090 and 10.73.100 apply only to petitions and motions filed more than one year after July 23, 1989. [1989 c 395 § 6.]

10.73.140 Collateral attack—Subsequent petitions. If a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause why the petitioner did not raise the new grounds in the previous petition. Upon receipt of a personal restraint petition, the court of appeals shall review the petition and determine whether the person has previously filed a petition or petitions and if so, compare them. If upon review, the court of appeals finds that the petitioner has previously raised the same grounds for review, or that the petitioner has failed to show good cause why the ground was not raised earlier, the court of appeals shall dismiss the petition on its own motion without requiring the state to respond to the petition. Upon receipt of a first or subsequent petition, the court of appeals shall, whenever possible, review the petition and determine if the petition is based on frivolous grounds. If frivolous, the court of appeals shall dismiss the petition on its own motion without first requiring the state to respond to the petition. [1989 c 395 § 9.]

10.73.900 Severability—1989 c 395. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 395 § 7.]

Chapter 10.77

CRIMINALLY INSANE—PROCEDURES

Sections

- 10.77.005 Findings—Developmental disabilities.
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 10.77.050 Trial, conviction, or sentencing of person under mental incapacity.
 10.77.060 Plea of not guilty due to insanity—Doubt as to competency—Examination—Report.
 10.77.070 Examination rights of defendant's expert or professional person.
 10.77.080 Motion for acquittal on grounds of insanity—Hearing—Findings.
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 10.77.920 Chapter successor to chapter 10.76 RCW.
 10.77.930 Effective date—1973 1st ex.s. c 117.
 10.77.940 Equal application of 1989 c 420—Evaluation for developmental disability.

Rules of court: Cf. CrR 4.2(c).

Mentally ill, commitment: Chapter 71.05 RCW.

10.77.005 Findings—Developmental disabilities.

With respect to *this act, the legislature finds that among those persons who endanger the safety of others by committing felony crimes are a small number of persons with developmental disabilities. While their conduct is not typical

of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with felony crimes, and have been found either incompetent to stand trial or not guilty by reason of insanity. The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities. Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with felony crimes and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety. [1989 c 420 § 1.]

*Reviser's note: For codification of "this act" [1989 c 420], see note following RCW 10.77.940.

10.77.010 Definitions. As used in this chapter:

(1) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing felonious acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(2) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(3) "Secretary" means the secretary of the department of social and health services or his or her designee.

(4) "Department" means the state department of social and health services.

(5) "Treatment" means any currently standardized medical or mental health procedure including medication.

(6) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(7) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute "insanity".

(8) "Furlough" means an authorized leave of absence for a resident of a state institution designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(9) "Developmental disability" means the condition defined in RCW 71A.10.020(2).

(10) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(11) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct.

(12) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(13) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW.

(14) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(15) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences. [1989 c 420 § 3; 1983 c 122 § 1; 1974 ex.s. c 198 § 1; 1973 1st ex.s. c 117 § 1.]

10.77.020 Right to legal counsel—Waiver—Finding—Right to expert and attorney when subjected to mental status examination—Indigents—Order of commitment or treatment—Self-incrimination. (1) At any and all stages of the proceedings pursuant to this chapter, any

person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him. A person may waive his right to counsel; but such waiver shall only be effective if a court makes a specific finding that he is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

(a) The nature of the charges;

(b) The statutory offense included within them;

(c) The range of allowable punishments thereunder;

(d) Possible defenses to the charges and circumstances in mitigation thereof; and

(e) All other facts essential to a broad understanding of the whole matter.

(2) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he may retain an expert or professional person to perform an examination in his behalf. In the case of a person who is indigent, the court shall upon his request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his services out of funds of the department, in an amount determined by it to be fair and reasonable.

(3) Whenever any person has been committed under any provision of this chapter, or ordered to undergo alternative treatment following his acquittal of a crime charged by reason of insanity, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which he was acquitted by reason of insanity. If at the end of that period the person has not been finally discharged and is still in need of commitment or treatment, civil commitment proceedings may be instituted, if appropriate.

(4) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, he shall be entitled to have his attorney present. The defendant may refuse to answer any question if he believes his answers may tend to incriminate him or form links leading to evidence of an incriminating nature. [1974 ex.s. c 198 § 2; 1973 1st ex.s. c 117 § 2.]

10.77.030 Evidence of insanity—Admissibility—Evidence required to establish as a defense. (1) Evidence of insanity is not admissible unless the defendant, at the time of arraignment or within ten days thereafter or at such later time as the court may for good cause permit, files a written notice of his intent to rely on such a defense.

(2) Insanity is a defense which the defendant must establish by a preponderance of the evidence. [1974 ex.s. c 198 § 3; 1973 1st ex.s. c 117 § 3.]

10.77.040 Instructions to jury on special verdict. Whenever the issue of insanity is submitted to the jury, the court shall instruct the jury to return a special verdict in substantially the following form:

- answer
yes or no
1. Did the defendant commit the act charged?
 2. If your answer to number 1 is yes, do you acquit him because of insanity existing at the time of the act charged?
 3. If your answer to number 2 is yes, is the defendant a substantial danger to other persons unless kept under further control by the court or other persons or institutions?
 4. If your answer to number 2 is yes, does the defendant present a substantial likelihood of committing felonious acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions?
 5. If your answers to either number 3 or number 4 is yes, is it in the best interests of the defendant and others that the defendant be placed in treatment that is less restrictive than detention in a state mental hospital?

[1974 ex.s. c 198 § 4; 1973 1st ex.s. c 117 § 4.]

10.77.050 Trial, conviction, or sentencing of person under mental incapacity. No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues. [1974 ex.s. c 198 § 5; 1973 1st ex.s. c 117 § 5.]

10.77.060 Plea of not guilty due to insanity—Doubt as to competency—Examination—Report. (1) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant. At least one of the experts or professional persons appointed shall be a developmental disabilities professional if the court is advised by any party that the defendant may be developmentally disabled. For purposes of the examination, the court may order the defendant committed to a hospital or other suitable facility for a period of time necessary to complete the examination, but not to exceed fifteen days.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the examination authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the mental condition of the defendant;
- (c) If the defendant suffers from a mental disease or defect, or is developmentally disabled, an opinion as to competency;
- (d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, an opinion as to the defendant's sanity at the time of the act;
- (e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;
- (f) An opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions. [1989 c 420 § 4; 1974 ex.s. c 198 § 6; 1973 1st ex.s. c 117 § 6.]

10.77.070 Examination rights of defendant's expert or professional person. When the defendant wishes to be examined by a qualified expert or professional person of his own choice such examiner shall be permitted to have reasonable access to the defendant for the purpose of such examination, as well as to all relevant medical and psychological records and reports. [1973 1st ex.s. c 117 § 7.]

10.77.080 Motion for acquittal on grounds of insanity—Hearing—Findings. The defendant may move the court for a judgment of acquittal on the grounds of insanity: PROVIDED, That a defendant so acquitted may not later contest the validity of his detention on the grounds that he did not commit the acts charged. At the hearing upon said motion the defendant shall have the burden of proving by a preponderance of the evidence that he was insane at the time of the offense or offenses with which he is charged. If the court finds that the defendant should be acquitted by reason of insanity, it shall enter specific findings in substantially the same form as set forth in RCW 10.77.040 as now or hereafter amended. If the motion is denied, the question may be submitted to the trier of fact in the same manner as other issues of fact. [1974 ex.s. c 198 § 7; 1973 1st ex.s. c 117 § 8.]

10.77.090 Stay of proceedings on grounds of incompetency where felony charged—Commitment—Findings—Evaluation, treatment for developmental disability—Extensions of commitment period—Alternative procedures—Procedure where crime charged is not a felony. (1) If at any time during the pendency of an action and prior to judgment, the court finds following a report as provided in RCW 10.77.060, as now or hereafter amended, that the defendant is incompetent, the court shall order the proceedings against the defendant be stayed, except as provided in subsection (5) of this section, and, if the defendant is charged with a felony, may commit the defendant to the custody of the secretary, who shall place such defendant in an appropriate facility of the department for evaluation and treatment, or the court may alternatively order the defendant to undergo evaluation and treatment at some other facility, or under the guidance and control of some

other person, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, but in any event, for no longer than a period of ninety days. A defendant found incompetent shall be evaluated at the direction of the secretary and a determination made whether the defendant is developmentally disabled. Such evaluation and determination shall be accomplished as soon as possible following the court's placement of the defendant in the custody of the secretary. When appropriate, and subject to available funds, if the defendant is determined to be developmentally disabled, he or she may be placed in a program specifically reserved for the treatment and training of persons with developmental disabilities where the defendant shall have the right to habilitation according to an individualized service plan specifically developed for the particular needs of the defendant. The program shall be separate from programs serving persons involved in any other treatment or habilitation program. The program shall be appropriately secure under the circumstances and shall be administered by developmental disabilities professionals who shall direct the habilitation efforts. The program shall provide an environment affording security appropriate with the charged criminal behavior and necessary to protect the public safety. The department may limit admissions of such persons to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. A copy of the report shall be sent to the facility. On or before expiration of the initial ninety day period of commitment the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent. If the defendant is charged with a crime which is not a felony, the court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the county mental health professional to evaluate the defendant and commence proceedings under chapter 71.05 RCW if appropriate; and subsections (2) and (3) of this section shall not be applicable: PROVIDED, That, upon order of the court, the prosecutor may directly petition for fourteen days of involuntary treatment under chapter 71.05 RCW.

(2) If the court finds by a preponderance of the evidence that the defendant is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety day period, but it must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second ninety day period. The defendant, the defendant's attorney, the prosecutor, or the judge shall have the right to demand that the hearing on or before the expiration of the second ninety day period be before a jury. No extension shall be ordered for a second ninety-day period, nor for any subsequent period as provided in subsection (3) of this section if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension. If no demand is made, the hearing shall be before the court. The court or jury shall determine whether or not the defendant has become competent.

(3) At the hearing upon the expiration of the second ninety day period or at the end of the first ninety-day period, in the case of a developmentally disabled defendant, if the jury or court, as the case may be, finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and either civil commitment proceedings shall be instituted, if appropriate, or the court shall order the release of the defendant: PROVIDED, That the criminal charges shall not be dismissed if at the end of the second ninety-day period, or at the end of the first ninety-day period, in the case of a developmentally disabled defendant, the court or jury finds that the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, and that there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for an additional six months. At the end of said six month period, if the defendant remains incompetent, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted, if appropriate, or the court shall order release of the defendant.

(4) The fact that the defendant is unfit to proceed does not preclude any pretrial proceedings which do not require the personal participation of the defendant.

(5) A defendant receiving medication for either physical or mental problems shall not be prohibited from standing trial, if the medication either enables the defendant to understand the proceedings against him or her and to assist in his or her own defense, or does not disable him or her from so understanding and assisting in his or her own defense.

(6) At or before the conclusion of any commitment period provided for by this section, the facility providing evaluation and treatment shall provide to the court a written report of examination which meets the requirements of RCW 10.77.060(3). [1989 c 420 § 5; 1979 ex.s. c 215 § 3; 1974 ex.s. c 198 § 8; 1973 1st ex.s. c 117 § 9.]

10.77.100 Experts or professional persons as witnesses. Subject to the rules of evidence, experts or professional persons who have reported pursuant to this chapter may be called as witnesses at any proceeding held pursuant to this chapter. Both the prosecution and the defendant may summon any other qualified expert or professional persons to testify. [1974 ex.s. c 198 § 9; 1973 1st ex.s. c 117 § 10.]

10.77.110 Acquittal of felony—Discharge, hospitalization, conditional release—Acquittal of nonfelony—Release or custody for evaluation—Evaluation, treatment for developmental disability. (1) If a defendant is acquitted of a felony by reason of insanity, and it is found that he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct the defendant's final discharge. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing

felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

(2) If the defendant has been found not guilty by reason of insanity and a substantial danger, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, so as to require treatment then the secretary shall immediately cause the defendant to be evaluated to ascertain if the defendant is developmentally disabled. When appropriate, and subject to available funds, the defendant may be committed to a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services according to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The treatment program shall provide physical security to a degree consistent with the finding that the defendant is dangerous and may incorporate varying conditions of security and alternative sites when the dangerousness of any particular defendant makes this necessary. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

(3) If it is found that such defendant is not a substantial danger to other persons, and does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, but that he or she is in need of control by the court or other persons or institutions, the court shall direct the defendant's conditional release. If the defendant is acquitted by reason of insanity of a crime which is not a felony, the court shall order the defendant's release or order the defendant's continued custody only for a reasonable time to allow the county-designated mental-health professional to evaluate the individual and to proceed with civil commitment pursuant to chapter 71.05 RCW, if considered appropriate. [1989 c 420 § 6; 1983 c 25 § 1; 1979 ex.s. c 215 § 4; 1974 ex.s. c 198 § 10; 1973 1st ex.s. c 117 § 11.]

10.77.120 Confinement of committed person—Custody—Hearings—Discharge. The secretary shall forthwith provide adequate care and individualized treatment at one or several of the state institutions or facilities under his or her direction and control wherein persons committed as criminally insane may be confined. Such persons shall be under the custody and control of the secretary to the same extent as are other persons who are committed to the secretary's custody, but such provision shall be made for their control, care, and treatment as is proper in view of their condition. In order that the secretary may adequately determine the nature of the mental illness or developmental disability of the person committed to him or her as criminal-

ly insane, and in order for the secretary to place such individuals in a proper facility, all persons who are committed to the secretary as criminally insane shall be promptly examined by qualified personnel in such a manner as to provide a proper evaluation and diagnosis of such individual. The examinations of all developmentally disabled persons committed under this chapter shall be performed by developmental disabilities professionals. Any person so committed shall not be discharged from the control of the secretary save upon the order of a court of competent jurisdiction made after a hearing and judgment of discharge.

Whenever there is a hearing which the committed person is entitled to attend, the secretary shall send him or her in the custody of one or more department employees to the county where the hearing is to be held at the time the case is called for trial. During the time the person is absent from the facility, he or she shall be confined in a facility designated by and arranged for by the department, and shall at all times be deemed to be in the custody of the department employee and provided necessary treatment. If the decision of the hearing remits the person to custody, the department employee shall forthwith return the person to such institution or facility designated by the secretary. If the state appeals an order of discharge, such appeal shall operate as a stay, and the person in custody shall so remain and be forthwith returned to the institution or facility designated by the secretary until a final decision has been rendered in the cause. [1989 c 420 § 7; 1974 ex.s. c 198 § 11; 1973 1st ex.s. c 117 § 12.]

10.77.140 Periodic examinations—Developmentally disabled—Reports—Notice to court. Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his or her mental condition made by one or more experts or professional persons at least once every six months. Said person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine him or her, and such expert or professional person shall have access to all hospital records concerning the person. In the case of a committed or conditionally released person who is developmentally disabled, the expert shall be a developmental disabilities professional. The secretary, upon receipt of the periodic report, shall provide written notice to the court of commitment of compliance with the requirements of this section. [1989 c 420 § 8; 1974 ex.s. c 198 § 12; 1973 1st ex.s. c 117 § 14.]

10.77.150 Conditional release—Application—Procedure. (1) Persons examined pursuant to RCW 10.77.140, as now or hereafter amended, may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered his commitment the person's application for conditional release as well as his recommendations concerning the application and any proposed terms and conditions upon which he reasonably believes the person can be conditionally

released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) The court of the county which ordered his commitment, upon receipt of an application for conditional release with the secretary's recommendation for conditional release, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary. The prosecuting attorney shall represent the state at such hearings and shall have the right to have the patient examined by an expert or professional person of his choice. If the committed person is indigent, and he so requests, the court shall appoint a qualified expert or professional person to examine him on his behalf. The issue to be determined at such a hearing is whether or not the person may be released conditionally without substantial danger to other persons, or substantial likelihood of committing felonious acts jeopardizing public safety or security. The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary.

(3) If the court determines that receiving regular or periodic medication or other medical treatment shall be a condition of the committed person's release, then the court shall require him to report to a physician or other person for the medication or treatment. In addition to submitting any report required by RCW 10.77.160, the physician or other person shall immediately upon the released person's failure to appear for the medication or treatment report the failure to the court and to the prosecuting attorney of the county in which the released person was committed.

(4) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial. [1982 c 112 § 1; 1974 ex.s. c 198 § 13; 1973 1st ex.s. c 117 § 15.]

10.77.160 Conditional release—Reports as to adherence to terms and conditions of release. When a conditionally released person is required by the terms of his conditional release to report to a physician, probation officer, or other such person on a regular or periodic basis, the doctor, probation officer, or other such person shall monthly, or as otherwise directed by the court, submit to the court, the secretary, the institution from which released, and to the prosecuting attorney of the county in which the person was committed, a report stating whether the person is adhering to the terms and conditions of his conditional release. [1973 1st ex.s. c 117 § 16.]

10.77.163 Furlough—Notice to law enforcement agencies—Time requirements—Temporary restraining order. (1) Before a person committed under this chapter is permitted temporarily to leave a treatment facility for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in

writing notify the prosecuting attorney of any county to which the person is released and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision conditionally to release the person. The notice shall be provided at least thirty days before the anticipated release and shall describe the conditions under which the release is to occur.

(2) In addition to the notice required by subsection (1) of this section, the superintendent of each state institution designated for the custody, care, and treatment of persons committed under this chapter shall notify appropriate law enforcement agencies through the state patrol communications network of the furloughs of persons committed under RCW 10.77.090 or 10.77.110. Notification shall be made at least forty-eight hours before the furlough, and shall include the name of the person, the place to which the person has permission to go, and the dates and times during which the person will be on furlough.

(3) Upon receiving notice that a person committed under this chapter is being temporarily released under subsection (1) of this section, the prosecuting attorney may seek a temporary restraining order to prevent the release of the person on the grounds that the person is dangerous to self or others.

(4) The notice provisions of this section are in addition to those provided in RCW 10.77.205. [1990 c 3 § 106; 1989 c 420 § 9; 1983 c 122 § 2.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.165 Escape or disappearance—Notification requirements. In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person on conditional release, the superintendent shall notify as appropriate, local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person. The notice provisions of this section are in addition to those provided in RCW 10.77.205. [1990 c 3 § 107; 1989 c 420 § 10; 1983 c 122 § 3.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.170 Payments to conditionally released persons. As funds are available, the secretary may provide payment to a person conditionally released pursuant to RCW 10.77.150, consistent with the provisions of RCW 72.02.100 and 72.02.110, and may adopt rules and regulations to do so. [1973 1st ex.s. c 117 § 17.]

10.77.180 Conditional release—Periodic review of case. Each person conditionally released pursuant to RCW 10.77.150, as now or hereafter amended, shall have his case reviewed by the court which conditionally released him no later than one year after such release and no later than every two years thereafter, such time to be scheduled by the court. Review may occur in a shorter time or more frequently, if the court, in its discretion, on its own motion, or on motion of the person, the secretary or the prosecuting attorney, so determines. The sole question to be determined by the court

is whether the person shall continue to be conditionally released. The court in making its determination shall be aided by the periodic reports filed pursuant to RCW 10.77.140, as now or hereafter amended, and RCW 10.77.160, and the opinions of the secretary and other experts or professional persons. [1974 ex.s. c 198 § 14; 1973 1st ex.s. c 117 § 18.]

10.77.190 Conditional release—Modification of terms—Procedure. (1) Any person submitting reports pursuant to RCW 10.77.160, the secretary, or the prosecuting attorney may petition the court to, or the court on its own motion may schedule an immediate hearing for the purpose of modifying the terms of conditional release if the petitioner or the court believes the released person is failing to adhere to the terms and conditions of his conditional release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the secretary, or the court, after examining the report filed with them pursuant to RCW 10.77.160, or based on other information received by them, reasonably believes that a conditionally released person is failing to adhere to the terms and conditions of his conditional release the court or secretary may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. The court shall be notified before the close of the next judicial day of the apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court or secretary shall, upon request, assist him in obtaining a qualified expert or professional person to conduct the examination.

(3) The court, upon receiving notification of the apprehension, shall promptly schedule a hearing. The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his release. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or his conditional release shall be revoked and he shall be committed subject to release only in accordance with provisions of this chapter. [1982 c 112 § 2; 1974 ex.s. c 198 § 15; 1973 1st ex.s. c 117 § 19.]

10.77.200 Final discharge—Procedure. (1) Upon application by the committed or conditionally released person, the secretary shall determine whether or not reasonable grounds exist for final discharge. If the secretary approves the final discharge he or she then shall authorize said person to petition the court.

(2) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for final discharge, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of his choice. If the petitioner is indigent, and the person so

requests, the court shall appoint a qualified expert or professional person to examine him or her. If the petitioner is developmentally disabled, the examination shall be performed by a developmental disabilities professional. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the petitioner may be finally discharged without substantial danger to other persons, and without presenting a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(3) Nothing contained in this chapter shall prohibit the patient from petitioning the court for final discharge or conditional release from the institution in which he or she is committed. The issue to be determined on such proceeding is whether the petitioner is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus. [1989 c 420 § 11; 1983 c 25 § 2; 1974 ex.s. c 198 § 16; 1973 1st ex.s. c 117 § 20.]

10.77.205 Persons acquitted of sex or violent offense due to insanity, in custody of department—Notification of conditional release, final discharge, furlough, transfer, or escape—To whom given—Definitions. (1)(a) At the earliest possible date, and in no event later than ten days before conditional release, final discharge, authorized furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of the conditional release, final discharge, authorized furlough, or transfer of a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is now in the custody of the department pursuant to this chapter, to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was committed or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) In addition to the notice requirements of (a) and (b) of this subsection, the superintendent shall comply with RCW 10.77.163.

(2) If a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is committed under this chapter escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim, if any, of the crime for which the person was committed or the victim's next of kin if the crime was a homicide. The superintendent shall also notify appropriate persons pursuant to RCW 10.77.165. If the person is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children;

(d) "Authorized furlough" means a furlough granted after compliance with RCW 10.77.163;

(e) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [1992 c 186 § 8; 1990 c 3 § 104.]

Severability—1992 c 186: See note following RCW 9A.46.110.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.207 Persons acquitted of sex offense due to insanity—Release of information authorized. In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information necessary to protect the public concerning a person who was acquitted of a sex offense as defined in RCW 9.94A.030 due to insanity and was subsequently committed to the department pursuant to this chapter. [1990 c 3 § 105.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.210 Right to adequate care and treatment—Records and reports to be kept—Availability. Any person involuntarily detained, hospitalized, or committed pursuant to the provisions of this chapter shall have the right to adequate care and individualized treatment. The person who

has custody of the patient or is in charge of treatment shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations of the patient that have been filed with the secretary pursuant to this chapter. Except as provided in RCW 10.77.205 and 4.24.550 regarding the release of information concerning insane offenders who are acquitted of sex offenses and subsequently committed pursuant to this chapter, all records and reports made pursuant to this chapter, shall be made available only upon request, to the committed person, to his or her attorney, to his or her personal physician, to the prosecuting attorney, to the court, to the protection and advocacy agency, or other expert or professional persons who, upon proper showing, demonstrates a need for access to such records. All records and reports made pursuant to this chapter shall also be made available, upon request, to the department of corrections or the indeterminate sentence review board if the person was on parole or probation at the time of detention, hospitalization, or commitment or the person is subsequently convicted for the crime for which he or she was detained, hospitalized, or committed pursuant to this chapter. [1990 c 3 § 108; 1989 c 420 § 12; 1983 c 196 § 3; 1973 1st ex.s. c 117 § 21.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.77.220 Incarceration in correctional institution or facility prohibited—Exceptions. No person confined pursuant to this chapter shall be incarcerated in a state correctional institution or facility: PROVIDED, That nothing herein shall prohibit confinement in a mental health facility located wholly within a correctional institution. Confinement in a county jail or other local facility while awaiting either placement in a treatment program or a court hearing pursuant to this chapter is permitted for no more than seven days. [1982 c 112 § 3; 1974 ex.s. c 198 § 17; 1973 1st ex.s. c 117 § 22.]

10.77.230 Appellate review. Either party may seek appellate review of the judgment of any hearing held pursuant to the provisions of this chapter. [1988 c 202 § 16; 1974 ex.s. c 198 § 18; 1973 1st ex.s. c 117 § 23.]

Rules of court: Cf. RAP 2.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

10.77.240 Existing rights not affected. Nothing in this chapter shall prohibit a person presently committed from exercising a right presently available to him for obtaining release from confinement, including the right to petition for a writ of habeas corpus. [1973 1st ex.s. c 117 § 24.]

10.77.250 Responsibility for costs—Reimbursement. The department shall be responsible for all costs relating to the evaluation and treatment of persons committed to it pursuant to any provisions of this chapter, and the logistical and supportive services pertaining thereto. Reimbursement may be obtained by the department pursuant to RCW 43.20B.330. [1987 c 75 § 1; 1985 c 245 § 1; 1973 1st ex.s. c 117 § 25.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

10.77.900 Savings—Construction—1973 1st ex.s. c 117. (1) Any acts done before July 1, 1973 and any proceedings then pending and any constitutional right or any action taken in any proceeding pending under statutes in effect prior to July 1, 1973 are not impaired by this chapter.

(2) This chapter shall also apply to persons committed under prior law as incompetent to stand trial or as being criminally insane and to any proceedings in court then pending or thereafter commenced regardless of when the proceedings were commenced, except to the extent that in the opinion of the court, the former procedure should continue to be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedures of this chapter. [1973 1st ex.s. c 117 § 26.]

10.77.910 Severability—1973 1st ex.s. c 117. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or its application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 117 § 27.]

10.77.920 Chapter successor to chapter 10.76 RCW. Sections 1 through 27 of this act shall constitute a new chapter in Title 10 RCW, and shall be considered the successor chapter to chapter 10.76 RCW. [1973 1st ex.s. c 117 § 28.]

10.77.930 Effective date—1973 1st ex.s. c 117. This act shall take effect on July 1, 1973. [1973 1st ex.s. c 117 § 30.]

10.77.940 Equal application of 1989 c 420—Evaluation for developmental disability. The provisions of *this act shall apply equally to persons **presently in the custody of the department who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for placement in a program specifically reserved for the treatment and training of persons with developmental disabilities. [1989 c 420 § 17.]

Reviser's note: *(1) "this act" [1989 c 420] consists of the enactment of RCW 10.77.005, 71.05.035, and 71.05.940, the amendment of RCW 10.77.010, 10.77.060, 10.77.090, 10.77.110, 10.77.120, 10.77.140, 10.77.163, 10.77.165, 10.77.200, 10.77.210, 71.05.020, 71.05.300, and 71.05.320, and a temporary study section [§ 19].

** (2) The act took effect on May 13, 1989.

Chapter 10.79 SEARCHES AND SEIZURES

Sections

- 10.79.015 Other grounds for issuance of search warrant.
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- 10.79.160 Strip, body cavity searches—Physical examinations for public health purposes excluded.
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Rules of court: Search and seizure—CrR 2.3; CrRLJ 2.3.

Alcoholic beverage control, search and seizure: Chapter 66.32 RCW.

Controlled substances, search and seizure: RCW 69.50.509.

Gambling devices, seizures and disposition: RCW 9.46.230.

10.79.015 Other grounds for issuance of search warrant. Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

(1) To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

(2) To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

(3) To search for and seize any evidence material to the investigation or prosecution of any homicide or any felony: PROVIDED, That if the evidence is sought to be secured from any radio or television station or from any regularly published newspaper, magazine or wire service, or from any employee of such station, wire service or publication, the evidence shall be secured only through a subpoena duces tecum unless: (a) There is probable cause to believe that the person or persons in possession of the evidence may be involved in the crime under investigation; or (b) there is probable cause to believe that the evidence sought to be seized will be destroyed or hidden if subpoena duces tecum procedures are followed. As used in this subsection, "person or persons" includes both natural and judicial persons.

(4) To search for and seize any instrument, apparatus or device used to obtain telephone or telegraph service in violation of *RCW 9.45.240. [1980 c 52 § 1; 1972 ex.s. c 75 § 2; 1969 c 83 § 1; 1949 c 86 § 1; Code 1881 § 986; 1873 p 216 § 154; 1854 p 101 § 2; Rem. Supp. 1949 § 2238. Formerly RCW 10.79.010, part.]

*Reviser's note: RCW 9.45.240 was recodified as RCW 9.26A.110 pursuant to 1990 c 11 § 5.

10.79.020 To whom directed—Contents. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and property, or things to be searched for shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case. [Code 1881 § 969; 1873 p 216 § 155; 1854 p 101 § 3; RRS § 2239.]

10.79.040 Search without warrant unlawful. It shall be unlawful for any policeman or other peace officer to enter and search any private dwelling house or place of residence without the authority of a search warrant issued upon a complaint as by law provided. [1921 c 71 § 1; RRS § 2240-1. FORMER PART OF SECTION: 1921 c 71 § 2; RRS § 2240-2, now codified as RCW 10.79.045.]

10.79.045 Search without warrant unlawful—Penalty. Any policeman or other peace officer violating the provisions of RCW 10.79.040 shall be guilty of a gross misdemeanor. [1921 c 71 § 2; RRS § 2240-2. Formerly RCW 10.79.040, part.]

10.79.050 Restoration of stolen property to owner—Duties of officers. All property obtained by larceny, robbery or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he shall be answerable for the same, and shall annex a schedule thereof to his return of the warrant. [Code 1881 § 851; 1873 p 192 § 57; 1854 p 84 § 51; RRS § 2129.]

10.79.060 Strip, body cavity searches—Legislative intent. It is the intent of the legislature to establish policies regarding the practice of strip searching persons booked into holding, detention, or local correctional facilities. It is the intent of the legislature to restrict the practice of strip searching and body cavity searching persons booked into holding, detention, or local correctional facilities to those situations where such searches are necessary. [1983 1st ex.s. c 42 § 1.]

Effective date—1983 1st ex.s. c 42: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983." [1983 1st ex.s. c 42 § 10.]

Severability—1983 1st ex.s. c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 42 § 9.]

10.79.070 Strip, body cavity searches—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 10.79.060 through 10.79.110.

(1) "Strip search" means having a person remove or arrange some or all of his or her clothing so as to permit an inspection of the genitals, buttocks, anus, or undergarments of the person or breasts of a female person.

(2) "Body cavity search" means the touching or probing of a person's body cavity, whether or not there is actual penetration of the body cavity.

(3) "Body cavity" means the stomach or rectum of a person and the vagina of a female person.

(4) "Law enforcement agency" and "law enforcement officer" include local departments of corrections created pursuant to RCW 70.48.090(3) and employees thereof. [1983 1st ex.s. c 42 § 2.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.080 Strip, body cavity searches—Warrant, authorization, report. (1) No person may be subjected to a body cavity search by or at the direction of a law enforcement agency unless a search warrant is issued pursuant to superior court criminal rules.

(2) No law enforcement officer may seek a warrant for a body cavity search without first obtaining specific authorization for the body cavity search from the ranking shift supervisor of the law enforcement authority. Authorization for the body cavity search may be obtained electronically: PROVIDED, That such electronic authorization shall be reduced to writing by the law enforcement officer seeking the authorization and signed by the ranking supervisor as soon as possible thereafter.

(3) Before any body cavity search is authorized or conducted, a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things otherwise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed. No body cavity search shall be authorized or conducted unless these other methods do not satisfy the safety, security, or evidentiary concerns of the law enforcement agency.

(4) A law enforcement officer requesting a body cavity search shall prepare and sign a report regarding the body cavity search. The report shall include:

(a) A copy of the written authorization required under subsection (2) of this section;

(b) A copy of the warrant and any supporting documents required under subsection (1) of this section;

(c) The name and sex of all persons conducting or observing the search;

(d) The time, date, place, and description of the search; and

(e) A statement of the results of the search and a list of any items removed from the person as a result of the search.

The report shall be retained as part of the law enforcement agency's records. [1983 1st ex.s. c 42 § 3.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.090 Strip, body cavity searches—Medical care not precluded. Nothing in RCW 10.79.080 or this section

may be construed as precluding or preventing the administration of medical care to persons requiring immediate medical care or requesting medical care. [1983 1st ex.s. c 42 § 4.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.100 Strip, body cavity searches—Standards for conducting. (1) Persons conducting a strip search shall not touch the person being searched except as reasonably necessary to effectuate the strip search of the person.

(2) Any body cavity search must be performed under sanitary conditions and conducted by a physician, registered nurse, or physician's assistant, licensed to practice in this state, who is trained in the proper medical process and the potential health problems associated with a body cavity search. No health professional authorized by this subsection to conduct a body cavity search shall be held liable in any civil action if the search is conducted in a manner that meets the standards and requirements of RCW 4.24.290 and 7.70.040.

(3) Except as provided in subsection (7) of this section, a strip search or body cavity search, as well as presearch undressing or postsearch dressing, shall occur at a location made private from the observation of persons not physically conducting the search. A strip search or body cavity search shall be performed or observed only by persons of the same sex as the person being searched, except for licensed medical professionals as required by subsection (2) of this section.

(4) Except as provided in subsection (5) of this section, no person may be present or observe during the search unless the person is necessary to conduct the search or to ensure the safety of those persons conducting the search.

(5) Nothing in this section prohibits a person upon whom a body cavity search is to be performed from having a readily available person of his or her choosing present at the time the search is conducted. However, the person chosen shall not be a person being held in custody by a law enforcement agency.

(6) RCW 10.79.080 and this section shall not be interpreted as expanding or diminishing the authority of a law enforcement officer with respect to searches incident to arrest or investigatory stop in public.

(7) A strip search of a person housed in a holding, detention, or local correctional facility to search for and seize a weapon may be conducted at other than a private location if there arises a specific threat to institutional security that reasonably requires such a search or if all persons in the facility are being searched for the discovery of weapons or contraband. [1983 1st ex.s. c 42 § 5.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.110 Strip, body cavity searches—Actions for damages, injunctive relief. (1) A person who suffers damage or harm as a result of a violation of RCW 10.79.080, 10.79.090, 10.79.100, or 10.79.130 through 10.79.170 may bring a civil action to recover actual damages sustained by him or her. The court may, in its discretion, award injunctive and declaratory relief as it deems necessary.

(2) RCW 10.79.080, 10.79.090, 10.79.100, and 10.79.130 through 10.79.170 shall not be construed as

limiting any constitutional, common law, or statutory right of any person regarding any action for damages or injunctive relief, or as precluding the prosecution under another provision of law of any law enforcement officer or other person who has violated RCW 10.79.080, 10.79.090, 10.79.100, or 10.79.130 through 10.79.170. [1986 c 88 § 7; 1983 1st ex.s. c 42 § 6.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.120 Strip, body cavity searches—Application of RCW 10.79.130 through 10.79.160. RCW 10.79.130 through 10.79.160 apply to any person in custody at a holding, detention, or local correctional facility, other than a person committed to incarceration by order of a court, regardless of whether an arrest warrant or other court order was issued before the person was arrested or otherwise taken into custody unless the court issuing the warrant has determined that the person shall not be released on personal recognizance, bail, or bond. RCW 10.79.130 through 10.79.160 do not apply to a person held for post-conviction incarceration for a criminal offense. The definitions and remedies provided by RCW 10.79.070 and 10.79.110 apply to RCW 10.79.130 through 10.79.160. [1986 c 88 § 1.]

10.79.130 Strip, body cavity searches—Warrant required—Exceptions. (1) No person to whom this section is made applicable by RCW 10.79.120 may be strip searched without a warrant unless:

(a) There is a reasonable suspicion to believe that a strip search is necessary to discover weapons, criminal evidence, contraband, or other thing concealed on the body of the person to be searched, that constitutes a threat to the security of a holding, detention, or local correctional facility;

(b) There is probable cause to believe that a strip search is necessary to discover other criminal evidence concealed on the body of the person to be searched, but not constituting a threat to facility security; or

(c) There is a reasonable suspicion to believe that a strip search is necessary to discover a health condition requiring immediate medical attention.

(2) For the purposes of subsection (1) of this section, a reasonable suspicion is deemed to be present when the person to be searched has been arrested for:

(a) A violent offense as defined in RCW 9.94A.030 or any successor statute;

(b) An offense involving escape, burglary, or the use of a deadly weapon; or

(c) An offense involving possession of a drug or controlled substance under chapter 69.41, 69.50, or 69.52 RCW or any successor statute. [1986 c 88 § 2.]

10.79.140 Strip, body cavity searches—Uncategorized searches—Determination of reasonable suspicion, probable cause—Less-intrusive alternatives.

(1) A person to whom this section is made applicable by RCW 10.79.120 who has not been arrested for an offense within one of the categories specified in RCW 10.79.130(2) may nevertheless be strip searched, but only upon an individualized determination of reasonable suspicion or probable cause as provided in this section.

(2) With the exception of those situations in which reasonable suspicion is deemed to be present under RCW 10.79.130(2), no strip search may be conducted without the specific prior written approval of the jail unit supervisor on duty. Before any strip search is conducted, reasonable efforts must be made to use other less-intrusive means, such as pat-down, electronic metal detector, or clothing searches, to determine whether a weapon, criminal evidence, contraband, or other thing is concealed on the body, or whether a health condition requiring immediate medical attention is present. The determination of whether reasonable suspicion or probable cause exists to conduct a strip search shall be made only after such less-intrusive means have been used and shall be based on a consideration of all information and circumstances known to the officer authorizing the strip search, including but not limited to the following factors:

- (a) The nature of the offense for which the person to be searched was arrested;
- (b) The prior criminal record of the person to be searched; and
- (c) Physically violent behavior of the person to be searched, during or after the arrest. [1986 c 88 § 3.]

10.79.150 Strip, body cavity searches—Written record required, contents—Unnecessary persons prohibited. (1) A written record of any strip search shall be maintained in the individual file of each person strip searched.

(2) With respect to any strip search conducted under RCW 10.79.140, the record shall contain the following information:

- (a) The name of the supervisor authorizing the strip search;
- (b) The specific facts constituting reasonable suspicion to believe that the strip search was necessary;
- (c) The name and serial number of the officer conducting the strip search and of all other persons present or observing during any part of the strip search;
- (d) The time, date, and place of the strip search; and
- (e) Any weapons, criminal evidence, contraband, or other thing, or health condition discovered as a result of the strip search.

(3) With respect to any strip search conducted under RCW 10.79.130(2), the record shall contain, in addition to the offense or offenses for which the person searched was arrested, the information required by subsection (2) (c), (d), and (e) of this section.

(4) The record may be included or incorporated in existing forms used by the facility, including the booking form required under the Washington Administrative Code. A notation of the name of the person strip searched shall also be entered in the log of daily activities or other chronological record, if any, maintained pursuant to the Washington Administrative Code.

(5) Except at the request of the person to be searched, no person may be present or observe during the strip search unless necessary to conduct the search. [1986 c 88 § 4.]

10.79.160 Strip, body cavity searches—Physical examinations for public health purposes excluded. Physical examinations conducted by licensed medical

professionals solely for public health purposes under separate statutory authority shall not be considered searches for purposes of RCW 10.79.120, 10.79.130, and 10.79.140. [1986 c 88 § 5.]

10.79.170 Strip, body cavity searches—Nonliability when search delayed. No governmental entity and no employee or contracting agent of a governmental entity shall be liable for injury, death, or damage caused by a person in custody when the injury, death, or damage is caused by or made possible by contraband that would have been discovered sooner but for the delay caused by having to seek a search warrant under RCW 10.79.080 or 10.79.130 through 10.79.160. [1986 c 88 § 6.]

Chapter 10.82

COLLECTION AND DISPOSITION OF FINES AND COSTS

Sections

- 10.82.010 Execution for fines and costs.
- 10.82.020 Stay of execution for sixty days on recognizance.
- 10.82.025 Effect of recognizance—Execution of judgment after sixty days.
- 10.82.030 Commitment for failure to pay fine and costs—Execution against defendant's property—Reduction by payment, labor, or confinement.
- 10.82.040 Commitment for failure to pay fine and costs—Reduction of amount by performance of labor.
- 10.82.070 Disposition of costs, fines, fees, penalties, and forfeitures.
- 10.82.080 Unlawful receipt of public assistance—Deduction from subsequent assistance payments—Restitution payments.
- 10.82.090 Interest on judgments.

City, county jail prisoners may be compelled to work: RCW 9.92.130, 9.92.140, 36.28.100.

Defendant liable for costs: RCW 10.64.015.

Fine and costs—Collection procedure, liability for, commitment for failure to pay, execution: RCW 10.01.160 through 10.01.180.

Jury fee disposition: RCW 10.46.190.

Payment of fine and costs in installments: RCW 9.92.070, 10.01.170.

10.82.010 Execution for fines and costs. Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions. [Code 1881 § 1120; 1873 p 242 § 278; 1854 p 123 § 142; RRS § 2201.]

Judgments a lien on realty: RCW 10.64.080.

10.82.020 Stay of execution for sixty days on recognizance. Every defendant against whom a judgment has been rendered for fine and costs, may stay the execution for the fine assessed and costs for sixty days from the rendition of the judgment, by procuring one or more sufficient sureties, to enter into a recognizance in open court, acknowledging themselves to be bail for such fine and costs. [Code 1881 § 1123; 1873 p 242 § 281; 1854 p 124 § 145; RRS § 2204. FORMER PART OF SECTION: Code 1881 § 1124; 1873 p 243 § 282; 1854 p 124 § 146; RRS § 2205, now codified as RCW 10.82.025.]

10.82.025 Effect of recognizance—Execution of judgment after sixty days. Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment, and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in *this act, in committal for default to pay or secure the fine and costs. [Code 1881 § 1124; 1873 p 243 § 282; 1854 p 124 § 146; RRS § 2205. Formerly RCW 10.82.020, part.]

***Reviser's note:** The term "this act" apparently refers to "An act to regulate the practice and pleadings in prosecutions for crimes" first enacted by Laws of 1854, page 100.

10.82.030 Commitment for failure to pay fine and costs—Execution against defendant's property—Reduction by payment, labor, or confinement. If any person ordered into custody until the fine and costs adjudged against him be paid shall not, within five days, pay, or cause the payment of the same to be made, the clerk of the court shall issue a warrant to the sheriff commanding him to imprison such defendant in the county jail until the amount of such fine and costs owing are paid. Execution may at any time issue against the property of the defendant for that portion of such fine and costs not reduced by the application of this section. The amount of such fine and costs owing shall be the whole of such fine and costs reduced by the amount of any portion thereof paid, and an amount established by the county legislative authority for every day the defendant performs labor as provided in RCW 10.82.040, and a lesser amount established by the county legislative authority for every day the defendant does not perform such labor while imprisoned. [1991 c 183 § 1; 1983 c 276 § 2; 1967 c 200 § 4; 1891 c 28 § 84; 1883 p 38 § 1, part; Code 1881 § 1125; 1873 p 243 § 283; 1854 p 124 § 147; RRS § 2206. Formerly RCW 10.82.030 and 10.82.050.]

Severability—1967 c 200: See note following RCW 9.45.122.

Commitment until fines and costs are paid: RCW 10.70.010.

Fine and costs, liability of defendant, collection procedure, contempt, commitment, execution: RCW 10.01.160 through 10.01.180.

10.82.040 Commitment for failure to pay fine and costs—Reduction of amount by performance of labor. When a defendant is committed to jail, on failure to pay any fines and costs, he shall, under the supervision of the county sheriff and subject to the terms of any ordinances adopted by the county commissioners, be permitted to perform labor to reduce the amount owing of the fine and costs. [1967 c 200 § 5; 1883 p 38 § 1, part; Code 1881 § 1129; 1877 p 206 § 8; 1873 p 243 § 287; 1854 p 124 § 151; RRS § 2209, part.]

Severability—1967 c 200: See note following RCW 9.45.122.

10.82.070 Disposition of costs, fines, fees, penalties, and forfeitures. (1) All sums of money derived from costs, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days

after the collection, to the county treasurer of the county in which the same have accrued.

(2) The county treasurer shall remit monthly thirty-two percent of the money received under this section except for certain costs to the state treasurer for deposit as provided under RCW 43.08.250 and shall deposit the remainder as provided by law. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel.

(3) All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed. [1988 c 169 § 5; 1987 c 202 § 169; 1985 c 389 § 7; 1984 c 258 § 313; 1969 ex.s. c 199 § 11; 1967 c 122 § 1; 1965 c 158 § 16; 1919 c 30 § 1; 1909 p 323 § 9; 1897 c 118 § 113; 1895 c 68 § 1; 1890 p 383 § 89; 1886 p 20 § 58; Code 1881 § 3211; 1873 p 421 § 3; RRS § 4940. Formerly codified as RCW 9.01.140.]

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

Effective date—1985 c 389: See note following RCW 27.24.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

10.82.080 Unlawful receipt of public assistance—Deduction from subsequent assistance payments—Restitution payments. (1) When a superior court has, as a condition of the sentence for a person convicted of the unlawful receipt of public assistance, ordered restitution to the state of that overpayment or a portion thereof:

(a) The department of social and health services shall deduct the overpayment from subsequent assistance payments as provided in RCW 43.20B.630, when the person is receiving public assistance; or

(b) Ordered restitution payments may be made at the direction of the court to the clerk of the appropriate county or directly to the department of social and health services when the person is not receiving public assistance.

(2) However, if payments are received by the county clerk, each payment shall be transmitted to the department of social and health services within forty-five days after receipt by the county. [1987 c 75 § 2; 1985 c 245 § 2; 1982 c 201 § 1.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

10.82.090 Interest on judgments. Financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. [1989 c 276 § 3.]

Severability—1989 c 276: See note following RCW 9.95.062.

Chapter 10.85 REWARDS

Sections

- 10.85.030 Rewards by counties, cities, towns, port commissions authorized.
 10.85.040 Conflicting claims.
 10.85.050 Payment of rewards.
 10.85.900 Severability—1979 ex.s. c 53.

Offer of rewards by governor: RCW 43.06.010(8).

10.85.030 Rewards by counties, cities, towns, port commissions authorized. The legislative authority of any county in the state, a port commission, or the governing body of a city or town, when in its opinion the public good requires it, is hereby authorized to offer and pay a suitable reward to any person or persons for information leading to:

(a) The arrest of a specified person or persons convicted of or charged with any criminal offense; or

(b) The arrest and conviction of a person or persons committing a specified criminal offense.

In the event of crimes against county, port district, city, or town property, including but not limited to road signs, vehicles, buildings, or any other type of county, port district, city, or town property, the legislative authority of any county, a port commission, or the governing body of a city or town may offer and pay a suitable reward to any person or persons who shall furnish information leading to the arrest and conviction of any person of any offense against this county, port district, city, or town property, including but not limited to those offenses set forth in RCW 9A.48.070 through 9A.48.090, whether or not the offense is a felony, gross misdemeanor, or misdemeanor. [1986 c 185 § 1; 1981 c 211 § 1; 1979 ex.s. c 53 § 1; 1975-'76 2nd ex.s. c 25 § 1; 1886 p 124 § 1; RRS § 2249.]

10.85.040 Conflicting claims. When more than one claimant applies for the payment of any reward, offered by any county legislative authority, board of commissioners of a port district, or city or town governing body, the county legislative authority, board of commissioners of a port district, or city or town governing body shall determine to whom the same shall be paid, and if to more than one person, in what proportion to each; and their determination shall be final and conclusive. [1986 c 185 § 2; 1979 ex.s. c 53 § 2; 1886 p 124 § 3; RRS § 2251.]

10.85.050 Payment of rewards. Whenever any reward has been offered by any county legislative authority, board of commissioners of a port district, or city or town governing body in the state under RCW 10.85.030, the person or persons providing the information shall be entitled to the reward, and the county legislative authority, board of commissioners of a port district, or city or town governing body which has offered the reward is authorized to draw a warrant or warrants out of any money in the county, port district, or city or town treasury, as appropriate, not otherwise appropriated. [1986 c 185 § 3; 1979 ex.s. c 53 § 3; 1886 p 124 § 2; RRS § 2250.]

10.85.900 Severability—1979 ex.s. c 53. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 53 § 6.]

Chapter 10.88

UNIFORM CRIMINAL EXTRADITION ACT

Sections

- 10.88.200 Definitions.
 10.88.210 Authority of governor.
 10.88.220 Demand for extradition—Requirements.
 10.88.230 Investigation of demand—Report.
 10.88.240 Return or surrender of person charged in another state.
 10.88.250 Surrender of person charged with crime committed in state other than demanding state.
 10.88.260 Warrant of arrest.
 10.88.270 Authority of officer or other person under warrant.
 10.88.280 Authority to command assistance.
 10.88.290 Rights of person arrested.
 10.88.300 Delivery of person in violation of RCW 10.88.290—Penalty.
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 10.88.320 Charge or complaint—Warrant of arrest.
 10.88.330 Arrest without warrant.
 10.88.340 Preliminary examination—Commitment.
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 10.88.360 Failure to make timely arrest or demand for extradition.
 10.88.370 Failure to appear—Bond forfeiture—Arrest—Recovery on bond.
 10.88.380 Pending criminal prosecution in this state.
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 10.88.400 Demand by governor of this state for extradition—Warrant—Agent.
 10.88.410 Application for requisition for return of person—Contents—Affidavits—Copies.
 10.88.420 Civil process—Service on extradited person.
 10.88.430 Waiver of extradition.
 10.88.440 Rights, powers, privileges or jurisdiction of state not waived.
 10.88.450 Trial for other crimes.
 10.88.460 Extradition or surrender of obligor—Uniform reciprocal enforcement of support act.
 10.88.900 Construction—1971 ex.s. c 46.
 10.88.910 Short title.
 10.88.920 Effective date—1971 ex.s. c 46.
 10.88.930 Severability—1971 ex.s. c 46.

Fugitives of this state: Chapter 10.34 RCW.

Interstate compact on juveniles: Chapter 13.24 RCW.

Return of parole violators from outside the state: RCW 9.95.280 through 9.95.300.

10.88.200 Definitions. Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state, and the term "state" referring to a state other than this state refers to any other state, or the District of Columbia, or territory organized or unorganized of the United States of America. [1971 ex.s. c 46 § 1.]

Reviser's note: Throughout this chapter, the phrase "this act" has been changed to "this chapter." This act [1971 ex.s. c 46] consists of this chapter, the 1971 amendment of RCW 26.21.050, and the repeal of RCW 10.88.010 through 10.88.060.

10.88.210 Authority of governor. Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of

congress enacted in pursuance thereof, the governor of this state may in his discretion have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state. [1971 ex.s. c 46 § 2.]

10.88.220 Demand for extradition—Requirements.

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under RCW 10.88.250, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be certified or authenticated by the executive authority making the demand. [1971 ex.s. c 46 § 3.]

10.88.230 Investigation of demand—Report. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. [1971 ex.s. c 46 § 4.]

10.88.240 Return or surrender of person charged in another state. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in RCW 10.88.410 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. [1971 ex.s. c 46 § 5.]

10.88.250 Surrender of person charged with crime committed in state other than demanding state. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in RCW 10.88.220 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. [1971 ex.s. c 46 § 6.]

10.88.260 Warrant of arrest. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. [1971 ex.s. c 46 § 7.]

10.88.270 Authority of officer or other person under warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter to the duly authorized agent of the demanding state. [1971 ex.s. c 46 § 8.]

10.88.280 Authority to command assistance. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. [1971 ex.s. c 46 § 9.]

10.88.290 Rights of person arrested. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state: PROVIDED, That the hearing provided for in this section shall not be available except as may be constitutionally required if a hearing on the legality of arrest has been held pursuant to RCW 10.88.320 or 10.88.330. [1971 ex.s. c 46 § 10.]

10.88.300 Delivery of person in violation of RCW 10.88.290—Penalty. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to RCW 10.88.290, shall be guilty of a gross misdemeanor and, on conviction, shall be imprisoned in the county jail for not more than one year, or be fined not more than one thousand dollars, or both. [1971 ex.s. c 46 § 11.]

10.88.310 Confinement of prisoner. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: PROVIDED, HOWEVER, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. [1971 ex.s. c 46 § 12.]

10.88.320 Charge or complaint—Warrant of arrest. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under RCW 10.88.250, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under RCW 10.88.250, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the

place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. [1971 ex.s. c 46 § 13.]

10.88.330 Arrest without warrant. (1) The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in RCW 10.88.320; and thereafter his answer shall be heard as if he had been arrested on a warrant.

(2) An officer of the United States customs service or the immigration and naturalization service may, without a warrant, arrest a person if:

(a) The officer is on duty;

(b) One or more of the following situations exists:

(i) The person commits an assault or other crime involving physical harm, defined and punishable under chapter 9A.36 RCW, against the officer or against any other person in the presence of the officer;

(ii) The person commits an assault or related crime while armed, defined and punishable under chapter 9.41 RCW, against the officer or against any other person in the presence of the officer;

(iii) The officer has reasonable cause to believe that a crime as defined in (b) (i) or (ii) of this subsection has been committed and reasonable cause to believe that the person to be arrested has committed it;

(iv) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it; or

(v) The officer has received positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a peace officer holds a warrant for the person's arrest; and

(c) The regional commissioner of customs certifies to the state of Washington that the customs officer has received proper training within the agency to enable that officer to enforce or administer this subsection. [1979 ex.s. c 244 § 16; 1971 ex.s. c 46 § 14.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

10.88.340 Preliminary examination—Commitment. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under RCW 10.88.250, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in RCW 10.88.350, or until he shall be legally discharged. [1971 ex.s. c 46 § 15.]

10.88.350 Bail. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such a bond, and for his surrender, to be arrested upon the warrant of the governor of this state. [1971 ex.s. c 46 § 16.]

10.88.360 Failure to make timely arrest or demand for extradition. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in RCW 10.88.350, but within a period not to exceed sixty days after the date of such new bond: PROVIDED, That the governor may, except in cases in which the offense is punishable under laws of the demanding state by death or life imprisonment, deny a demand for extradition when such demand is not received by the governor before the expiration of one hundred twenty days from the date of arrest in this state of the alleged fugitive, in the absence of a showing of good cause for such delay. [1971 ex.s. c 46 § 17.]

10.88.370 Failure to appear—Bond forfeiture—Arrest—Recovery on bond. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state. [1971 ex.s. c 46 § 18.]

10.88.380 Pending criminal prosecution in this state. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state. [1971 ex.s. c 46 § 19.]

10.88.390 Recall or reissuance of warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. [1971 ex.s. c 46 § 20.]

10.88.400 Demand by governor of this state for extradition—Warrant—Agent. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the appropriate authority of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and

convey him to the proper officer of the county in this state in which the offense was committed. [1971 ex.s. c 46 § 21.]

10.88.410 Application for requisition for return of person—Contents—Affidavits—Copies. (1) When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. [1971 ex.s. c 46 § 22.]

10.88.420 Civil process—Service on extradited person. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been finally convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited. [1971 ex.s. c 46 § 23.]

10.88.430 Waiver of extradition. Any person arrested in this state charged with having committed any

crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in RCW 10.88.260 and 10.88.270 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state: PROVIDED, HOWEVER, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in RCW 10.88.290.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: PROVIDED, HOWEVER, That nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state. [1971 ex.s. c 46 § 24.]

10.88.440 Rights, powers, privileges or jurisdiction of state not waived. Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. [1971 ex.s. c 46 § 25.]

10.88.450 Trial for other crimes. After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. [1971 ex.s. c 46 § 26.]

10.88.460 Extradition or surrender of obligor—Uniform reciprocal enforcement of support act. See chapter 26.21 RCW.

10.88.900 Construction—1971 ex.s. c 46. The provisions of this chapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it, to the extent which it has been enacted by this state. [1971 ex.s. c 46 § 27.]

10.88.910 Short title. RCW 10.88.200 through 10.88.450 shall be known and may be cited as the Uniform Criminal Extradition Act. [1971 ex.s. c 46 § 28.]

10.88.920 Effective date—1971 ex.s. c 46. This act shall become effective on July 1, 1971. [1971 ex.s. c 46 § 29.]

10.88.930 Severability—1971 ex.s. c 46. If any provisions of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1971 ex.s. c 46 § 32.]

Chapter 10.89

UNIFORM ACT ON FRESH PURSUIT

Sections

10.89.010	Authority of foreign peace officer.
10.89.020	Preliminary examination by magistrate.
10.89.030	Construction as to lawfulness of arrest.
10.89.040	"State" includes District of Columbia.
10.89.050	"Fresh pursuit" defined.
10.89.060	Duty to send copies to other states.
10.89.070	Severability—1943 c 261.
10.89.080	Short title.

10.89.010 Authority of foreign peace officer. Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state. [1943 c 261 § 1; Rem. Supp. 1943 § 2252-1. Formerly RCW 10.88.070.]

10.89.020 Preliminary examination by magistrate. If an arrest is made in this state by an officer of another state in accordance with the provisions of RCW 10.89.010, he shall, without unnecessary delay, take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state. If the magistrate determines that the arrest was unlawful, he shall discharge the person arrested. [1943 c 261 § 2; Rem. Supp. 1943 § 2252-2. Formerly RCW 10.88.080.]

10.89.030 Construction as to lawfulness of arrest. RCW 10.89.010 shall not be construed so as to make unlawful any arrest in this state which otherwise would be lawful. [1943 c 261 § 3; Rem. Supp. 1943 § 2252-3. Formerly RCW 10.88.100.]

10.89.040 "State" includes District of Columbia. For the purpose of this chapter the word "state" shall include the District of Columbia. [1943 c 261 § 4; Rem. Supp. 1943 § 2252-4. Formerly RCW 10.88.110.]

10.89.050 "Fresh pursuit" defined. The term "fresh pursuit" as used in this chapter, shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony actually has been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay. [1943 c 261 § 5; Rem. Supp. 1943 § 2252-5. Formerly RCW 10.88.090.]

10.89.060 Duty to send copies to other states. Upon the passage and approval by the governor of this chapter, it shall be the duty of the secretary of state, or other officer, to certify a copy of this chapter to the executive department of each of the states of the United States. [1943 c 261 § 6; Rem. Supp. 1943 § 2252-6.]

10.89.070 Severability—1943 c 261. If any part of this chapter is for any reason declared void, it is declared to be the intent of this chapter that such invalidity shall not affect the validity of the remaining portions of this chapter. [1943 c 261 § 7; Rem. Supp. 1943 § 2252-7.]

10.89.080 Short title. This chapter may be cited as the "Uniform Act on Fresh Pursuit." [1943 c 261 § 8; Rem. Supp. 1943 § 2252-8.]

Chapter 10.91

UNIFORM RENDITION OF ACCUSED PERSONS ACT

Sections

10.91.010	Arrest and return of released person charged in another state—Violation of release conditions—Request—Documents—Warrant—Investigation.
10.91.020	Preliminary hearing—Waiver—Conditions of release.
10.91.030	Preliminary hearing—Investigation report—Findings—Order authorizing return.
10.91.040	"Judicial officer of this state," "judicial officer" defined.
10.91.050	Costs.
10.91.900	Severability—1971 ex.s. c 17.
10.91.910	Construction—1971 ex.s. c 17.
10.91.920	Short title.

10.91.010 Arrest and return of released person charged in another state—Violation of release conditions—Request—Documents—Warrant—Investigation. (1) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his release, and is present in this state, a designated agent of the court, judge, or magistrate which authorized the release may request the issuance of a warrant for the arrest of the person and an

order authorizing his return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent must file with a judicial officer of this state the following documents:

(a) an affidavit stating the name and whereabouts of the person whose removal is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him;

(b) a certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and

(c) a certified copy of an order of the demanding court, judge, or magistrate stating the manner in which the terms and the conditions of the release have been violated and designating the affiant its agent for seeking removal of the person.

(2) Upon initially determining that the affiant is a designated agent of the demanding court, judge, or magistrate, and that there is a probable cause for believing that the person whose removal is sought has violated the terms or conditions of his release, the judicial officer shall issue a warrant to a law enforcement officer of this state for the person's arrest.

(3) The judicial officer shall notify the prosecuting attorney of his action and shall direct him to investigate the case to ascertain the validity of the affidavits and documents required by subsection (1) and the identity and authority of the affiant. [1971 ex.s. c 17 § 2.]

10.91.020 Preliminary hearing—Waiver—Conditions of release. (1) The person whose removal is sought shall be brought before the judicial officer without unnecessary delay upon arrest pursuant to the warrant; whereupon the judicial officer shall set a time and place for hearing, and shall advise the person of his right to have the assistance of counsel, to confront the witnesses against him, and to produce evidence in his own behalf at the hearing.

(2) The person whose removal is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the judicial officer shall issue an order pursuant to RCW 10.91.030.

(3) The judicial officer may impose conditions of release authorized by the laws of this state which will reasonably assure the appearance at the hearing of the person whose removal is sought. [1971 ex.s. c 17 § 3.]

10.91.030 Preliminary hearing—Investigation report—Findings—Order authorizing return. The prosecuting attorney shall appear at the hearing and report to the judicial officer the results of his investigation. If the judicial officer finds that the affiant is a designated agent of the demanding court, judge, or magistrate and that the person whose removal is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his release, the judicial officer shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith. [1971 ex.s. c 17 § 4.]

10.91.040 "Judicial officer of this state," "judicial officer" defined. For the purpose of this chapter "judicial officer of this state" and "judicial officer" mean a judge of the superior or district court. [1987 c 202 § 170; 1971 ex.s. c 17 § 5.]

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

10.91.050 Costs. The costs of the procedures required by this chapter shall be borne by the demanding state, except when the designated agent is not a public official. In any case when the designated agent is not a public official, he shall bear the cost of such procedures. [1971 ex.s. c 17 § 9.]

10.91.900 Severability—1971 ex.s. c 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 17 § 6.]

10.91.910 Construction—1971 ex.s. c 17. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1971 ex.s. c 17 § 7.]

10.91.920 Short title. This chapter may be cited as the "Uniform Rendition of Accused Persons Act." [1971 ex.s. c 17 § 8.]

Chapter 10.93

WASHINGTON MUTUAL AID PEACE OFFICERS POWERS ACT

Sections

10.93.001	Short title—Legislative intent—Construction.
10.93.020	Definitions.
10.93.030	Reporting use of authority under this chapter.
10.93.040	Liability for exercise of authority.
10.93.050	Supervisory control over peace officers.
10.93.060	Privileges and immunities applicable.
10.93.070	General authority peace officer—Powers of, circumstances.
10.93.080	Limited authority peace officer—No additional powers.
10.93.090	Specially commissioned peace officer—Powers of, circumstances.
10.93.100	Federal peace officers—No additional powers.
10.93.110	Attorney general—No additional powers.
10.93.120	Fresh pursuit, arrest.
10.93.130	Contracting authority of law enforcement agencies.
10.93.140	State patrol exempted.
10.93.900	Effective date—1985 c 89.

10.93.001 Short title—Legislative intent—Construction. (1) This chapter may be known and cited as the Washington mutual aid peace officer powers act of 1985.

(2) It is the intent of the legislature that current artificial barriers to mutual aid and cooperative enforcement of the laws among general authority local, state, and federal agencies be modified pursuant to this chapter.

(3) This chapter shall be liberally construed to effectuate the intent of the legislature to modify current restrictions upon the limited territorial and enforcement authority of

general authority peace officers and to effectuate mutual aid among agencies.

(4) The modification of territorial and enforcement authority of the various categories of peace officers covered by this chapter shall not create a duty to act in extraterritorial situations beyond any duty which may otherwise be imposed by law or which may be imposed by the primary commissioning agency. [1985 c 89 § 1.]

10.93.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "General authority Washington law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol is a general authority Washington law enforcement agency.

(2) "Limited authority Washington law enforcement agency" means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources, fisheries, wildlife, and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

(3) "General authority Washington peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(4) "Limited authority Washington peace officer" means any full-time, fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible. A limited authority Washington peace officer may be a specially commissioned Washington peace officer if otherwise qualified for such status under this chapter.

(5) "Specially commissioned Washington peace officer", for the purposes of this chapter, means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under this chapter as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specially commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon or

Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho. A reserve peace officer is an individual who is an officer of a Washington law enforcement agency who does not serve such agency on a full-time basis but who, when called by the agency into active service, is fully commissioned on the same basis as full-time peace officers to enforce the criminal laws of the state.

(6) "Federal peace officer" means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(7) "Agency with primary territorial jurisdiction" means a city or town police agency which has responsibility for police activity within its boundaries; or a county police or sheriff's department which has responsibility with regard to police activity in the unincorporated areas within the county boundaries; or a statutorily authorized port district police agency or four-year state college or university police agency which has responsibility for police activity within the statutorily authorized enforcement boundaries of the port district, state college, or university.

(8) "Primary commissioning agency" means (a) the employing agency in the case of a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer, and (b) the commissioning agency in the case of a specially commissioned Washington peace officer (i) who is performing functions within the course and scope of the special commission and (ii) who is not also a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer.

(9) "Primary function of an agency" means that function to which greater than fifty percent of the agency's resources are allocated.

(10) "Mutual law enforcement assistance" includes, but is not limited to, one or more law enforcement agencies aiding or assisting one or more other such agencies through loans or exchanges of personnel or of material resources, for law enforcement purposes. [1988 c 36 § 5; 1985 c 89 § 2.]

10.93.030 Reporting use of authority under this chapter. The circumstances surrounding any actual exercise of peace officer authority under this chapter shall be timely reported, after the fact, to the Washington law enforcement agency with primary territorial jurisdiction and shall be subject to any reasonable reporting procedure which may be established by such agency. [1985 c 89 § 3.]

10.93.040 Liability for exercise of authority. Any liability or claim of liability which arises out of the exercise or alleged exercise of authority by an officer acting within the course and scope of the officer's duties as a peace officer under this chapter is the responsibility of the primary commissioning agency unless the officer acts under the direction and control of another agency or unless the liability is otherwise allocated under a written agreement between the primary commissioning agency and another agency. [1985 c 89 § 4.]

10.93.050 Supervisory control over peace officers. All persons exercising peace officer powers under this chapter are subject to supervisory control of and limitations imposed by the primary commissioning agency, but the primary commissioning agency may, by agreement with another agency, temporarily delegate supervision over the peace officer to another agency. [1985 c 89 § 5.]

10.93.060 Privileges and immunities applicable. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, all pension, relief, disability, worker's compensation insurance, and other benefits which apply to the activity of officers, agents, or employees of any law enforcement agency when performing their respective functions within the territorial limits of their respective agencies shall apply to them and to their primary commissioning agencies to the same degree and extent while such persons are engaged in the performance of authorized functions and duties under this chapter. [1985 c 89 § 6.]

10.93.070 General authority peace officer—Powers of, circumstances. In addition to any other powers vested by law, a general authority Washington peace officer who possesses a certificate of basic law enforcement training or a certificate of equivalency or has been exempted from the requirement therefor by the Washington state criminal justice training commission may enforce the traffic or criminal laws of this state throughout the territorial bounds of this state, under the following enumerated circumstances:

(1) Upon the prior written consent of the sheriff or chief of police in whose primary territorial jurisdiction the exercise of the powers occurs;

(2) In response to an emergency involving an immediate threat to human life or property;

(3) In response to a request for assistance pursuant to a mutual law enforcement assistance agreement with the agency of primary territorial jurisdiction or in response to the request of a peace officer with enforcement authority;

(4) When the officer is transporting a prisoner;

(5) When the officer is executing an arrest warrant or search warrant; or

(6) When the officer is in fresh pursuit, as defined in RCW 10.93.120. [1985 c 89 § 7.]

10.93.080 Limited authority peace officer—No additional powers. A limited authority Washington peace officer shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 8.]

10.93.090 Specially commissioned peace officer—Powers of, circumstances. A specially commissioned Washington peace officer who has successfully completed a course of basic training prescribed or approved for such officers by the Washington state criminal justice training commission may exercise any authority which the special commission vests in the officer, throughout the territorial bounds of the state, outside of the officer's primary territorial jurisdiction under the following circumstances:

(1) The officer is in fresh pursuit, as defined in RCW 10.93.120; or

(2) The officer is acting pursuant to mutual law enforcement assistance agreement between the primary commissioning agency and the agency with primary territorial jurisdiction. [1985 c 89 § 9.]

10.93.100 Federal peace officers—No additional powers. Federal peace officers shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 10.]

10.93.110 Attorney general—No additional powers. The attorney general shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 11.]

10.93.120 Fresh pursuit, arrest. (1) Any peace officer who has authority under Washington law to make an arrest may proceed in fresh pursuit of a person (a) who is reasonably believed to have committed a violation of traffic or criminal laws, or (b) for whom such officer holds a warrant of arrest, and such peace officer shall have the authority to arrest and to hold such person in custody anywhere in the state.

(2) The term "fresh pursuit," as used in this chapter, includes, without limitation, fresh pursuit as defined by the common law. Fresh pursuit does not necessarily imply immediate pursuit, but pursuit without unreasonable delay. [1985 c 89 § 12.]

10.93.130 Contracting authority of law enforcement agencies. Under the interlocal cooperation act, chapter 39.34 RCW, any law enforcement agency referred to by this chapter may contract with any other such agency and may also contract with any law enforcement agency of another state, or such state's political subdivision, to provide mutual law enforcement assistance. The agency with primary territorial jurisdiction may require that officers from participating agencies meet reasonable training or certification standards or other reasonable standards. [1985 c 89 § 13.]

10.93.140 State patrol exempted. This chapter does not limit the scope of jurisdiction and authority of the Washington state patrol as otherwise provided by law, and the Washington state patrol shall not be bound by the reporting requirements of RCW 10.93.030. [1985 c 89 § 14.]

10.93.900 Effective date—1985 c 89. This act shall take effect July 1, 1985. [1985 c 89 § 17.]

Chapter 10.95

CAPITAL PUNISHMENT—AGGRAVATED FIRST DEGREE MURDER

Sections

- 10.95.010 Supreme court rules promulgated under RCW 2.04.190 and 2.04.200 not to supersede or alter chapter provisions.
- 10.95.020 Aggravated first degree murder defined.
- 10.95.030 Sentences for aggravated first degree murder.
- 10.95.040 Special sentencing proceeding—Notice—Filing—Service.
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- 10.95.060 Special sentencing proceeding—Jury instructions—Opening statements—Evidence—Arguments—Question for jury.
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- 10.95.120 Information report—Form—Contents—Submission to supreme court, defendant, prosecuting attorney.
- 10.95.130 Questions posed for determination by supreme court in death sentence review—Review in addition to appeal—Consolidation of review and appeal.
- 10.95.140 Invalidation of sentence, remand for resentencing—Affirmation of sentence, remand for execution.
- 10.95.150 Time limit for appellate review of death sentence and filing opinion.
- 10.95.160 Death warrant—Issuance—Form—Time for execution of judgment and sentence.
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- 10.95.200 Proceedings for failure to execute on day named.
- 10.95.900 Severability—1981 c 138.

Homicide: Chapter 9A.32 RCW.

10.95.010 Supreme court rules promulgated under RCW 2.04.190 and 2.04.200 not to supersede or alter chapter provisions. No rule promulgated by the supreme court of Washington pursuant to RCW 2.04.190 and 2.04.200, now or in the future, shall be construed to supersede or alter any of the provisions of this chapter. [1981 c 138 § 1.]

10.95.020 Aggravated first degree murder defined. A person is guilty of aggravated first degree murder if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the *board of prison terms and paroles; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(7) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime;

(8) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(9) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

(c) Burglary in the first or second degree;

(d) Kidnapping in the first degree; or

(e) Arson in the first degree;

(10) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim. [1981 c 138 § 2.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

10.95.030 Sentences for aggravated first degree murder. (1) Except as provided in subsection (2) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the *board of prison terms and paroles or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

(2) If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. [1981 c 138 § 3.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

10.95.040 Special sentencing proceeding—Notice—Filing—Service. (1) If a person is charged with aggravated first degree murder as defined by RCW 10.95.020, the prosecuting attorney shall file written notice of a special sentencing proceeding to determine whether or not the death penalty should be imposed when there is reason to believe that there are not sufficient mitigating circumstances to merit leniency.

(2) The notice of special sentencing proceeding shall be filed and served on the defendant or the defendant's attorney within thirty days after the defendant's arraignment upon the charge of aggravated first degree murder unless the court, for good cause shown, extends or reopens the period for filing and service of the notice. Except with the consent of the prosecuting attorney, during the period in which the prosecuting attorney may file the notice of special sentencing proceeding, the defendant may not tender a plea of guilty to the charge of aggravated first degree murder nor may the court accept a plea of guilty to the charge of aggravated first degree murder or any lesser included offense.

(3) If a notice of special sentencing proceeding is not filed and served as provided in this section, the prosecuting attorney may not request the death penalty. [1981 c 138 § 4.]

10.95.050 Special sentencing proceeding—When held—Jury to decide matters presented—Waiver—Reconvening same jury—Impanelling new jury—Peremptory challenges. (1) If a defendant is adjudicated guilty of aggravated first degree murder, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, a special sentencing proceeding shall be held if a notice of special sentencing proceeding was filed and served as provided by RCW 10.95.040. No sort of plea, admission, or agreement may abrogate the requirement that a special sentencing proceeding be held.

(2) A jury shall decide the matters presented in the special sentencing proceeding unless a jury is waived in the discretion of the court and with the consent of the defendant and the prosecuting attorney.

(3) If the defendant's guilt was determined by a jury verdict, the trial court shall reconvene the same jury to hear the special sentencing proceeding. The proceeding shall commence as soon as practicable after completion of the trial at which the defendant's guilt was determined. If, however, unforeseen circumstances make it impracticable to reconvene the same jury to hear the special sentencing proceeding, the trial court may dismiss that jury and convene a jury pursuant to subsection (4) of this section.

(4) If the defendant's guilt was determined by plea of guilty or by decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including but not limited to a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve persons plus whatever alternate jurors the trial court deems necessary. The defense and prosecution shall each be allowed to peremptorily challenge twelve jurors. If there is more than one defendant, each defendant shall be allowed an additional peremptory chal-

lenge and the prosecution shall be allowed a like number of additional challenges. If alternate jurors are selected, the defense and prosecution shall each be allowed one peremptory challenge for each alternate juror to be selected and if there is more than one defendant each defendant shall be allowed an additional peremptory challenge for each alternate juror to be selected and the prosecution shall be allowed a like number of additional challenges. [1981 c 138 § 5.]

10.95.060 Special sentencing proceeding—Jury instructions—Opening statements—Evidence—Arguments—Question for jury. (1) At the commencement of the special sentencing proceeding, the trial court shall instruct the jury as to the nature and purpose of the proceeding and as to the consequences of its decision, as provided in RCW 10.95.030.

(2) At the special sentencing proceeding both the prosecution and defense shall be allowed to make an opening statement. The prosecution shall first present evidence and then the defense may present evidence. Rebuttal evidence may be presented by each side. Upon conclusion of the evidence, the court shall instruct the jury and then the prosecution and defense shall be permitted to present argument. The prosecution shall open and conclude the argument.

(3) The court shall admit any relevant evidence which it deems to have probative value regardless of its admissibility under the rules of evidence, including hearsay evidence and evidence of the defendant's previous criminal activity regardless of whether the defendant has been charged or convicted as a result of such activity. The defendant shall be accorded a fair opportunity to rebut or offer any hearsay evidence.

In addition to evidence of whether or not there are sufficient mitigating circumstances to merit leniency, if the jury sitting in the special sentencing proceeding has not heard evidence of the aggravated first degree murder of which the defendant stands convicted, both the defense and prosecution may introduce evidence concerning the facts and circumstances of the murder.

(4) Upon conclusion of the evidence and argument at the special sentencing proceeding, the jury shall retire to deliberate upon the following question: "Having in mind the crime of which the defendant has been found guilty, are you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?"

In order to return an affirmative answer to the question posed by this subsection, the jury must so find unanimously. [1981 c 138 § 6.]

10.95.070 Special sentencing proceeding—Factors which jury may consider in deciding whether leniency merited. In deciding the question posed by RCW 10.95.060(4), the jury, or the court if a jury is waived, may consider any relevant factors, including but not limited to the following:

(1) Whether the defendant has or does not have a significant history, either as a juvenile or an adult, of prior criminal activity;

(2) Whether the murder was committed while the defendant was under the influence of extreme mental disturbance;

(3) Whether the victim consented to the act of murder;

(4) Whether the defendant was an accomplice to a murder committed by another person where the defendant's participation in the murder was relatively minor;

(5) Whether the defendant acted under duress or domination of another person;

(6) Whether, at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental disease or defect;

(7) Whether the age of the defendant at the time of the crime calls for leniency; and

(8) Whether there is a likelihood that the defendant will pose a danger to others in the future. [1981 c 138 § 7.]

10.95.080 When sentence to death or sentence to life imprisonment shall be imposed. (1) If a jury answers affirmatively the question posed by RCW 10.95.060(4), or when a jury is waived as allowed by RCW 10.95.050(2) and the trial court answers affirmatively the question posed by RCW 10.95.060(4), the defendant shall be sentenced to death. The trial court may not suspend or defer the execution or imposition of the sentence.

(2) If the jury does not return an affirmative answer to the question posed in RCW 10.95.060(4), the defendant shall be sentenced to life imprisonment as provided in RCW 10.95.030(1). [1981 c 138 § 8.]

10.95.090 Sentence if death sentence commuted, held invalid, or if death sentence established by chapter held invalid. If any sentence of death imposed pursuant to this chapter is commuted by the governor, or held to be invalid by a final judgment of a court after all avenues of appeal have been exhausted by the parties to the action, or if the death penalty established by this chapter is held to be invalid by a final judgment of a court which is binding on all courts in the state, the sentence for aggravated first degree murder if there was an affirmative response to the question posed by RCW 10.95.060(4) shall be life imprisonment as provided in RCW 10.95.030(1). [1981 c 138 § 9.]

10.95.100 Mandatory review of death sentence by supreme court—Notice—Transmittal—Contents of notice—Jurisdiction. Whenever a defendant is sentenced to death, upon entry of the judgment and sentence in the trial court the sentence shall be reviewed on the record by the supreme court of Washington.

Within ten days of the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall transmit notice thereof to the clerk of the supreme court of Washington and to the parties. The notice shall include the caption of the case, its cause number, the defendant's name, the crime or crimes of which the defendant was convicted, the sentence imposed, the date of entry of judgment and sentence, and the names and addresses of the attorneys for the parties. The notice shall vest with the supreme court of Washington the jurisdiction to review the sentence of death as provided by this chapter. The failure of the clerk of the

trial court to transmit the notice as required shall not prevent the supreme court of Washington from conducting the sentence review as provided by *this act. [1981 c 138 § 10.]

*Reviser's note: This act [1981 c 138] consists of chapter 10.95 RCW, an amendment to RCW 9A.32.040, and the repeal of RCW 9A.32.045 through 9A.32.047, 10.49.010, 10.70.040 through 10.70.130, and 10.94.010 through 10.94.900.

10.95.110 Verbatim report of trial proceedings—Preparation—Transmittal to supreme court—Clerk's papers—Receipt. (1) Within ten days after the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall cause the preparation of a verbatim report of the trial proceedings to be commenced.

(2) Within five days of the filing and approval of the verbatim report of proceedings, the clerk of the trial court shall transmit such verbatim report of proceedings together with copies of all of the clerk's papers to the clerk of the supreme court of Washington. The clerk of the supreme court of Washington shall forthwith acknowledge receipt of these documents by providing notice of receipt to the clerk of the trial court, the defendant or his or her attorney, and the prosecuting attorney. [1981 c 138 § 11.]

10.95.120 Information report—Form—Contents—Submission to supreme court, defendant, prosecuting attorney. In all cases in which a person is convicted of aggravated first degree murder, the trial court shall, within thirty days after the entry of the judgment and sentence, submit a report to the clerk of the supreme court of Washington, to the defendant or his or her attorney, and to the prosecuting attorney which provides the information specified under subsections (1) through (8) of this section. The report shall be in the form of a standard questionnaire prepared and supplied by the supreme court of Washington and shall include the following:

- (1) Information about the defendant, including the following:
 - (a) Name, date of birth, gender, marital status, and race and/or ethnic origin;
 - (b) Number and ages of children;
 - (c) Whether his or her parents are living, and date of death where applicable;
 - (d) Number of children born to his or her parents;
 - (e) The defendant's educational background, intelligence level, and intelligence quotient;
 - (f) Whether a psychiatric evaluation was performed, and if so, whether it indicated that the defendant was:
 - (i) Able to distinguish right from wrong;
 - (ii) Able to perceive the nature and quality of his or her act; and
 - (iii) Able to cooperate intelligently with his or her defense;
 - (g) Any character or behavior disorders found or other pertinent psychiatric or psychological information;
 - (h) The work record of the defendant;
 - (i) A list of the defendant's prior convictions including the offense, date, and sentence imposed; and
 - (j) The length of time the defendant has resided in Washington and the county in which he or she was convicted.
- (2) Information about the trial, including:

- (a) The defendant's plea;
- (b) Whether defendant was represented by counsel;
- (c) Whether there was evidence introduced or instructions given as to defenses to aggravated first degree murder, including excusable homicide, justifiable homicide, insanity, duress, entrapment, alibi, intoxication, or other specific defense;
- (d) Any other offenses charged against the defendant and tried at the same trial and whether they resulted in conviction;
- (e) What aggravating circumstances were alleged against the defendant and which of these circumstances was found to have been applicable; and
- (f) Names and charges filed against other defendant(s) if tried jointly and disposition of the charges.
- (3) Information concerning the special sentencing proceeding, including:
 - (a) The date the defendant was convicted and date the special sentencing proceeding commenced;
 - (b) Whether the jury for the special sentencing proceeding was the same jury that returned the guilty verdict, providing an explanation if it was not;
 - (c) Whether there was evidence of mitigating circumstances;
 - (d) Whether there was, in the court's opinion, credible evidence of the mitigating circumstances as provided in RCW 10.95.070;
 - (e) The jury's answer to the question posed in RCW 10.95.060(4);
 - (f) The sentence imposed.
- (4) Information about the victim, including:
 - (a) Whether he or she was related to the defendant by blood or marriage;
 - (b) The victim's occupation and whether he or she was an employer or employee of the defendant;
 - (c) Whether the victim was acquainted with the defendant, and if so, how well;
 - (d) The length of time the victim resided in Washington and the county;
 - (e) Whether the victim was the same race and/or ethnic origin as the defendant;
 - (f) Whether the victim was the same sex as the defendant;
 - (g) Whether the victim was held hostage during the crime and if so, how long;
 - (h) The nature and extent of any physical harm or torture inflicted upon the victim prior to death;
 - (i) The victim's age; and
 - (j) The type of weapon used in the crime, if any.
- (5) Information about the representation of the defendant, including:
 - (a) Date counsel secured;
 - (b) Whether counsel was retained or appointed, including the reason for appointment;
 - (c) The length of time counsel has practiced law and nature of his or her practice; and
 - (d) Whether the same counsel served at both the trial and special sentencing proceeding, and if not, why not.
- (6) General considerations, including:
 - (a) Whether the race and/or ethnic origin of the defendant, victim, or any witness was an apparent factor at trial;

- (b) What percentage of the county population is the same race and/or ethnic origin of the defendant;
 - (c) Whether members of the defendant's or victim's race and/or ethnic origin were represented on the jury;
 - (d) Whether there was evidence that such members were systematically excluded from the jury;
 - (e) Whether the sexual orientation of the defendant, victim, or any witness was a factor in the trial;
 - (f) Whether any specific instruction was given to the jury to exclude race, ethnic origin, or sexual orientation as an issue;
 - (g) Whether there was extensive publicity concerning the case in the community;
 - (h) Whether the jury was instructed to disregard such publicity;
 - (i) Whether the jury was instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when considering its verdict or its findings in the special sentencing proceeding;
 - (j) The nature of the evidence resulting in such instruction; and
 - (k) General comments of the trial judge concerning the appropriateness of the sentence considering the crime, defendant, and other relevant factors.
- (7) Information about the chronology of the case, including the date that:
- (a) The defendant was arrested;
 - (b) Trial began;
 - (c) The verdict was returned;
 - (d) Post-trial motions were ruled on;
 - (e) Special sentencing proceeding began;
 - (f) Sentence was imposed;
 - (g) Trial judge's report was completed; and
 - (h) Trial judge's report was filed.
- (8) The trial judge shall sign and date the questionnaire when it is completed. [1981 c 138 § 12.]

10.95.130 Questions posed for determination by supreme court in death sentence review—Review in addition to appeal—Consolidation of review and appeal.

(1) The sentence review required by RCW 10.95.100 shall be in addition to any appeal. The sentence review and an appeal shall be consolidated for consideration. The defendant and the prosecuting attorney may submit briefs within the time prescribed by the court and present oral argument to the court.

(2) With regard to the sentence review required by *this act, the supreme court of Washington shall determine:

- (a) Whether there was sufficient evidence to justify the affirmative finding to the question posed by RCW 10.95.060(4); and
- (b) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. For the purposes of this subsection, "similar cases" means cases reported in the Washington Reports or Washington Appellate Reports since January 1, 1965, in which the judge or jury considered the imposition of capital punishment regardless of whether it was imposed or executed, and cases in which reports have been filed with the supreme court under RCW 10.95.120; and

(c) Whether the sentence of death was brought about through passion or prejudice. [1981 c 138 § 13.]

*Reviser's note: For meaning of "this act," see note following RCW 10.95.100.

10.95.140 Invalidation of sentence, remand for resentencing—Affirmation of sentence, remand for execution. Upon completion of a sentence review:

(1) The supreme court of Washington shall invalidate the sentence of death and remand the case to the trial court for resentencing in accordance with RCW 10.95.090 if:

- (a) The court makes a negative determination as to the question posed by RCW 10.95.130(2)(a); or
 - (b) The court makes an affirmative determination as to either of the questions posed by RCW 10.95.130(2)(b) or (c).
- (2) The court shall affirm the sentence of death and remand the case to the trial court for execution in accordance with RCW 10.95.160 if:

- (a) The court makes an affirmative determination as to the question posed by RCW 10.95.130(2)(a); and
- (b) The court makes a negative determination as to the question posed by RCW 10.95.130(2)(b) and (c). [1981 c 138 § 14.]

10.95.150 Time limit for appellate review of death sentence and filing opinion. In all cases in which a sentence of death has been imposed, the appellate review, if any, and sentence review to or by the supreme court of Washington shall be decided and an opinion on the merits shall be filed within one year of receipt by the clerk of the supreme court of Washington of the verbatim report of proceedings and clerk's papers filed under RCW 10.95.110. If this time requirement is not met, the chief justice of the supreme court of Washington shall state on the record the extraordinary and compelling circumstances causing the delay and the facts supporting such circumstances. A failure to comply with the time requirements of this subsection shall in no way preclude the ultimate execution of a sentence of death. [1988 c 202 § 17; 1981 c 138 § 15.]

Severability—1988 c 202: See note following RCW 2.24.050.

10.95.160 Death warrant—Issuance—Form—Time for execution of judgment and sentence. (1) If a death sentence is affirmed and the case remanded to the trial court as provided in RCW 10.95.140(2), a death warrant shall forthwith be issued by the clerk of the trial court, which shall be signed by a judge of the trial court and attested by the clerk thereof under the seal of the court. The warrant shall be directed to the superintendent of the state penitentiary and shall state the conviction of the person named therein and the judgment and sentence of the court, and shall appoint a day on which the judgment and sentence of the court shall be executed by the superintendent, which day shall not be less than thirty nor more than ninety days from the date the trial court receives the remand from the supreme court of Washington.

(2) If the date set for execution under subsection (1) of this section is stayed by a court of competent jurisdiction for any reason, the new execution date is automatically set at thirty judicial days after the entry of an order of termination or vacation of the stay by such court unless the court

invalidates the conviction, sentence, or remands for further judicial proceedings. The presence of the inmate under sentence of death shall not be required for the court to vacate or terminate the stay according to this section. [1990 c 263 § 1; 1981 c 138 § 16.]

10.95.170 Imprisonment of defendant. The defendant shall be imprisoned in the state penitentiary within ten days after the trial court enters a judgment and sentence imposing the death penalty and shall be imprisoned both prior to and subsequent to the issuance of the death warrant as provided in RCW 10.95.160. During such period of imprisonment, the defendant shall be confined in the segregation unit, where the defendant may be confined with other prisoners not under sentence of death, but prisoners under sentence of death shall be assigned to single-person cells. [1983 c 255 § 1; 1981 c 138 § 17.]

Severability—1983 c 255: See RCW 72.74.900.

Convicted female persons, commitment and procedure as to death sentences: RCW 72.02.250.

10.95.180 Death penalty—How executed. (1) The punishment of death shall be supervised by the superintendent of the penitentiary and shall be inflicted either by hanging by the neck or, at the election of the defendant, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until the defendant is dead. In any case, death shall be pronounced by a licensed physician.

(2) All executions, for both men and women, shall be carried out within the walls of the state penitentiary. [1986 c 194 § 1; 1981 c 138 § 18.]

10.95.190 Death warrant—Record—Return to trial court. (1) The superintendent of the state penitentiary shall keep in his or her office as part of the public records a book in which shall be kept a copy of each death warrant together with a complete statement of the superintendent's acts pursuant to such warrants.

(2) Within twenty days after each execution of a sentence of death, the superintendent of the state penitentiary shall return the death warrant to the clerk of the trial court from which it was issued with the superintendent's return thereon showing all acts and proceedings done by him or her thereunder. [1981 c 138 § 19.]

10.95.200 Proceedings for failure to execute on day named. Whenever the day appointed for the execution of a defendant shall have passed, from any cause, other than the issuance of a stay by a court of competent jurisdiction, without the execution of such defendant having occurred, the trial court which issued the original death warrant shall issue a new death warrant in accordance with RCW 10.95.160. The defendant's presence before the court is not required. However, nothing in this section shall be construed as restricting the defendant's right to be represented by counsel in connection with issuance of a new death warrant. [1990 c 263 § 2; 1987 c 286 § 1; 1981 c 138 § 20.]

10.95.900 Severability—1981 c 138. If any provision of this act or its application to any person or circumstance is

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held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 138 § 22.]

Chapter 10.97

WASHINGTON STATE CRIMINAL RECORDS PRIVACY ACT

Sections

- 10.97.010 Declaration of policy.
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- 10.97.130 Information identifying child victims of sexual assaults confidential.

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10.97.010 Declaration of policy. The legislature declares that it is the policy of the state of Washington to provide for the completeness, accuracy, confidentiality, and security of criminal history record information and victim, witness, and complainant record information as defined in this chapter. [1977 ex.s. c 314 § 1.]

10.97.020 Short title. This chapter may be cited as the Washington State Criminal Records Privacy Act. [1977 ex.s. c 314 § 2.]

Reviser's note: The phrase "This 1977 amendatory act" has been changed to "This chapter." This 1977 amendatory act [1977 ex.s. c 314] consists of chapter 10.97 RCW and the amendments of RCW 42.17.310, 43.43.705, 43.43.710, 43.43.730, and 43.43.810.

10.97.030 Definitions. For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including sentences, correctional supervision, and release. The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in

the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130 as now existing or hereafter amended;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330 as now existing or hereafter amended;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal, or acquittal except when the acquittal is due to a finding of not guilty by reason of insanity pursuant to chapter 10.77 RCW and the person was committed pursuant to chapter 10.77 RCW: PROVIDED, HOWEVER, That a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single record keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination. [1990 c 3 § 128; 1979 ex.s. c 36 § 1; 1979 c 158 § 5; 1977 ex.s. c 314 § 3.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.97.040 Dissemination of information shall state disposition of charge—Current and complete information required—Exceptions. No criminal justice agency shall disseminate criminal history record information pertaining to an arrest, detention, indictment, information, or other formal criminal charge made after December 31, 1977, unless the record disseminated states the disposition of such charge to the extent dispositions have been made at the time of the request for the information: PROVIDED, HOWEVER, That if a disposition occurring within ten days immediately preceding the dissemination has not been reported to the agency disseminating the criminal history record information, or if information has been received by the agency within the seventy-two hours immediately preceding the dissemination, that information shall not be required to be included in the dissemination: PROVIDED FURTHER, That when another criminal justice agency requests criminal history record information, the disseminating agency may disseminate specific facts and incidents which are within its direct knowledge without furnishing disposition data as otherwise required by this section, unless the disseminating agency has received such disposition data from either: (1) the state patrol, or (2) the court or other criminal justice agency required to furnish disposition data pursuant to RCW 10.97.045.

No criminal justice agency shall disseminate criminal history record information which shall include information concerning a felony or gross misdemeanor without first making inquiry of the identification section of the Washington state patrol for the purpose of obtaining the most current and complete information available, unless one or more of the following circumstances exists:

(1) The information to be disseminated is needed for a purpose in the administration of criminal justice for which time is of the essence and the identification section is technically or physically incapable of responding within the required time;

(2) The full information requested and to be disseminated relates to specific facts or incidents which are within the

direct knowledge of the agency which disseminates the information;

(3) The full information requested and to be disseminated is contained in a criminal history record information summary received from the identification section by the agency which is to make the dissemination not more than thirty days preceding the dissemination to be made;

(4) The statute, executive order, court rule, or court order pursuant to which the information is to be disseminated refers solely to information in the files of the agency which makes the dissemination;

(5) The information requested and to be disseminated is for the express purpose of research, evaluative, or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is directly sought; or

(6) A person who is the subject of the record requests the information and the agency complies with the requirements in RCW 10.97.080 as now or hereafter amended. [1979 ex.s. c 36 § 2; 1977 ex.s. c 314 § 4.]

10.97.045 Disposition of criminal charge data to be furnished agency initiating criminal history record and state patrol. Whenever a court or other criminal justice agency reaches a disposition of a criminal proceeding, the court or other criminal justice agency shall furnish the disposition data to the agency initiating the criminal history record for that charge and to the identification section of the Washington state patrol as required under RCW 43.43.745. [1979 ex.s. c 36 § 6.]

10.97.050 Unrestricted dissemination of certain information—Dissemination of other information to certain persons or for certain purposes—Records of dissemination, contents. (1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and

agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

(a) An indication of to whom (agency or person) criminal history record information was disseminated;

(b) The date on which the information was disseminated;

(c) The individual to whom the information relates; and

(d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

(8) In addition to the other provisions in this section allowing dissemination of criminal history record information, RCW 4.24.550 governs dissemination of information concerning offenders who commit sex offenses as defined by RCW 9.94A.030. Criminal justice agencies, their employees, and officials shall be immune from civil liability for dissemination on criminal history record information concerning sex offenders as provided in RCW 4.24.550. [1990 c 3 § 129; 1977 ex.s. c 314 § 5.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

10.97.060 Deletion of certain information, conditions. Criminal history record information which consists of nonconviction data only shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to the defendant, or upon the passage of three years from the date of arrest or issuance of

a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of nonconviction data shall be deleted upon the request of the person who is the subject of the record: PROVIDED, HOWEVER, That the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if:

(1) The disposition was a deferred prosecution or similar diversion of the alleged offender;

(2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;

(3) The individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event. [1977 ex.s. c 314 § 6.]

10.97.070 Discretionary disclosure of suspect's identity to victim. (1) Criminal justice agencies may, in their discretion, disclose to persons who have suffered physical loss, property damage, or injury compensable through civil action, the identity of persons suspected as being responsible for such loss, damage, or injury together with such information as the agency reasonably believes may be of assistance to the victim in obtaining civil redress. Such disclosure may be made without regard to whether the suspected offender is an adult or a juvenile, whether charges have or have not been filed, or a prosecuting authority has declined to file a charge or a charge has been dismissed.

(2) The disclosure by a criminal justice agency of investigative information pursuant to subsection (1) of this section shall not establish a duty to disclose any additional information concerning the same incident or make any subsequent disclosure of investigative information, except to the extent an additional disclosure is compelled by legal process. [1977 ex.s. c 314 § 7.]

10.97.080 Inspection of information by subject—Limitations—Rules governing—Challenge of records and correction of information—Dissemination of corrected information. All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identifica-

tion, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.17 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information. [1979 ex.s. c 36 § 3; 1977 ex.s. c 314 § 8.]

10.97.090 Administration of act by state patrol—Powers and duties. The Washington state patrol is hereby designated the agency of state government responsible for the administration of the 1977 Washington State Criminal Records Privacy Act. The Washington state patrol may adopt any rules and regulations necessary for the performance of the administrative functions provided for in this chapter.

The Washington state patrol shall have the following specific administrative duties:

(1) To establish by rule and regulation standards for the security of criminal history information systems in order that such systems and the data contained therein be adequately protected from fire, theft, loss, destruction, other physical hazard, or unauthorized access;

(2) To establish by rule and regulation standards for personnel employed by criminal justice of other state and local government agencies in positions with responsibility for maintenance and dissemination of criminal history record information; and

(3) To contract with the Washington state auditor or other public or private agency, organization, or individual to perform audits of criminal history record information systems. [1979 ex.s. c 36 § 4; 1977 ex.s. c 314 § 9.]

10.97.100 Fees for dissemination of information. Criminal justice agencies shall be authorized to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons other than criminal justice agencies. [1977 ex.s. c 314 § 10.]

10.97.110 Action for injunction and damages for violation of chapter—Measure of damages—Action not to affect criminal prosecution. Any person may maintain an action to enjoin a continuance of any act or acts in

violation of any of the provisions of this chapter, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of this chapter. [1979 ex.s. c 36 § 5; 1977 ex.s. c 314 § 11.]

10.97.120 Penalty for violation of chapter—Criminal prosecution not to affect civil action. Violation of the provisions of this chapter shall constitute a misdemeanor, and any person whether as principal, agent, officer, or director for himself or for another person, or for any firm or corporation, public or private, or any municipality who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation. Any criminal prosecution shall not affect the right of any person to bring a civil action as authorized by this chapter or otherwise authorized by law. [1977 ex.s. c 314 § 12.]

10.97.130 Information identifying child victims of sexual assaults confidential. Information identifying child victims under age eighteen who are victims of sexual assaults is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying the child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault. Prior to release of any criminal history record information, the releasing agency shall delete any information identifying a child victim of sexual assault from the information except as provided in this section. [1992 c 188 § 8.]

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

Chapter 10.98

CRIMINAL JUSTICE INFORMATION ACT

Sections

10.98.010	Purpose.
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10.98.090	Disposition forms—Coding.
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10.98.110	Tracking of felony cases.
10.98.130	Reporting of admissions and releases by local jails—Information required.
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10.98.150	Release of information on suspected or convicted felons.
10.98.160	Procedures, development considerations—Executive committee, review and recommendations.

10.98.010 Purpose. The purpose of this chapter is to provide a system of reporting and disseminating felony criminal justice information that provides: (1) Timely and accurate criminal histories for filing and sentencing under the sentencing reform act of 1981, (2) identification and tracking of felons, and (3) data for state-wide planning and forecasting of the felon population. [1984 c 17 § 1.]

10.98.020 Short title. This chapter may be known and cited as the criminal justice information act. [1984 c 17 § 2.]

10.98.030 Source of conviction histories. The Washington state patrol *identification and criminal history section as established in RCW 43.43.700 shall be the primary source of felony conviction histories for filings, plea agreements, and sentencing on felony cases. [1984 c 17 § 3.]

***Reviser's note:** The "identification and criminal history" section has been redesignated the "identification, child abuse, and criminal history" section. See RCW 43.43.700.

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

(1) "Arrest and fingerprint form" means the reporting form prescribed by the *identification and criminal history section to initiate compiling arrest and identification information.

(2) "Chief law enforcement officer" includes the sheriff or director of public safety of a county, the chief of police of a city or town, and chief officers of other law enforcement agencies operating within the state.

(3) "Department" means the department of corrections.

(4) "Disposition" means the conclusion of a criminal proceeding at any stage it occurs in the criminal justice system. Disposition includes but is not limited to temporary or permanent outcomes such as charges dropped by police, charges not filed by the prosecuting attorney, deferred prosecution, defendant absconded, charges filed by the prosecuting attorney pending court findings such as not guilty, dismissed, guilty, or guilty—case appealed to higher court.

(5) "Disposition report" means the reporting form prescribed by the *identification and criminal history section to report the legal procedures taken after completing an arrest and fingerprint form. The disposition report shall include but not be limited to the following types of information:

- (a) The type of disposition;
- (b) The statutory citation for the arrests;
- (c) The sentence structure if the defendant was convicted of a felony;
- (d) The state identification number; and
- (e) Identification information and other information that is prescribed by the *identification and criminal history section.

(6) "Fingerprints" means the fingerprints taken from arrested or charged persons under the procedures prescribed by the Washington state patrol *identification and criminal history section.

(7) "Prosecuting attorney" means the public or private attorney prosecuting a criminal case.

(8) "Section" refers to the Washington state patrol section on *identification and criminal history.

(9) "Sentence structure" means itemizing the components of the felony sentence. The sentence structure shall include but not be limited to the total or partial confinement sentenced, and whether the sentence is prison or jail, community supervision, fines, restitution, or community service. [1985 c 201 § 1; 1984 c 17 § 4.]

***Reviser's note:** The "identification and criminal history" section has been redesignated the "identification, child abuse, and criminal history" section. See RCW 43.43.700.

10.98.050 Fingerprints, identifying data, and disposition reports from various officials. (1) It is the duty of the chief law enforcement officer or the local director of corrections to transmit within seventy-two hours from the time of arrest to the section fingerprints together with other identifying data as may be prescribed by the section, and statutory violations of any person lawfully arrested, fingerprinted, and photographed under RCW 43.43.735. The disposition report shall be transmitted to the prosecuting attorney.

(2) At the preliminary hearing or the arraignment of a felony case, the judge shall ensure that the felony defendants have been fingerprinted and an arrest and fingerprint form transmitted to the section. In cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the local director of corrections, or, in the case of a juvenile, the juvenile court administrator to initiate an arrest and fingerprint form and transmit it to the section. The disposition report shall be transmitted to the prosecuting attorney. [1989 c 6 § 1; 1987 c 450 § 6; 1985 c 201 § 2; 1984 c 17 § 5.]

10.98.060 Arrest and fingerprint form. The arrest and fingerprint form shall include but not be limited to the following:

- (1) Unique numbers associated with the arrest charges. The unique numbering system may be controlled by the local law enforcement agency, however the section shall approve of the numbering system and maintain a current catalog of approved local numbering systems. The purpose of the unique numbering system is to allow tracking of arrest charges through disposition;
- (2) An organization code;
- (3) Date of arrest;
- (4) Local identification number;
- (5) The prescribed fingerprints;

(6) Individual identification information and other information prescribed by the section. [1984 c 17 § 6.]

10.98.070 Participation in national crime information center interstate identification index. The section shall be the sole recipient of arrest and fingerprint forms described in RCW 10.98.060, fingerprint forms described in RCW 43.43.760, and disposition reports for forwarding to the federal bureau of investigation as required for participation in the national crime information center interstate identification index. The section shall comply with national crime information center interstate identification index regulations to maintain availability of out-of-state criminal history information. [1984 c 17 § 7.]

10.98.080 State identification number, furnishing of. The section shall promptly furnish a state identification number to the originating agency and to the prosecuting attorney who received a copy of the arrest and fingerprint form. In the case of juvenile felony-like adjudications, the section shall furnish, upon request, the state identification number to the juvenile information section of the administrator for the courts. [1985 c 201 § 3; 1984 c 17 § 8.]

10.98.090 Disposition forms—Coding. (1) In all cases where an arrest and fingerprint form is transmitted to the section, the originating agency shall code the form indicating which agency is initially responsible for reporting the disposition to the section. Coding shall include but not be limited to the prosecuting attorney, district court, municipal court, or the originating agency.

(2) In the case of a superior court or felony disposition, the prosecuting attorney shall promptly transmit the completed disposition form to the section. In the case of a felony conviction, the prosecuting attorney shall attach a copy of the judgment and sentence form to the disposition form transmitted to the section. In the case of a lower court disposition, the district or municipal court shall promptly transmit the completed disposition form to the section. For all other dispositions the originating agency shall promptly transmit the completed disposition form to the section.

(3) Until October 1, 1985, the prosecuting attorney, upon a felony conviction, shall also forward a copy of the judgment and sentence form to the department. [1985 c 201 § 4; 1984 c 17 § 9.]

10.98.100 Compliance audit of disposition reports. The section shall administer a compliance audit at least once annually for each prosecuting attorney, district and municipal court, and originating agency to ensure that all disposition reports have been received and added to the criminal offender record information described in RCW 43.43.705. The section shall prepare listings of all arrests charged and listed in the criminal offender record information for which no disposition report has been received and which has been outstanding for more than nine months since the date of arrest. Each prosecuting attorney, district and municipal court, and originating agency shall be furnished a list of outstanding disposition reports. Cases pending prosecution shall be considered outstanding dispositions in the compliance audit. Within forty-five days, the prosecuting attorney,

district and municipal court, and originating agency shall provide the section with a current disposition report for each outstanding disposition. The section shall assist prosecuting attorneys with the compliance audit by cross-checking outstanding cases with the administrator for the courts and the department of corrections. The section may provide technical assistance to prosecuting attorneys, district or municipal courts, or originating agencies for their compliance audits. The results of compliance audits shall be published annually and distributed to legislative committees dealing with criminal justice issues, the office of financial management, and criminal justice agencies and associations. [1985 c 201 § 5; 1984 c 17 § 10.]

10.98.110 Tracking of felony cases. (1) The department shall maintain records to track felony cases following convictions in Washington state and felony cases under the jurisdiction of Washington state pursuant to interstate compact agreements.

(2) Tracking shall begin at the time the department receives a disposition form from a prosecuting attorney and shall include the collection and updating of felons' criminal records from conviction through completion of sentence.

(3) The department of corrections shall collect information for tracking felons from its offices and from information provided by county clerks, the Washington state patrol *identification and criminal history section, the office of financial management, and any other public or private agency that provides services to help individuals complete their felony sentences. [1987 c 462 § 2; 1984 c 17 § 11.]

*Reviser's note: The "identification and criminal history" section has been redesignated the "identification, child abuse, and criminal history" section. See RCW 43.43.700.

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.130 Reporting of admissions and releases by local jails—Information required. Local jails shall report to the office of financial management and that office shall transmit to the department the information on all persons convicted of felonies or incarcerated for noncompliance with a felony sentence who are admitted or released from the jails and shall promptly respond to requests of the department for such data. Information transmitted shall include but not be limited to the state identification number, whether the reason for admission to jail was a felony conviction or noncompliance with a felony sentence, and the dates of the admission and release.

The office of financial management may contract with a state or local governmental agency, or combination thereof, or a private organization for the information collection and transmittal under this section. [1988 c 152 § 1; 1987 c 462 § 3; 1984 c 17 § 13.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.140 Criminal justice information—Forecasting, felons, sentences. (1) The section, the department, and the office of financial management shall be the primary sources of information for criminal justice forecasting. The information maintained by these agencies shall be complete, accurate, and sufficiently timely to support state criminal justice forecasting.

(2) The office of financial management shall be the official state agency for the sentenced felon jail forecast. This forecast shall provide at least a six-year projection and shall be published by December 1 of every even-numbered year beginning with 1986. The office of financial management shall seek advice regarding the assumptions in the forecast from criminal justice agencies and associations.

(3) The sentencing guidelines commission shall keep records on all sentencings above or below the standard range defined by chapter 9.94A RCW. As a minimum, the records shall include the name of the offender, the crimes for which the offender was sentenced, the name and county of the sentencing judge, and the deviation from the standard range. Such records shall be made available to public officials upon request. [1987 c 462 § 4; 1985 c 201 § 6; 1984 c 17 § 14.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.150 Release of information on suspected or convicted felons. The section and the department shall provide prompt responses to the requests of law enforcement agencies and jails regarding the status of suspected or convicted felons. Dissemination of individual identities, criminal histories, or the whereabouts of a suspected or convicted felon shall be in accordance with chapter 10.97 RCW, the Washington state criminal records privacy act. [1984 c 17 § 15.]

10.98.160 Procedures, development considerations—Executive committee, review and recommendations. In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrator for the courts, local law enforcement agencies, jailers, the sentencing guidelines commission, the *board of prison terms and paroles, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. An executive committee appointed by the heads of the department, the Washington state patrol, and the office of financial management shall review and provide recommendations for development and modification of the section, the department, and the office of financial management's felony criminal information systems. [1987 c 462 § 5; 1984 c 17 § 16.]

*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective dates—1987 c 462: See note following RCW 13.04.116.

Chapter 10.99

DOMESTIC VIOLENCE—OFFICIAL RESPONSE

Sections	
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10.99.020	Definitions.
10.99.030	Law enforcement officers—Training, powers, duties.
10.99.040	Restrictions upon and duties of court.
10.99.045	Appearances by defendant—Orders prohibiting contact.
10.99.050	Restriction or prohibition of contact with victim—Violation, penalties—Written order—Procedures.

- 10.99.055 Enforcement of orders against defendants.
 10.99.060 Notification of victim of prosecution decision—Description of procedures available to institute criminal proceedings.
 10.99.070 Liability of peace officers.
 10.99.900 Severability—1979 ex.s. c 105.

Arrest without warrant in domestic violence cases: RCW 10.31.100(2).

Domestic violence prevention: Chapter 26.50 RCW.

Rape crisis centers: Chapters 70.123 and 70.125 RCW.

Shelters for victims of domestic violence: Chapter 70.123 RCW.

Victims, survivors, and witnesses of crimes: Chapter 7.69 RCW.

10.99.010 Purpose—Intent. The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship. [1979 ex.s. c 105 § 1.]

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

(1) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, and adult persons who are presently residing together or who have resided together in the past.

(2) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

- (a) Assault in the first degree (RCW 9A.36.011);
- (b) Assault in the second degree (RCW 9A.36.021);
- (c) Assault in the third degree (RCW 9A.36.031);
- (d) Assault in the fourth degree (RCW 9A.36.041);
- (e) Reckless endangerment in the first degree (RCW 9A.36.045);
- (f) Reckless endangerment in the second degree (RCW 9A.36.050);
- (g) Coercion (RCW 9A.36.070);
- (h) Burglary in the first degree (RCW 9A.52.020);
- (i) Burglary in the second degree (RCW 9A.52.030);
- (j) Criminal trespass in the first degree (RCW 9A.52.070);
- (k) Criminal trespass in the second degree (RCW 9A.52.080);

(l) Malicious mischief in the first degree (RCW 9A.48.070);

(m) Malicious mischief in the second degree (RCW 9A.48.080);

(n) Malicious mischief in the third degree (RCW 9A.48.090);

(o) Kidnapping in the first degree (RCW 9A.40.020);

(p) Kidnapping in the second degree (RCW 9A.40.030);

(q) Unlawful imprisonment (RCW 9A.40.040);

(r) Violation of the provisions of a restraining order restraining the person or excluding the person from a residence (RCW 26.09.300);

(s) Violation of the provisions of a protection order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, or 26.50.130);

(t) Rape in the first degree (RCW 9A.44.040); and

(u) Rape in the second degree (RCW 9A.44.050).

(3) "Victim" means a family or household member who has been subjected to domestic violence. [1991 c 301 § 3; 1986 c 257 § 8; 1984 c 263 § 20; 1979 ex.s. c 105 § 2.]

Finding—1991 c 301: "The legislature finds that:

The collective costs to the community for domestic violence include the systematic destruction of individuals and their families, lost lives, lost productivity, and increased health care, criminal justice, and social service costs.

Children growing up in violent homes are deeply affected by the violence as it happens and could be the next generation of batterers and victims.

Many communities have made headway in addressing the effects of domestic violence and have devoted energy and resources to stopping this violence. However, the process for breaking the cycle of abuse is lengthy. No single system intervention is enough in itself.

An integrated system has not been adequately funded and structured to assure access to a wide range of services, including those of the law/safety/justice system, human service system, and health care system. These services need to be coordinated and multidisciplinary in approach and address the needs of victims, batterers, and children from violent homes.

Given the lethal nature of domestic violence and its effect on all within its range, the community has a vested interest in the methods used to stop and prevent future violence. Clear standards of quality are needed so that perpetrator treatment programs receiving public funds or court-ordered referrals can be required to comply with these standards.

While incidents of domestic violence are not caused by perpetrator's use of alcohol and illegal substances, substance abuse may be a contributing factor to domestic violence and the injuries and deaths that result from it.

There is a need for consistent training of professionals who deal frequently with domestic violence or are in a position to identify domestic violence and provide support and information.

Much has been learned about effective interventions in domestic violence situations; however, much is not yet known and further study is required to know how to best stop this violence." [1991 c 301 § 1.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Domestic violence defined under the domestic violence prevention act: RCW 26.50.010.

10.99.030 Law enforcement officers—Training, powers, duties. (1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.

(3)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.

(4) When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any municipal, district, or superior court.

Information about shelters and alternatives to domestic violence is available from a state-wide twenty-four-hour toll-free hotline at 1-800-562-6025. The battered women's shelter and other resources in your area are (include local information)"

(5) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(6) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

(7) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(8) Records kept pursuant to subsections (3) and (7) of this section shall be made identifiable by means of a

departmental code for domestic violence. [1984 c 263 § 21; 1981 c 145 § 5; 1979 ex.s. c 105 § 3.]

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

10.99.040 Restrictions upon and duties of court. (1)

Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim. The no-contact order shall also be issued in writing as soon as possible. If the court has probable cause to believe that the person charged or arrested is likely to use or display or threaten to use a deadly weapon as defined in RCW 9A.04.110 in any further acts of violence, the court may also require that person to surrender any deadly weapon in that person's immediate possession or control, or subject to that person's immediate possession or control, to the sheriff of the county or chief of police of the municipality in which that person resides or to the defendant's counsel for safe-keeping.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2) or (3) of this section is a misdemeanor. Upon conviction and in addition to other penalties provided by law, the court may require that the defendant submit to

electronic monitoring. The court shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The court also may include a requirement that the defendant pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(b) Any assault that is a violation of an order issued under this section and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this section that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(c) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony. A certified copy of the order shall be provided to the victim. If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed. Such orders need not be entered into the computer information system in this state which is used by law enforcement agencies to list outstanding warrants.

(5) Whenever an order prohibiting contact is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall forthwith enter the order for one year or until the expiration date specified on the order into any computer information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. [1992 c 86 § 2; 1991 c 301 § 4; 1985 c 303 § 10; 1984 c 263 § 22; 1983 c 232 § 7; 1981 c 145 § 6; 1979 ex.s. c 105 § 4.]

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 c 232: See note following RCW 9.41.010.

Child abuse, temporary restraining order: RCW 26.44.063.

Orders for protection in cases of domestic violence: RCW 26.50.030, 26.50.070.

Temporary restraining order: RCW 26.09.060.

10.99.045 Appearances by defendant—Orders prohibiting contact. (1) A defendant arrested for an offense involving domestic violence as defined by RCW 10.99.020(2) shall be required to appear in person before a magistrate within one judicial day after the arrest.

(2) A defendant who is charged by citation, complaint, or information with an offense involving domestic violence as defined by RCW 10.99.020(2) and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next

day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of the appearances provided in subsection (1) or (2) of this section, the court shall determine the necessity of imposing a no contact order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment. If the court has probable cause to believe that the defendant is likely to use or display or threaten to use a deadly weapon as defined in RCW 9A.04.110 in any further acts of violence, as one of the conditions of pretrial release, the court may require the defendant to surrender any deadly weapon in the defendant's immediate possession or control, or subject to the defendant's immediate possession or control, to the sheriff of the county or chief of police of the municipality in which the defendant resides or to the defendant's counsel for safekeeping. The decision of the judge and findings of fact in support thereof shall be in writing.

(4) Appearances required pursuant to this section are mandatory and cannot be waived.

(5) The no-contact order shall be issued and entered with the appropriate law enforcement agency pursuant to the procedures outlined in RCW 10.99.040 (2) and (4). [1984 c 263 § 23; 1983 c 232 § 8; 1981 c 145 § 7.]

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 c 232: See note following RCW 9.41.010.

10.99.050 Restriction or prohibition of contact with victim—Violation, penalties—Written order—Procedures.

(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2) Willful violation of a court order issued under this section is a misdemeanor. Any assault that is a violation of an order issued under this section and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this section that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

(3) Whenever an order prohibiting contact is issued pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall forthwith enter the order for one year into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. [1991 c 301 § 5; 1985 c 303 § 12; 1984 c 263 § 24; 1979 ex.s. c 105 § 5.]

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

10.99.055 Enforcement of orders against defendants. A peace officer in this state shall enforce an order issued by any court in this state restricting a defendant's ability to have contact with a victim by arresting and taking the defendant into custody, pending release on bail, personal recognizance, or court order, when the officer has probable cause to believe that the defendant has violated the terms of that order. [1984 c 263 § 25; 1983 c 232 § 9; 1981 c 145 § 8.]

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 c 232: See note following RCW 9.41.010.

10.99.060 Notification of victim of prosecution decision—Description of procedures available to institute criminal proceedings. The public attorney responsible for making the decision whether or not to prosecute shall advise the victim of that decision within five days, and, prior to making that decision shall advise the victim, upon the victim's request, of the status of the case. Notification to the victim that charges will not be filed shall include a description of the procedures available to the victim in that jurisdiction to initiate a criminal proceeding. [1979 ex.s. c 105 § 6.]

10.99.070 Liability of peace officers. A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident. [1979 ex.s. c 105 § 7.]

10.99.900 Severability—1979 ex.s. c 105. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 105 § 9.]

Chapter 10.101

INDIGENT DEFENSE SERVICES

Sections

- 10.101.005 Legislative finding.
- 10.101.010 Definitions.
- 10.101.020 Determination of indigency—Provisional appointment—Promissory note.
- 10.101.030 Standards for public defense services.
- 10.101.040 Selection of defense attorneys.

10.101.005 Legislative finding. The legislature finds that effective legal representation should be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches. [1989 c 409 § 1.]

10.101.010 Definitions. The following definitions shall be applied in connection with this chapter:

(1) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Aid to families with dependent children, general assistance, poverty-related veterans' benefits, food stamps, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(2) "Indigent and able to contribute" means a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of that cost.

(3) "Anticipated cost of counsel" means the cost of retaining private counsel for representation on the matter before the court.

(4) "Available funds" means liquid assets and disposable net monthly income calculated after provision is made for bail obligations. For the purpose of determining available funds, the following definitions shall apply:

(a) "Liquid assets" means cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in motor vehicles. A motor vehicle necessary to maintain employment and having a market value not greater than three thousand dollars shall not be considered a liquid asset.

(b) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistance programs. It includes any contribution received from any family member or other person who is domiciled in the same residence as the defendant and who is helping to defray the defendant's basic living costs.

(c) "Disposable net monthly income" means the income remaining each month after deducting federal, state, or local income taxes, social security taxes, contributory retirement, union dues, and basic living costs.

(d) "Basic living costs" means the average monthly amount spent by the defendant for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations. [1989 c 409 § 2.]

10.101.020 Determination of indigency—Provisional appointment—Promissory note. (1) A determination of indigency shall be made for all persons wishing the appointment of counsel in criminal, juvenile, involuntary commitment, and dependency cases, and any other case where the right to counsel attaches. The court or its designee shall

determine whether the person is indigent pursuant to the standards set forth in this chapter.

(2) In making the determination of indigency, the court shall also consider the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services, and any other circumstances presented to the court which are relevant to the issue of indigency. The appointment of counsel shall not be denied to the person because the person's friends or relatives, other than a spouse who was not the victim of any offense or offenses allegedly committed by the person, have resources adequate to retain counsel, or because the person has posted or is capable of posting bond.

(3) The determination of indigency shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit. The court or its designee shall keep a written record of the determination of indigency. Any information given by the accused under this section or sections shall be confidential and shall not be available for use by the prosecution in the pending case.

(4) If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.

(5) All persons determined to be indigent and able to contribute, shall be required to execute a promissory note at the time counsel is appointed. The person shall be informed whether payment shall be made in the form of a lump sum payment or periodic payments. The payment and payment schedule must be set forth in writing. The person receiving the appointment of counsel shall also sign an affidavit swearing under penalty of perjury that all income and assets reported are complete and accurate. In addition, the person must swear in the affidavit to immediately report any change in financial status to the court.

(6) The office or individual charged by the court to make the determination of indigency shall provide a written report and opinion as to indigency on a form prescribed by the office of the administrator for the courts, based on information obtained from the defendant and subject to verification. The form shall include information necessary to provide a basis for making a determination with respect to indigency as provided by this chapter. [1989 c 409 § 3.]

10.101.030 Standards for public defense services.

Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of

contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington state bar association for the provision of public defense services may serve as guidelines to contracting authorities. [1989 c 409 § 4.]

10.101.040 Selection of defense attorneys. City attorneys, county prosecutors, and law enforcement officers shall not select the attorneys who will provide indigent defense services. [1989 c 409 § 5.]