

1974  
REVISED CODE  
*of*  
WASHINGTON



**Volume 1**

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# TITLE 1

## GENERAL PROVISIONS

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### Chapter 1.04 THE CODE

#### Sections

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*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) application 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)**

Sections

1.08.001	Statute law committee created—Membership.
1.08.003	Terms of members—Filling vacancies.
1.08.005	Expenses of members.
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1.08.033	Reviser's office location.
1.08.037	Publication of code—Specifications—Certificate of compliance.
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1.08.039	Publication, sale, and distribution of code and supplements—Contracts or other arrangements.
1.08.0392	Publication, sale, and distribution of code and supplements—Statute law committee publications account created—Purpose—Disbursements.
1.08.040	Certification—Official code—Prima facie evidence.
1.08.050	Amendment, repeal to include code numbers—Assignment of code numbers.
1.08.060	Loans and exchanges of codes and supplements.
1.08.070	Legislators to receive codes and supplements.
1.08.100	Data processing services to be provided—Legislative information system—Personnel—Contracts.

*Administrative procedures, reviser's powers and duties: Chapter 34.04 RCW.*

*State higher education administrative procedure act, reviser's duties: Chapter 28B.19 RCW.*

*Statute law committee to publish session laws: RCW 44.20.050.*

**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.] This applies to RCW 1.08.001, 1.08.003, 1.08.017, 1.08.028, 1.08.033, 1.08.037, 1.08.038, 1.08.039 and 1.08.070.

**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 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 entitled to allowances at rates equivalent thereto. [1969 c 21 § 1; 1951 c 157 § 3.]

**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, chapters, 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. [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, the legislative council, other 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. [1959 c 95 § 3; 1951 c 157 § 11.]

**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.]

**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, fifteen sets;
- (2) for use of the house committees, twenty 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. [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.]

**1.08.100 Data processing services to be provided—Legislative information system—Personnel—Contracts.** The code reviser shall be in charge of and shall operate and maintain the legislative information system which shall provide automatic data processing services for the legislature and its various committees and, by agreement, for the judiciary and the legal or law-oriented agencies of the executive branch. All such operations shall be subject to the general supervision of the statute law committee. The statute law committee may employ or engage and fix the compensation for such personnel as may be required to plan, supervise, operate, procure, or supply such services. Pursuant to prior consultation with the data processing advisory committee, the statute law committee may enter into contracts with public or private vendors or purchasers for the sale, exchange, or acquisition of data processing materials, services, and facilities. [1969 ex.s. c 212 § 5.]

*Data processing and communications systems: Chapter 43.105 RCW.*

## 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 statutes.
1.12.026	Construction of statutes—Retrospective application.
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.

**Reviser's note:** RCW 1.12.010, 1.12.020, 1.12.050, 1.16.060, and 1.16.080 are each 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:".

**1.12.010 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 statutes.** 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 extraordinary 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. [1974 1st 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.]

**1.12.040 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.

*Computation of time: RCW 4.28.005; Rules of court: CAROA 9, CR 6(a), ROA 1-9.*

**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:".



*Rules of court: CAROA 2, ROA 1-2.*

*Crimes, number and gender: RCW 9.01.010(13).*

*Juvenile court law, number and gender: RCW 13.04.140.*

*Probate, number and gender: RCW 11.02.005(14), (15).*

*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.]

1.16.080 "Person" defined.

**Reviser's note:** RCW 1.16.060, 1.16.080, 1.12.010, 1.12.020 and 1.12.050 are each a part of 1891 c 23 § 1. The introductory phrase to 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:".

**1.16.020 "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. [1953 c 184 § 2; 1923 c 86 § 1; RRS § 10927.]

*Biennial reports: RCW 43.01.035.*

*Fiscal year defined—State budget law: RCW 43.86.140.*

**1.16.030 "Fiscal year"—School districts and other taxing districts.** June 30th shall end the fiscal year of school districts and December 31st of all other taxing districts. [1909 c 76 § 13; RRS § 9963.]

*Fiscal year defined—State budget law: RCW 43.86.140.*

**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 twelfth day of February, being the anniversary of the birth of Abraham Lincoln; the third Monday of February, being celebrated as the anniversary of the birth of George Washington; the thirtieth day 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 second Monday of October, to be known as Columbus Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the twenty-fifth day of December, commonly called Christmas Day; the day on which any general election is held throughout the state; and any day designated by public proclamation of the chief executive of the state as a legal holiday.

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.

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

**Effective date—1969 c 11:** "The effective date of this act shall be January 1, 1971." [1969 c 11 § 2.] "this act" refers to the 1969 amendment to this section.

**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"

*Court business on legal holidays: RCW 2.28.100, 2.28.110.*  
*School holidays: RCW 28A.02.061.*

**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 9.01.010(24).*

**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 9.01.010(14).*

*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.
1.20.030	State flower.
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.
1.20.080	State seal.

*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.02.030.*

**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.]

**1.20.030 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.]

**1.20.040 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.]

**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.]

**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.

**1.20.080 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.]



# TITLE 2

## COURTS OF RECORD

### Chapters

- 2.04 Supreme court.
- 2.06 Court of appeals.
- 2.08 Superior courts.
- 2.10 Judicial retirement system.
- 2.12 Retirement of judges—Retirement system.
- 2.16 Association of superior court judges.
- 2.20 Magistrates.
- 2.24 Court commissioners and referees.
- 2.28 Powers of courts and general provisions.
- 2.32 Court clerks, reporters, and bailiffs.
- 2.36 Juries.
- 2.40 Witnesses.
- 2.42 Interpreters for impaired persons involved in legal proceedings.
- 2.44 Attorneys at law.
- 2.48 State bar act.
- 2.50 Legal aid.
- 2.52 Judicial council.
- 2.56 Administrator for the courts.
- 2.60 Federal court local law certificate procedure act.

*Family court: Chapter 26.12 RCW.*

*Judiciary and judicial power: State Constitution Art. 4.*

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

*Records, receipts and exhibits of superior court, destruction, reproduction: RCW 36.23.065, 36.23.067, 36.23.070.*

### 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.
- 2.04.090 Salary—Affidavit.
- 2.04.100 Vacancy, how filled.
- 2.04.110 Justices, judges to wear gowns.
- 2.04.150 Apportionment of business—En banc hearings.
- 2.04.160 Finality of departmental decision—Rehearings.
- 2.04.170 En banc hearings—Quorum—Finality of decision.
- 2.04.180 Rules of practice and forms of process in supreme court.
- 2.04.190 Rules of pleading, practice, and procedure generally.
- 2.04.200 Effect of rules upon statutes.
- 2.04.210 Supplementary superior court rules.
- 2.04.220 Effect of supreme court judgments.
- 2.04.230 Report to governor.
- 2.04.240 Judges pro tempore—Declaration of policy—Oath of office.

2.04.250 Judges pro tempore—Remuneration.

*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.]

*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.*

**2.04.090 Salary—Affidavit.** Each justice of the supreme court shall receive an annual salary of thirty-four thousand eight hundred twenty-five dollars, but no salary warrant shall be issued to any judge of the supreme court until he shall have made and filed with the state treasurer an affidavit that no matter referred to him for opinion or decision has been uncompleted or undecided by him for more than six months. [1974 1st ex.s. c 149 § 3 (Initiative Measure No. 282); 1973 c 106 § 2; 1972 ex.s. c 100 § 1; 1965 ex.s. c 127 § 1; 1957 c 260 § 1; 1953 c 144 § 1. Prior: 1949 c 48 § 2, part; 1947 c 194 § 1, part; 1943 c 50 § 1, part; 1921 c 188 § 1, part; 1919 c 77 § 1, part; 1907 c 57 § 1, part; Rem. Supp. 1949 § 11053, part.]

*Severability—1974 1st ex.s. c 149 (Initiative Measure No. 282):* See note following RCW 43.03.010.

*Construction—1965 ex.s. c 127:* "The salary increases provided for herein shall take effect at the earliest time allowable by the Constitution of the state of Washington, including Article II, section 13, Article II, section 25, Article IV, section 13, and Article XXVIII: *Provided*, That it is the intent of the legislature that nothing in this act shall render a member of the legislature or of the judiciary ineligible to file for and be elected to the legislature or the judiciary respectively." [1965 ex.s. c 127 § 5.] "this act" [1965 ex.s. c 127] is codified as RCW 2.04.090, 2.08.090, 43.03.010 and 44.04.080.

*Construction—1953 c 144:* "Nothing contained in this act shall affect the salary of any judge now in office during the term for which he was elected." [1953 c 144 § 3.] This applies to RCW 2.04.090 and 2.08.090.

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

*Salary schedule for public officials: See notes following RCW 43.03.010.*

**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—Rule 4.*

**2.04.160 Finality of departmental decision—Rehearings.** The decision of a department, except in cases otherwise ordered as hereinafter provided, shall not become final until thirty days after the filing thereof, during which period a petition for rehearing, or for a hearing en banc, may be filed, the filing of either of which, except as hereinafter otherwise provided, shall have the effect of suspending such decision until the same shall have been disposed of. If no such petition be filed the decision of a department shall become final thirty days from the date of its filing, unless during such thirty-day period an order for a hearing en banc shall have been made: *Provided*, That if for any cause the chief justice or a majority of the department rendering any decision shall be of the opinion that such decision should go into effect prior to thirty days after its filing, it shall go into effect, and a judgment issue thereon, any time after its filing and prior to such thirty-day period, upon being in writing approved by the chief justice and any two associate judges who took no part in rendering such decision. The effect of granting a petition for a rehearing, or of ordering a cause once decided by department to be heard en banc, shall be to vacate and set aside the decision. Whenever a decision shall become final, as herein provided, a judgment shall issue thereon. [1909 c 24 § 4, part; RRS § 10.]

*Rules of court: SAR 15; ROA I–50.*

**2.04.170 En banc hearings—Quorum—Finality of decision.** The chief justice, or any four judges, may convene the court en banc at any time, and the chief justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision in the court en banc: *Provided*, That if five of the judges so present do not concur in a decision, then reargument shall be ordered and all the judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court en banc shall be final except in cases in which no previous decision has been rendered in one of the departments, and in such cases the decision of the court en banc shall become final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such period shall have the effect of suspending the decision until disposed of by the concurrence of five judges: *Provided*, That if for any cause five judges shall be of the opinion that

such decision should go into effect prior to thirty days after its filing, it shall go into effect any time after its filing and prior to such thirty-day period upon being in writing approved by six judges of such court. Whenever a decision shall become final as herein provided, a judgment shall issue thereon. [1909 c 24 § 5; RRS § 11.]

*Rules of court: SAR 15; ROA I–50.*

**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.]

**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 justices of the peace 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. [1925 ex.s. c 118 § 1; RRS § 13–1.]

*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).*

**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).*

*Court rules fixing time for pleading: RCW 4.32.230.*

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

**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 Judges 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 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. [1963 c 40 § 1.]

*Rules of court: SAR 21.*

**2.04.250 Judges pro tempore—Remuneration.** (1) A superior court judge serving as a judge pro tempore of the supreme court as provided in RCW 2.04.240 shall receive, in addition to his regular salary, his actual traveling expenses not to exceed one round trip at ten cents per mile from his residence during his term of service as judge pro tempore and twenty dollars per day in lieu of subsistence and lodging.

(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) His actual traveling expenses not to exceed one round trip at ten cents per mile from his residence during his term of service as judge pro tempore and twenty dollars per day in lieu of subsistence and lodging.

(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, the full amount of the actual traveling and living expenses incurred by such visiting judge as a result of such assignment shall be paid 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. [1963 c 40 § 2.]

## Chapter 2.06 COURT OF APPEALS

Sections	
2.06.010	Court of appeals established—Definitions.
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2.06.030	General powers and authority—Transfers of cases— Appellate jurisdiction, exceptions—Appeals.
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2.06.150	Judges pro tempore—Appointment—Oath of office.
2.06.160	Judges pro tempore—Remuneration.

*Commission to supervise publication of reports: RCW 2.32.160.*

*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 six judges from three districts, as follows:

- (a) District 1 shall consist of King county and shall have four judges;
- (b) District 2 shall consist of Snohomish county and shall have one judge; 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 three judges, one from each of the following districts:

- (a) District 1 shall consist of Pierce county.
- (b) District 2 shall consist of Clallam, Grays Harbor, Jefferson, Kitsap, Mason and Thurston counties.



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

(3) The third division shall have three judges, one from each of the following districts:

(a) District 1 shall consist of Ferry, Lincoln, Okanogan, Pend Oreille, Spokane and Stevens counties.

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

(c) District 3 shall consist of Chelan, Douglas, Kittitas, Klickitat and Yakima counties. [1969 ex.s. c 221 § 2.]

**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.

When the court acquires jurisdiction of any cause and makes a disposition thereof, there shall be a right of appeal to the supreme court when the court reverses a judgment or order of the superior court by less than a unanimous decision. In all other cases, 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. [1969 ex.s. c 221 § 3.]

**2.06.040 Panels—Decisions, publication as opinions, when—Sessions, where held—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 such of the following cities as may be designated by rule: Seattle, Everett, Bellingham, Tacoma, Vancouver, Spokane, Yakima, Richland and Walla Walla.

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 into conflict with rules of the supreme court. [1971 c 41 § 1; 1969 ex.s. c 221 § 4.]

**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.]

**2.06.060 Salaries—Timely completion of opinions required.** Each judge of the court shall receive an annual salary of thirty-one thousand six hundred fifty dollars, but no salary warrant shall be issued to any judge until he shall have made and filed with the state treasurer an affidavit that no matter referred to him for opinion or decision has been uncompleted by him for more than three months. [1974 1st ex.s. c 149 § 4 (Initiative Measure No. 282); 1973 c 106 § 3; 1972 ex.s. c 100 § 2; 1969 ex.s. c 221 § 6.]

**Severability—1974 1st ex.s. c 149 (Initiative Measure No. 282):** See note following RCW 43.03.010.

**Salary schedule for public officials:** See notes following RCW 43.03.010.

**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.

**2.06.080 Vacancies, 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 Judges 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: *And provided further,* That the court of appeals shall not utilize the services of judges pro tempore to exceed two hundred forty court days during 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. [1973 c 114 § 1.]

**2.06.160 Judges 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 actual travel expense or ten cents per mile, whichever is less, from his residence and in addition his regular salary, his actual living expenses not to exceed forty dollars per day during his term of service as judge pro tempore.

(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) His actual travel expenses or ten cents per mile, whichever is less, from his residence and in addition his living expenses not to exceed forty dollars per day during his term of service as judge pro tempore; 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, the actual travel expenses or ten cents per mile, whichever is less, from place of residence and in addition the living expenses not to exceed forty dollars per day incurred by such visiting judge as a result of such assignment shall be paid 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. [1973 c 114 § 2.]

**Chapter 2.08  
SUPERIOR COURTS**

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2.08.250 Report to judges of supreme court.

*Court commissioners: State Constitution Art. 4 § 23.*

*Family court: Chapter 26.12 RCW.*

*Judiciary and judicial power: State Constitution Art. 4.*

*Juvenile courts: Chapter 13.04 RCW.*

**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 justices' and other inferior courts in their respective counties as may be prescribed by law. [1890 p 343 § 6; RRS § 17.]

*Appeals from justice courts: Criminal, Chapter 10.10 RCW; Civil, Chapter 12.36 RCW.*

*Appeals from municipal courts: Chapter 35.20 RCW, RCW 35A.20.040.*

*Appeals from police court: RCW 35.22.530, 35.23.600, 35.24.470, 35.27.540, 35A.20.040.*

*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.*

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

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

*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 twenty-nine judges of the superior court; in the county of Spokane eight judges of the superior court; in the county of Pierce ten judges of the superior court. [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.]

*Reviser's note:* The amendment to this section by 1973 1st ex.s. c 27 was conditional, see RCW 2.08.065.

**2.08.062 Judges—Chelan, Clark, Grays Harbor, Kitsap, Kittitas, and Lewis counties.** There shall be in the county of Chelan one judge of the superior court; in the county of Clark four judges of the superior court; in the county of Grays Harbor two judges of the superior

court; in the county of Kitsap three judges of the superior court; in the county of Kittitas one judge of the superior court; in the county of Lewis one judge of the superior court. [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.]

**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, two 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 five judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, two judges of the superior court. [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.]

*Reviser's note:* The amendment to this section by 1973 1st ex.s. c 27 was conditional, see RCW 2.08.065.

**2.08.064 Judges—Benton, Franklin, Clallam, Jefferson, Snohomish, Asotin, Columbia, Garfield, Cowlitz, Klickitat, and Skamania counties.** There shall be in the counties of Benton and Franklin jointly, three judges of the superior court; in the counties of Clallam and Jefferson jointly, two judges of the superior court; in the county of Snohomish seven 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, two judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court. [1974 1st 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.]

**2.08.065 Judges—Douglas, Grant, Ferry, Okanogan, Mason, Thurston, Pacific, Wahkiakum, Pend Oreille, Stevens, San Juan and Island counties.** There shall be in the counties of Douglas and Grant jointly, two judges of the superior court; in the counties of Ferry and Okanogan jointly, one judge of the superior court; in the counties of Mason and Thurston jointly, four judges of the superior court; in the counties of Pacific and Wahkiakum jointly, one judge of the superior court; in the counties of Pend Oreille and Stevens jointly, one judge of the superior court; and in the

counties of San Juan and Island jointly, one judge of the superior court: *Provided*, That \*this act shall only take effect in the event the legislature shall appropriate funds for the 1973–75 biennium to carry out the purpose of \*this 1973 act. [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.]

**\*Reviser's note:** The terms "this act" and "this 1973 act" apparently refer to 1973 1st ex.s. c 27 which amended RCW 2.08.061, 2.08.063 and 2.08.065.

**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.

**2.08.090 Salary.** Each judge of the superior court shall receive an annual salary of twenty-eight thousand five hundred dollars. [1974 1st ex.s. c 149 § 5 (Initiative Measure No. 282); 1972 ex.s. c 100 § 3; 1967 c 65 § 1; 1965 ex.s. c 127 § 2; 1957 c 260 § 2; 1953 c 144 § 2. Prior: 1949 c 48 § 2, part; 1947 c 194 § 1, part; 1943 c 50 § 1, part; 1923 c 169 § 1; 1921 c 188 § 1, part; 1919 c 77 § 1, part; 1907 c 57 § 1, part; Rem. Supp. 1949 § 11053, part.]

**Severability—1974 1st ex.s. c 149 (Initiative Measure No. 282):** See note following RCW 43.03.010.

**Construction—1965 ex.s. c 127:** "The salary increases provided for herein shall take effect at the earliest time allowable by the Constitution of the state of Washington, including Article II, section 13, Article II, section 25, Article IV, section 13, and Article XXVIII: *Provided*, That it is the intent of the legislature that nothing in this act shall render a member of the legislature or of the judiciary ineligible to file for and be elected to the legislature or the judiciary respectively." [1965 ex.s. c 127 § 5.] "This act" [1965 ex.s. c 127] is codified as RCW 2.04.090, 2.08.090, 43.03.010 and 44.04.080.

*Salaries of judicial officers:* State Constitution Art. 4 § 13.

*Salary schedule for public officials:* See notes following RCW 43.03.010.

### **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.]

**2.08.120 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 the amount of his actual traveling expenses from his residence to the place where he shall hold such sessions, and on his return to his residence, and of the actual traveling expenses of his sojourn at the place where he shall hold such sessions during the continuance thereof. 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 general fund [current expense fund] of such county for the amount in favor of such judge. [1893 c 43 § 4; RRS § 30. Prior: 1890 p 329 § 4.]

*Holding court in another county or district—Traveling, living expenses: RCW 2.56.070.*

**2.08.180 Judges 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. 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. [1971 c 81 § 6; 1967 c 149 § 1; 1890 p 343 § 11; RRS § 40.]

*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.*

*Reports to judicial council: RCW 2.52.060.*

## Chapter 2.10 JUDICIAL RETIREMENT SYSTEM

### Sections

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**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. [1971 ex.s. c 267 § 3.]

**2.10.040 System created—Coverage—Transfers to system from chapter 2.12 RCW coverage.** 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 shall be members of this system. Any person serving as a judge on August 9, 1971 and who is covered under the provisions of chapter 2.12 RCW shall have the option of transferring to this system. Said transfer shall be in writing and received by the Washington judicial retirement board not later than one calendar year after August 9, 1971. [1971 ex.s. c 267 § 4.]

*Transfers to system, prior service credit: RCW 2.10.220.*

**2.10.050 Retirement board—General powers and duties—Administration of system.** The Washington judicial retirement board is hereby established. This board shall be responsible for making effective the provisions of this chapter, and the authority to make all rules and regulations necessary therefor are hereby vested in the retirement board. All such rules and regulations shall be governed by the provisions of chapter

34.04 RCW, as now or hereafter amended. The administration of the retirement system is hereby vested in the director and staff of the Washington public employees' retirement system established pursuant to chapter 41.40 RCW. [1971 ex.s. c 267 § 5.]

**2.10.060 Retirement board—Members—Terms—Vacancies—Officers.** The retirement board shall consist of seven members.

(1) Three members shall be elected by the judges of the respective courts. One member shall be elected by and serve as a representative of the supreme court, one from the court of appeals and one from the superior court. The elected board members shall serve a three-year term except that the first member from the supreme court shall serve a one-year term and the first member from the court of appeals shall serve a two-year term.

(2) The governor shall appoint four members, only one of whom may be a member of the Washington state bar association. These members shall serve a four-year term with one member appointed each July 1. Original terms of office of the appointees shall be one, two, three and four years as designated by the governor.

(3) The terms of all members shall commence on the first of July following their election or appointment. Any vacancy occurring by reason of resignation, death, disability or retirement ninety days or more before the expiration of the term of office of any elected board member shall be filled by election as provided in (1) above. If it is less than ninety days before the end of the term of office, the office shall remain vacant until the election for the next term is final. The newly elected member shall then take office immediately and fill out the remainder of the unexpired term in addition to the term to which he was elected.

If a vacancy occurs in the office of an appointed member for any reason, the governor shall appoint a replacement for the remainder of the term.

(4) The retirement board shall annually at its July meeting or the first meeting after July if there is no July meeting, elect a chairman and a vice chairman, one of whom must be a judge and one an appointed board member. [1971 ex.s. c 267 § 6.]

**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, and all interest 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 and placed to the credit of the retirement fund.

(3) The public employees' retirement board established by chapter 41.40 RCW shall have full power to invest or reinvest the funds of this system in those classes of investments authorized by RCW 43.84.150 and 41.40.072.

(4) For the purpose of providing amounts to be used to defray the cost of administration and investment, 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. [1973 1st ex.s. c 103 § 1; 1971 ex.s. c 267 § 8.]

**Severability—1973 1st ex. 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 of system.** 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.]

**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 and has attained the age of sixty years may be retired upon his written request.

(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. [1971 ex.s. c 267 § 10.]

**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.** 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. [1971 ex.s. c 267 § 12.]

**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 Surviving spouse's benefit.** 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 three years at time of death: *And provided further*, That if the surviving spouse remarries all benefits under this chapter shall cease. [1971 ex.s. c 267 § 14.]

**2.10.150 Income of retired judge—Statement—Reduction.** Every judge retired either for service or disability under the provisions of this chapter shall file a statement of income with the retirement board. Any retired judge who is receiving income from employment of any kind shall have his retirement allowance reduced by the amount that his combined retirement allowance and employment income exceed the current monthly salary being paid a judge of the same court in which the retired judge served immediately prior to his retirement: *Provided, however*, That pro tempore service as a judge of a court of record shall not constitute employment as that term is used in this section and income from pro tempore service need not be reported to the retirement board. Pro tempore service shall be limited to not more than ninety days in any single year, and the combined retirement allowance of a retired judge together with his income as a pro tempore judge shall not exceed the salary being paid a judge of the same court in which the retired judge served immediately prior to his retirement.

Failure to file or the filing of a false statement shall be grounds for cancellation of all benefits payable under this chapter. [1973 1st ex.s c 119 § 1; 1971 ex.s c 267 § 15.]

**2.10.160 Earnings of surviving spouse—Statement—Reduction.** Any surviving spouse who is receiving a monthly benefit under the provisions of this chapter and who is employed in any capacity shall file with the retirement board a statement of earnings. If said earnings are in excess of fifty percent of the monthly allowance being received the board shall reduce the allowance payable by the amount of said excess.

Failure to file or the filing of a false statement shall be grounds for cancellation of all benefits payable under this chapter. [1971 ex.s. c 267 § 16.]

**2.10.170 Cost of living adjustments.** 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 Exemption from taxation and judicial process.** 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. [1971 ex.s. c 267 § 18.]

**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. 267 § 19.]

**2.10.200 Hearing prior to judicial review—Conduct.** A hearing shall be held by members of the retirement board, or its duly authorized representatives, in the county of the residence of the claimant at a time and place designated by the retirement board. Such hearings shall be de novo and shall conform to the provisions of chapter 34.04 RCW, as now or hereafter amended. The retirement board shall be entitled to appear in all such proceedings and introduce testimony in support of the decision. Judicial review of any final decision by the retirement board shall be governed by the provisions of chapter 34.04 RCW as now law or hereafter amended. [1971 ex.s. c 267 § 20.]

**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 Transfers 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 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 January 1, 1972. Upon reinstatement in accordance with this subsection, the provisions of subsection (1) and the provisions of RCW 41.40.120(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. [1971 ex.s. c 267 § 22.]

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

## Chapter 2.12 RETIREMENT OF JUDGES—RETIREMENT SYSTEM

Sections	
2.12.010	Retirement for service or age.
2.12.012	Partial pension for less than eighteen years service— When authorized, amount.
2.12.015	Additional pension for more than eighteen years service—Amount.
2.12.020	Retirement for disability.
2.12.030	Amount and time of payment—Surviving spouse's benefit.
2.12.035	Retirement pay of certain justices or judges retiring prior to December 1, 1968—Widow's benefits.
2.12.037	Adjustment of pension of retired judges or widows.
2.12.040	Service after retirement.
2.12.050	Judges' retirement fund—Custody—Depositaries—Security.
2.12.060	Fund, how constituted—Salary deductions—Aid.
2.12.070	Investment of fund.
2.12.100	Transfer of membership from Washington public employees' retirement system to judges' retirement system—Authorized—Procedure.
2.12.900	Construction—Gender.

*Judicial retirement system—1971 act: Chapter 2.10 RCW.*

*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 [chapter 73.16 RCW]: *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 state treasurer, who is hereby created treasurer, ex officio, of the fund hereinafter established, and who is hereinafter referred to as "the treasurer," 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 treasurer 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. No retirement shall be made within a period of less than thirty days after such statement is filed, and no retirement after separation from office by expiration of term shall be allowed unless the statement be filed within thirty days thereafter. [1973 c 106 § 4; 1971 c 30 § 1; 1943 c 221 § 1; 1937 c 229 § 1; Rem. Supp. 1943 § 11054-1.]

**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.]

This applies to RCW 2.12.010, 2.12.012, 2.12.015, 2.12.020, 2.12.030 and 2.12.060.

**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.** 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 treasurer 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 treasurer 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 treasurer 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. [1973 c 106 § 5; 1971 c 30 § 4; 1937 c 229 § 2; RRS § 11054-2.]

**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 pertaining 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.]

**2.12.050 Judges' retirement fund—Custody—Depositaries—Security.** There is hereby created a fund 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 treasurer shall be custodian of the moneys

in said judges' retirement fund. He shall receive all moneys payable into said fund and make disbursements therefrom as provided in this chapter. He shall keep written permanent records showing all receipts and disbursements of said fund and shall make an annual written report showing receipts and disbursements and the status of said fund as of June 30th of each year, and shall, on or before the first day of August of each year, file one copy thereof with the governor, and one copy with the president-judge of the association of the superior court judges of the state of Washington. The treasurer's account shall be audited at convenient times by the state auditor. The treasurer shall receive no compensation for his services hereunder other than his salary as state treasurer, but he shall be allowed from said fund his actual expenses in connection with his duties hereunder. The moneys in said fund shall be deposited by the treasurer in the name of said fund in such bank or banks as may be directed by the state finance committee. The treasurer shall require from all banks holding deposits of moneys belonging to said fund, deposits of securities or surety company bonds to indemnify said fund against loss, the same as are required of depositaries of state funds, which deposit of securities or surety company bonds shall at all times be ample and sufficient to cover all deposits from said fund. [1967 c 28 § 1; 1959 c 192 § 1; 1937 c 229 § 5; RRS § 11054–5.]

**2.12.060 Fund, how constituted—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.

**2.12.070 Investment of fund.** Whenever the treasurer estimates that the balance of cash remaining in the judges' retirement fund, together with the estimated receipts for the remainder of the fiscal year, will exceed the estimated disbursements for the remainder of such year in the sum of one thousand dollars or more, he shall request the state finance committee to invest such excess in such bonds as are by law authorized for the investment of the permanent school funds of the state. Whenever it appears to the treasurer that the cash remaining in the fund, together with the estimated receipts for the remainder of the fiscal year, will not meet the estimated disbursements as they shall fall due, he shall request the state finance committee to sell so many of any bonds belonging to said fund as will produce cash sufficient for that purpose, and deposit the proceeds of such sale in the fund. [1955 c 221 § 1; 1937 c 229 § 8; RRS § 11054-8.]

**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 2.16

### 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.

*Court administrator: 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.*

*Court rules fixing time for pleading: RCW 4.32.230.*

*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.]

## Chapter 2.20 MAGISTRATES

### Sections

- 2.20.010 Magistrate defined.  
2.20.020 Who are magistrates.

*Jurisdiction of police judge: RCW 35A.20.040.*

*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 justices of the peace.
- (4) All municipal officers authorized to exercise the powers and perform the duties of a justice of the peace. [1971 c 81 § 9; 1891 c 53 § 2; RRS § 51.]

## Chapter 2.24 COURT COMMISSIONERS AND REFEREES

### Sections

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

*Court commissioners: State Constitution Art. 4 § 23.*

*Juror, etc., accepting bribe: RCW 9.18.030.*

**2.24.010 Appointment of court commissioner—Qualifications—Term of office.** There may be appointed in each county or judicial district, by the judges of the superior court having jurisdiction therein, a court commissioner for said county or judicial district. Such commissioner shall be a citizen of the United States and an elector of the county or judicial district in which he may be appointed, and shall hold his office during the pleasure of the judges appointing him. [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 of commissioner—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 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, for the dissolution of incorporations, and to change the name of any person.

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

(10) 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.

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

(12) To charge and collect, for his own use, the same fees for the official performance of official acts mentioned in subdivisions (4) and (10) herein as are provided by law for referees and notaries public. [1963 c 188 § 1; 1909 c 124 § 2; RRS § 85. Prior: 1895 c 83 § 2.]

*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, his orders and judgments shall be and become the orders and judgments of the superior court, and from same an appeal may be taken to the supreme court or the court of appeals in all cases where an appeal will lie from like orders and judgments entered by the judge. [1971 c 81 § 10; 1909 c 124 § 3; RRS § 86.]

**2.24.060 Referees—Definition and 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 bribe: RCW 9.18.030.*

*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	Punishment for contempt.
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	Powers of judicial officers.
2.28.070	Judicial officer may punish for contempt.
2.28.080	Powers of judges of supreme and superior courts.
2.28.090	Powers of inferior judicial officers.
2.28.100	No court on legal holidays—Exceptions.
2.28.110	Sitting deemed adjourned over legal holiday.
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.

*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 Punishment for contempt.** 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 7.20 RCW.*

*Criminal contempts: Chapter 9.23 RCW, RCW 9.92.040.*

*Justices of the peace, contempts: Chapter 3.28 RCW.*

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

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

**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.]

*Judge as creditor of estate: RCW 11.40.050.*

**2.28.040 May act as attorney, when.** Any judicial officer may act as an attorney in any action, suit or proceeding to which he is a party or in which he is directly interested. A justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one of which he is judge, except in an action, suit or proceeding removed therefrom to another court for review; but no judicial officer shall act as attorney in any court except as in this section allowed. [1891 c 54 § 4; RRS § 55. Cf. Code 1881 § 3293.]



*Rules of court: Judicial ethics—CJE 31.*

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

*Justice of peace not to office with attorney—Exception: RCW 3.04.150.*

**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 Powers of judicial officers.** 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 Judicial officer may punish for contempt.** 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 7.20 RCW.*

*Criminal contempts: Chapter 9.23 RCW, RCW 9.92.040.*

*Justices of the peace, contempts: Chapter 3.28 RCW.*

*Power of court to punish for contempt: RCW 2.28.020.*

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

**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.]

*Power of superior court judge to prescribe rules for regulation and government of county jails: RCW 36.63.060.*

*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 No court on legal holidays—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.

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. [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).*

*Legal holidays: RCW 1.16.050.*

**2.28.110 Sitting deemed adjourned over legal holiday.** 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.]

## Chapter 2.32

### COURT CLERKS, REPORTERS, AND BAILIFFS

#### Sections

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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.

(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. [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 not eligible as justice of the peace: RCW 3.04.040.*

*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 first paper or record and making an appearance, the appellant or petitioner shall pay to the clerk of said court a docket fee of twenty-five dollars.

For copies of opinions, ten 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 two dollars, except that there shall be no fee for an original certificate to be issued at the time of his admission.

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. [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.]

*"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 Specification of 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(5).*

**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(6).*

*Publication of supreme court opinions: State Constitution Art. 4 § 21.*

*Publication of supreme court 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(6).*

**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. [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.]

**2.32.170 Powers of commission.** 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.** 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 court holden by him 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. 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 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 class AA county shall be made by the majority vote of the judges in said county acting en banc; the appointments in class A counties and counties of the first class 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, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his duties shall take an oath to perform faithfully the duties of his office, and file a bond in the sum of two thousand

dollars for the faithful discharge of his duties. Such reporter in each court is hereby declared to be a necessary part of the judicial system of the state of Washington. [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.]

**2.32.200 Duties of official reporter.** It shall be the duty of each official reporter appointed under RCW 2.32.180 through 2.32.320 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. [1913 c 126 § 2; RRS § 42-2.]

**2.32.210 Salaries—Expenses in joint districts.** Each official reporter shall be paid compensation as follows:

- (1) In judicial districts comprised of class AA counties, such salary as shall be fixed by the judges of said counties and approved by the board of county commissioners of said class AA counties;
  - (2) In judicial districts having a total population of forty thousand or more, excluding class AA counties, fourteen thousand dollars per annum;
  - (3) In judicial districts having a total population of twenty-five thousand and under forty thousand, eight thousand four hundred dollars per annum;
- Said compensation shall be paid out of the current expense fund of the county where court is held.

In judicial districts comprising more than one county the judge or judges 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. [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 2.32.320, if the court, or either party to the suit or action, or his attorney, request a transcript, the official reporter 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 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 2.32.320 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 the defendant in any criminal case, a juvenile in any case determining such juvenile to be a delinquent or incorrigible child under RCW 13.04.010, or petitioner for a writ of habeas corpus has been judicially determined to have a constitutional right

to a free 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. [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.]

*Counsel—Right to—Fees: RCW 10.01.110.*

*"Folio" defined: RCW 1.16.040.*

*Indigent defendants—State to pay costs and fees incident to supreme court review: RCW 10.01.112.*

**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 To act as amanuensis in certain counties.** In all counties or judicial districts, except in class AA counties and class A counties and counties of the first class, such official reporter shall act as amanuensis to the court for which he is appointed. [1957 c 244 § 5; 1943 c 69 § 5; 1913 c 126 § 9; Rem. Supp. 1943 § 42-9.]

**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

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*Grand juries—Criminal investigations: Chapter 10.27 RCW.*

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*Jury trial, civil cases, challenging, procedure, etc.: Chapter 4.44 RCW.*

*Jury trial, criminal cases: Chapter 10.49 RCW.*

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*Juries, crimes relating to: Chapter 9.51 RCW.*

*Juries in eminent domain proceedings: Title 8 RCW.*

**2.36.010 Jury defined.** A jury is a body of men temporarily selected from the qualified inhabitants of a particular district, and invested with power—

- (1) To present or indict a person for a public offense.
- (2) To try a question of fact. [1891 c 48 § 1; RRS § 89.]

**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 Petit jury defined.** A petit jury is a body of men twelve or less in number in the superior court and six in number in courts of justices of the peace; drawn in the superior court by lot from the jurors in attendance upon the court at a particular session, and sworn to try and determine a question of fact; but in a justice's court the jury is drawn according to the mode specially provided for such court. [1972 ex.s. c 57 § 1; 1891 c 48 § 4; RRS § 92.]

**2.36.060 Petit jury, how drawn—Jury list—Procedure.** The judge or judges of the superior court of each county shall divide the county into not less than three jury districts, following the lines of voting precincts and arranging the districts in such manner that the population in each district shall be as nearly equal as may be, and the fixing of the boundaries of the district shall be evidenced by an order made by the court and entered upon its records.

For the purposes of this section the clerk or comptroller of each incorporated city or town designated as registrar of voters by Title 29 RCW, except the registrars of voters in the city or town which is the county seat of any county, shall prepare annually from the original registration files of voters of such city or town a list according to a procedure or formula established by the judge or judges of the superior court for the selection of prospective jurors from the original registration files of voters of the city or town which is the county seat of the county, and from the original registration files of rural precincts of voters. The list shall be divided into the respective voting precincts and shall specify with respect to each name appearing on said list all the information upon the original registration card of each qualified voter, and the said clerk or comptroller shall certify and file such list with the county auditor of his county on or before the first day of June of each year.

During the month of July of each year, the judge or judges of the superior court for each county shall select by lot, in the manner hereinafter set forth, from said lists and from the original registration files of voters of the city or town which is the county seat of the county, and from the original registration files of rural precincts

of voters in the office of the county auditor of said county, and enter in a book kept for that purpose and shall certify and file with the county clerk a jury list containing the names of a sufficient number of qualified persons to serve as jurors until the first day of August of the next calendar year. The judge or judges may call (but are not required to call) one or more electors from each or any of the jury districts to advise in the selection. Each such elector shall receive for his services the sum of five dollars per day and the mileage allowed sheriffs, upon vouchers approved by the judge or presiding judge of the county. In making the selection of jurors the judge or judges shall be bound by the list of names filed with the county clerk as in this section provided. At any time and from time to time the judges may add to the jury list in the same manner, and when this is done a certified list of the names added shall be filed with the clerk.

The number of persons selected from the several jury districts shall be as nearly as possible in proportion to the number of names on the list certified and filed with the county clerk for the several districts. Any woman who upon being listed upon the list as in this section provided shall claim her exemption to serve as a juror, shall not be listed in the preparation of the list of jurors.

The county clerk shall provide boxes sufficient in number to correspond with the number of jury districts fixed by the court, and numbered to correspond therewith, and having written the names appearing in the jury list for each district upon slips of paper, which shall be similar in size, quality of paper, and writing, shall deposit such slips in the jury box of the proper district. At the time of the drawing of names for any venire there must be in the jury boxes at least five times as many names as the number of names to be drawn.

The jury list shall be selected by the judge or judges in the following manner:

(1) The selection of precincts from which names are to be selected shall be by lot;

(2) The number of jurors selected from each precinct selected under subsection (1) shall, insofar as practicable, be equal;

(3) The selection of prospective jurors within a given precinct shall be by selection of names in a given and identical numbered sequence based upon the number of jurors to be selected therefrom. [1967 c 92 § 1; 1961 c 287 § 1; 1943 c 238 § 1; 1925 ex.s. c 191 § 1; 1921 c 26 § 1; 1911 c 57 § 3; Rem. Supp. 1943 § 96.]

**2.36.063 Jury list—Electronic data processing random selection method—Master jury list.** The judge or judges of the superior court of any county may, if they so choose, by local superior court rule, employ a properly programmed electronic data processing system or device to make random selection of jurors as required by RCW 2.36.060.

Upon determination that such system shall be employed, the judge or judges of the superior court shall direct the county auditor to provide the names and other information concerning all registered voters which have been filed with him by the registrar of voters pursuant to RCW 2.36.060.

In those counties employing the electronic data processing random selection method, the judge or judges of the superior court may determine that fair and random selection may be achieved without division of the county into three or more jury districts. Upon such determination, the judge or judges shall, during the month of July each year, order a master jury list to be selected by an unrestricted random sample from the names of all registered voters filed with the county auditor, without regard to location of precinct.

In those counties employing the electronic data processing random selection method, if the judge or judges of the superior court determine that the jury district procedure required for noncomputer jury selection is to be followed, the judge or judges shall divide the county into not less than three jury districts pursuant to RCW 2.36.060. The judge or judges shall during the month of July each year, order a master jury list to be selected by an unrestricted random sample from the names of all registered voters filed with the county auditor. Such list must contain as nearly as possible an equal number of jurors from each jury district.

The master jury list randomly selected shall contain names of a sufficient number of qualified voters to serve as jurors until the first day of August of the next calendar year, and shall be certified and filed with the county clerk. At any time the judge or judges may add to the jury list in the random selection manner by data process device as approved by the judge or judges. A certified list of the added names shall be filed with the county clerk. [1973 2nd ex.s. c 13 § 1.]

**2.36.070 Qualification of jurors.** No person shall be competent to serve as a juror in the superior courts of the state of Washington unless he be

- (1) an elector and taxpayer of the state,
- (2) a resident of the county in which he is called for service for more than one year preceding such time,
- (3) in full possession of his faculties and of sound mind, and
- (4) able to read and write the English language. [1971 ex.s. c 292 § 3; 1911 c 57 § 1; RRS § 94. Prior: 1909 c 73 § 1.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**2.36.080 Persons exempt.** Officers of the United States and of the state, attorneys at law, school teachers, practicing physicians, licensed embalmers, active members of the fire and police departments of any municipality, and all persons over sixty years of age, shall not be compelled to serve as jurors; and in preparing jury lists, the names of such persons, other than persons over sixty years of age, shall, if it be known that they are entitled to be excused from jury service, be omitted from the jury list: *Provided*, That the right of any such person to be excused from jury service shall not be cause for challenge as to his competency if he desires to serve. [1967 c 39 § 1; 1911 c 57 § 2; RRS § 95. Prior: 1909 c 73 § 2.]

*Members of state militia exempt from jury duty: RCW 38.40.090.*

*Personnel of certain state hospitals exempt from jury duty: RCW 72.23.050.*

*Telegraph company employees exempt: RCW 2.36.120.*

**2.36.090 Jury terms—Jury, how selected.** Jury terms shall commence on the first Monday of each month, and shall end on the Saturday preceding the first Monday of each month, unless the day of commencing or ending said term be changed by order of the judge or judges of the superior court; but it shall not be necessary to call a jury for any term in any county unless the judge or judges of the superior court of that county shall consider that there is sufficient business to be submitted to a jury to require that one be called. When the judge or judges of the superior court of any county shall deem that the public business requires a jury term to be held, he or they shall require the county clerk to draw jurors to serve for the ensuing term. The county clerk, not more than forty nor less than fourteen days preceding the beginning of a jury term, shall be blindfolded, and in the presence of the judge or one of the judges or of a court commissioner of the superior court shall draw from the jury boxes the names of such number of persons as may have been ordered summoned as jurors for the ensuing term: *Provided*, That at any time or for any period or periods of time the judge or judges may direct by rule or order that all or any number or proportion of the jurors thereafter to be drawn shall be drawn to serve for two successive terms, to the end that not all of the jurors serving during a given period shall cease their service at the same time. The names shall be drawn in equal numbers from each jury box, and before the drawing is made the boxes shall be shaken up so that the slips bearing the names thereon may be thoroughly mixed, and the drawing of the slips shall depend purely upon chance. [1965 c 65 § 1; 1925 ex.s. c 191 § 2; 1911 c 57 § 4; RRS § 97. Prior: 1909 c 73 § 4.]

**2.36.093 Selection of jurors—Electronic data processing random selection method.** At such time as the judge or judges of the superior court of any county shall deem that the public business requires a jury term to be held, he or they shall direct the county clerk to select jurors to serve for the ensuing term, pursuant to RCW 2.36.090. In any county in which the judge or judges have chosen to employ the electronic data process random selection method as provided for in RCW 2.36.063, the county clerk shall within the first fifteen days of the calendar month preceding the month on which the jurors are to be called to serve, cause the names of the jurors to be selected from the master list of prospective jurors for the year placed on file in his office.

The name of a person once selected for a jury term shall be excluded from selection of jurors for subsequent terms in that jury year unless otherwise ordered by the judge or judges of superior court: *Provided*, That at any time or for any period or periods of time, the judge or judges may direct by rule or order that all or any number or proportion of the jurors thereafter to be selected shall be selected to serve for two successive

terms, to the end that not all of the jurors serving during a given period shall cease their service at the same time.

It shall be the duty and responsibility of the judge or judges of the superior court to insure that such electronic data processing system or device is employed so as to insure continued random selection of the master jury list and jurors. To that end, the judge or 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 RCW 2.36.063 and 2.36.093 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 jurors is achieved. [1973 2nd ex.s. c 13 § 2.]

**2.36.100 Excuse from service—Reasons.** A person summoned as a juror may be excused from acting as such on account of any of the reasons stated in RCW 2.36.080 hereof; when his own health requires, on account of death in his family, or of illness in his family of such character that he is required to be in attendance thereupon, or when his business interests would be seriously prejudiced by such service. No person, however, shall be excused from service as a juror on account of business reasons unless his service is such as would lead to the waste or destruction of his property; and unless it shall appear that after having been summoned as a juror he had made every reasonable effort to permit of his serving as a juror without causing waste or destruction of his property. When excused for any of the foregoing reasons, or for any reason deemed sufficient by the court, the name of the juror so excused shall remain upon the jury list from which jurors are drawn, and his name returned to the jury box from which it was drawn. Any person applying to be excused from jury service for any of the causes herein specified, may be placed upon oath or affirmation to testify truly in all respects as to the cause for such excuse, and that he will answer truly any question put to him by the judge with respect thereto. [1911 c 57 § 7; RRS § 100. Prior: 1909 c 73 § 7.]

**2.36.110 Judge must excuse unfit persons.** It shall be the duty of a superior 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. [1925 ex.s. c 191 § 3; RRS § 97-1.]

**2.36.120 Telegraph company employees exempt.** All operators, clerks and persons in the employ of any telegraph company, whilst employed in the offices of said company, or along the route of its telegraph line, shall be exempt from militia duty and from serving on juries, and from any fine or penalty for the neglect thereof. [Code 1881 § 2351; 1866 p 74 § 10; RRS § 11358.]



**2.36.130 Additional names—Open venire by stipulation.** If for any reason the jurors drawn for service upon a petit 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 the superior court may draw from the jury list such additional names as they may consider necessary, and the persons whose names are so drawn shall thereupon be summoned to serve as jurors forthwith. The judge or judges drawing such additional names, may, in his or their discretion, order and direct that, of such additional jurors, only those living nearest to the county seat or most conveniently reached and found shall be at first summoned by the sheriff, and at any time when a sufficiency of such persons has been summoned and produced in court, such judge or judges may, in his or their discretion, order and direct the sheriff not to summon the remainder of the additional jurors so drawn. By stipulation or agreement made in open court as a part of the record, the parties to any action may agree that an open venire may be issued to make up a jury in that action, and upon order of the court approving such stipulation and directing the number of jurors to be drawn, the clerk shall issue an open venire, and the sheriff shall fill the same by summoning from the bystanders, or elsewhere, a sufficient number of persons to fill the open venire. [1911 c 57 § 6; RRS § 99.]

**2.36.140 Separation of jury.** In no action or proceeding whatever, except felony cases shall the jury sworn to try the issues therein be kept together and in the custody of the officers of the court, save during the actual progress of the trial, until the case shall have been finally submitted to them for their decision. Whenever the jury are kept together in the custody of the officers when the trial is not in progress, they shall be supplied with meals at regular hours, and with comfortable sleeping and toilet accommodations. [1911 c 57 § 8; RRS § 101. Prior: 1909 c 73 § 8.]

*Admonitions to jurors—Separation: RCW 4.44.280.*

*Care of jury while deliberating: RCW 4.44.300.*

*Custody of jury in criminal case: RCW 10.49.110.*

**2.36.150 Compensation of jurors.** Each grand and petit juror shall receive for each day's attendance upon the superior or any inferior court in the state of Washington, besides mileage, ten dollars; for each day's attendance upon a justice of the peace court, four dollars; and for serving on a coroner's jury, per day, four dollars; mileage, each way, per mile, ten cents: *Provided*, That a person excused from jury service at his 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. [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.]

*Travel expense in lieu of mileage in certain cases: RCW 2.40.030.*

**2.36.160 Jury of inquest defined.** A jury of inquest is a body of men six in number summoned from the qualified inhabitants of a particular district, before the coroner or other ministerial officer, to inquire of particular facts. [1891 c 48 § 5; RRS § 93.]

*County coroner: Chapter 36.24 RCW.*

*Human remains: Chapter 68.08 RCW.*

## 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 26-37.*

*Justice courts, witnesses: Chapter 12.16 RCW.*

*Utilities and transportation commission proceedings, witness fees: RCW 80.04.040, 81.04.040.*

*Witnesses: Chapters 5.56 and 5.60 RCW.*

*Witness fees and mileage in criminal cases: RCW 10.01.130, 10.01.140, 10.52.040.*

**2.40.010 Witness fees and mileage.** Witnesses shall receive for each day's attendance in all courts of this state, besides mileage at ten cents per mile each way, four dollars. [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.]

*Salaried public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.*

**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.]

**Reviser's note:** It is doubtful whether this section is now of any force except as to witnesses. As to public officers see RCW 36.17.030 and chapter 43.03 RCW. As to jurors, whatever may have been true in territorial days, they are not now required to travel from one county to another.

*Compensation of jurors:* RCW 2.36.150.

*County officers—Expenses:* RCW 36.17.030.

*Courts are always open except on nonjudicial days:* State Constitution Art. 4 § 6 (Amendment 28).

*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 FOR IMPAIRED PERSONS INVOLVED IN LEGAL PROCEEDINGS

##### Sections

2.42.010	Legislative declaration—Intent.
2.42.020	Definitions.
2.42.030	Appointment of interpreters.
2.42.040	Interpreters—Compensation and expenses—Costs.
2.42.050	Oath.

**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 spoken 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. [1973 c 22 § 1.]

**2.42.020 Definitions.** As used in this chapter (1) an "impaired person" is any person involved in a legal proceeding who is deaf, deaf mute, or who, because of other hearing or speech defects, cannot readily understand or communicate spoken language and who, when involved as a party to a legal proceeding, is unable by reason of such defects to obtain due process of law; (2) a "qualified interpreter" is one who is able readily to translate spoken English to and for impaired persons and to translate statements of impaired persons into spoken English; (3) "legal proceeding" is a proceeding in any court in this state, at grand jury hearings or hearings before an inquiry judge, or before administrative boards, commissions, agencies, or licensing bodies of the state or any political subdivision thereof. [1973 c 22 § 2.]

**2.42.030 Appointment of interpreters.** When an impaired person is a party to any legal proceeding or a witness therein the judge, magistrate, or other presiding official shall, in the absence of a written waiver by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. [1973 c 22 § 3.]

**2.42.040 Interpreters—Compensation and expenses—Costs.** Interpreters appointed pursuant to this chapter shall be adequately compensated for their services and shall be reimbursed for actual expenses as hereinafter provided:

(1) In criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the proceedings.

(2) In other legal proceedings the cost of providing the interpreter shall be borne by the impaired person unless the impaired person is indigent, pursuant to adopted standards of the body, and thus unable to pay for the interpreter, in which case the cost shall be borne as an administrative cost of the governmental body under the authority of which the proceeding is conducted.

(3) The cost of providing the interpreter may be a taxable cost of any proceeding in which costs are ordinarily taxed. [1973 c 22 § 4.]

**2.42.050 Oath.** Every qualified interpreter appointed pursuant to this chapter shall, before entering upon his duties as such, take an oath that he will make a true interpretation to the person being examined of all the proceedings in a language which said person understands, and that he will repeat the statements of said person to the court or other agency conducting the proceedings, in the English language, to the best of his skill and judgment. [1973 c 22 § 5.]

### 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	Proceedings on death or removal of attorney.

**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 attorney's 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 Proceedings on death or removal of attorney.** 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.
2.48.040	State bar governed by board of governors.
2.48.050	Powers of governors.
2.48.060	Admission and disbarment.
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2.48.220	Grounds of disbarment or suspension.
2.48.230	Code of ethics.

**Rules of court:** See *Code of professional responsibility, Discipline rules for attorneys, also Admission to practice rules.*

*Judicial council, membership on:* RCW 2.52.010.

**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.]

The foregoing annotations apply to RCW 2.48.010 to 2.48.180, inclusive.

**Short title:** "This act may be known and cited as the State Bar Act." [1933 c 94 § 1.]

**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: *Provided, however,* That the present members of the board of governors in office on May 23, 1972 shall hold office for their remaining terms 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. [1972 ex.s. c 66 § 1; 1933 c 94 § 5; RRS § 138-5.]

**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.]

*Board of governors designates five members of Statute Law Committee: RCW 1.08.001.*

**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 Discipline rules for attorneys, 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.]

**2.48.120 Admission of presiding officer of house or senate.** Any person who has served as presiding officer of either the house of representatives or the senate of the state of Washington as speaker of the house or president of the senate for six consecutive regular sessions of the legislature may be admitted to the practice of law in the state of Washington and to membership in the Washington State Bar Association without examination, upon motion made before the supreme court of the state of Washington. [1945 c 181 § 6; Rem. Supp. 1945 § 138-7F.]

**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 2B(5), 2C, and 3B(5).*

**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 7.*

**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 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. [1933 c 94 § 14; RRS § 138-14.]

*Rules of court: Discipline—DRA 1.1(b).*

*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 as an attorney or counselor at law or qualified to do work of a legal nature, unless he 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 own case in any action or proceeding brought by or against him, or may appear in his own behalf in the small claims department of the justice's 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 state grants the same right to attorneys of this state. [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 7.

#### 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, coroner, or deputy sheriff; 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 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 preclude a judge or justice of a court of this state from finishing any business by him undertaken in a court of the United States prior to his becoming a judge or justice. [1971 c 81 § 13; 1921 c 126 § 5; RRS § 139-5.]

**Rules of court:** *Judicial ethics*—CJE 31.

*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 5C and 5G.

**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:** *Discipline*—DRA 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 canons of professional ethics, also canons of judicial ethics.

**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 Legal aid 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 Legal aid 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 1st 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.
2.52.040	Meetings.
2.52.050	Duties.
2.52.060	Reports to council.
2.52.070	Hearing—Oaths—Subpoenas.
2.52.080	Expenses of members.

**2.52.010 Council created—How constituted.** There is hereby established a judicial council which shall consist of the following:

(1) The chief justice and one other judge of the supreme court, to be selected and appointed by the chief justice of the supreme court;

(2) Two judges of the court of appeals, to be selected and appointed by the three chief judges of the three divisions thereof;

(3) Two judges of the superior court, to be selected and appointed by the superior court judges' association;

(4) Three members of the state senate, no more than two of whom shall be members of the same political



party, one of whom will be the chairman of the senate judiciary committee and the other two to be designated by the chairman; three members of the state house of representatives, no more than two of whom shall be members of the same political party, one of whom shall be the chairman of the house judiciary committee and the other two to be designated by the chairman; unless the house judiciary committee is organized into two sections, in which case the chairman of each section shall be a member and they shall designate the third house member;

(5) The dean of each recognized school of law within this state;

(6) Five members of the bar who are practicing law and at least one of whom is a prosecuting attorney, three to be appointed by the chief justice of the supreme court with the advice and consent of the other judges of the court, 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;

(8) Two judges from the courts of limited jurisdiction chosen by the Washington state magistrates' association; and

(9) A county clerk to be selected and appointed by the Washington state association of county clerks. [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 state law librarian shall be recording secretary, and he shall keep in his office records of the proceedings and acts of the council. 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. [1925 ex.s. c 45 § 3; RRS § 10959-3.]

**2.52.040 Meetings.** A meeting of the council shall be held at the seat of government on the second Monday of September of 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. [1925 ex.s. c 45 § 4; RRS § 10959-4.]

**2.52.050 Duties.** It shall be the duty of the council

(1) Continuously to survey and study the operation of the judicial department of the state, the volume and condition of business in the courts, whether of record or not, the methods of procedure therein, the work accomplished, and the character of the results;

(2) To receive and consider suggestions from judges, public officers, members of the bar, and citizens as to remedies for faults in the administration of justice;

(3) To devise ways of simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in the administration of justice;

(4) 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;

(5) To report biennially to the governor and the legislature on the condition of business in the courts, with the council's recommendations as to needed changes in the organization of the judicial department or the courts or in judicial procedure; and

(6) To assist the judges in giving effect to Art. 4 § 25 of the state Constitution. [1925 ex.s. c 45 § 5; RRS § 10959-5.]

**2.52.060 Reports to council.** Judges and other officers of the courts, whether of record or not, and all other state, county and municipal officers shall render to the council such reports as it may request on matters within the scope of its duty to inquire. [1925 ex.s. c 45 § 6; RRS § 10959-6.]

**2.52.070 Hearing—Oaths—Subpoenas.** The council may hold public meetings and hearings, and shall have power to require the attendance of witnesses and the production of books and documents. Every member of the council shall have power to administer oaths and to issue subpoenas requiring the attendance of witnesses and the production of books and documents before the council, and the superior court shall have power to enforce obedience to such subpoenas and to compel the giving of testimony. [1925 ex.s. c 45 § 7; RRS § 10959-7.]

**2.52.080 Expenses of members.** A member of the council shall not receive compensation for his services but shall be allowed his actual necessary expenses when traveling on business of the council. [1925 ex.s. c 45 § 8; RRS § 10959-8.]

**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.
2.56.040	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—Traveling, living expenses.  
 2.56.080 Chapter applies to supreme, superior, inferior courts and court of appeals.  
 2.56.090 Disbursement of appropriated funds.

**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 not to exceed ninety percent of the salary of a judge of the superior court. [1974 1st ex.s. c 156 § 1; 1969 c 93 § 1; 1957 c 259 § 1.]

**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 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; and

(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) Attend to such other matters as may be assigned by the supreme court of this state. [1957 c 259 § 3.]

**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 and 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, and of 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 his necessary expenses to be paid from state appropriations made for the purposes of this chapter. [1957 c 259 § 6.]

**2.56.070 Holding court in another county—Traveling, living 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 the amount of his actual traveling and living expenses. [1957 c 259 § 7.]

**2.56.080 Chapter applies to supreme, superior, inferior courts and court of appeals.** 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 inferior courts of this state, including justice courts. [1971 c 81 § 14; 1957 c 259 § 8.]

**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.]

### 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.

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

**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.]



# TITLE 3

## JUSTICES OF THE PEACE AND CONSTABLES

### Chapters

- 3.04 Justices of the peace.
- 3.08 Constables.
- 3.12 Justices and constables in cities.
- 3.14 Justice court districts.
- 3.16 Salaries and fees.
- 3.20 Jurisdiction and venue.
- 3.24 Night courts.
- 3.28 Contempt.

### JUSTICE COURTS AND OTHER INFERIOR COURTS—1961 BASIC ACT

- 3.30 Justice courts.
- 3.34 Justices of the peace.
- 3.38 Justice court districts.
- 3.42 Justice 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.*

*Justice courts—Civil procedure: Title 12 RCW.*

*Justice or constable levying demand or promising reward: RCW 9.12.020.*

*Municipal courts, cities, over five hundred thousand: Chapter 35.20 RCW.*

*Persons convicted in justice court may be placed under supervision of county probation officer: RCW 9.92.060, 9.95.210.*

*Rules for courts of limited jurisdiction: Volume 0.*

### Chapter 3.04 JUSTICES OF THE PEACE

#### Sections

- 3.04.010 Election of justices of the peace.
- 3.04.030 Qualifications, terms of office, powers—  
Disqualification.
- 3.04.040 Eligibility.
- 3.04.050 Certificate of election—Oath.
- 3.04.060 Official bond.
- 3.04.070 Action upon bond.
- 3.04.080 Term of office.
- 3.04.090 Location of office—Process.
- 3.04.100 Effect of division of precinct.
- 3.04.110 Docket—Contents.
- 3.04.120 Separate docket for small claims department.
- 3.04.130 Vacancy—Delivery of records—Completion of  
business.
- 3.04.140 Penalty for default.
- 3.04.150 Not to office with attorney—Exception.

*Judiciary and judicial power: State Constitution Art. 4.*

**3.04.010 Election of justices of the peace.** At each general election for the election of county and precinct officers, there shall be elected by the qualified electors of each election precinct one or more justices of the peace. [1955 c 11 § 1. Prior: 1888 p 120 § 1; 1854 p 222 § 1; RRS § 7544.]

**3.04.030 Qualifications, terms of office, powers—Disqualification.** The qualifications, terms of office, duties, powers, and jurisdiction of justices of the peace shall be as provided by law, except that no justice of the peace shall have jurisdiction of any action brought to enforce or collect any claim or demand which said justice had, in any manner, attempted to collect as agent or otherwise. [1955 c 11 § 2; 1888 p 120 § 4; RRS § 7546.]

*Self interest: Rules of court: CJE 29.*

**3.04.040 Eligibility.** No person shall be eligible to the office of justice of the peace who is not a citizen of the United States and the state, and an elector of the precinct in which he is elected; nor shall any sheriff, coroner, or clerk of the superior court be eligible to or hold the office. [1955 c 11 § 3; Code 1881 § 1691; 1854 p 223 § 3; RRS § 7547.]

*Election to hold public office: RCW 42.04.020.*

**3.04.050 Certificate of election—Oath.** Every person elected justice of the peace shall be entitled to a certificate of election, and shall take an oath of office; which oath shall be indorsed on the back of the certificate of election, and together with the certificate, filed in the office of the county auditor. [1955 c 11 § 4; Code 1881 § 1692; 1854 p 223 § 4; RRS § 7548.]

*Election procedure for judicial offices: RCW 29.21.070.*

**3.04.060 Official bond.** Every person elected a justice of the peace shall, at the time of filing his oath of office in the office of the county auditor, enter into a bond to the state, with two or more sureties, residents of the county, or a corporate surety to be approved by the board of county commissioners, if in session, and if not in session, by the chairman of such board, and to be filed and recorded in the office of the county clerk, in the sum of five hundred dollars, conditioned that he will faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office

as justice of the peace. The bond may be in the following form:

Know all men by these presents, that we J P, A B, and C D, are held and firmly bound unto the state of Washington, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors, and administrators.

Sealed with our seals; dated this ----- day of -----, A.D. 19--.

Whereas, the said J P has been duly elected a justice of the peace in and for the precinct of ----- in the county of -----, A.D. 19--. Now the condition of the above obligation is such that if the said J P shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise in full force. [1955 c 11 § 5; Code 1881 § 1693; 1854 p 223 § 5; RRS § 7549.]

**3.04.070 Action upon bond.** The bond shall be filed in the office of the county clerk, and every person aggrieved by a breach of the condition thereof may, by an action upon the bond, have a judgment against the justice and his sureties for such sum as he may show himself entitled to, with costs, and interest at the rate of twenty-five percent per annum. Upon any such judgment stay of execution shall not be allowed. [1955 c 11 § 6; Code 1881 § 1694; 1854 p 223 § 6; RRS § 7550.]

**3.04.080 Term of office.** Every justice of the peace shall hold office for a term of four years and until his successor is elected and qualified. [1955 c 11 § 7; Code 1881 § 1695; 1854 p 224 § 7; RRS § 7551.]

**3.04.090 Location of office—Process.** Every justice of the peace shall keep his office in the precinct, or in the case of a justice court district, in the district, and not elsewhere, but he may issue process in any place in his county. [1951 c 156 § 14; Code 1881 § 1707; 1873 p 333 § 14; 1854 p 226 § 20; RRS § 48.]

*Territorial jurisdiction of justice of peace: RCW 3.20.050, 3.20.090.*

**3.04.100 Effect of division of precinct.** When a precinct shall be divided, and any justice of the peace of the original precinct shall fall into the new one, he shall continue to discharge the duties of justice of the peace until his term of office expires, and his successor is elected and qualified. [Code 1881 § 1703; 1854 p 224 § 10; RRS § 7552.]

**3.04.110 Docket—Contents.** Every justice of the peace shall keep a docket in a well bound book, in which he shall enter:

- (1) The titles of all actions commenced before him;
- (2) The object of the action or proceeding, and if a sum of money is claimed, the amount of the demand;
- (3) The date of the notice, and the time of its return; and if an order to arrest the defendant is made, the statement of the facts on which the order is issued;
- (4) The time when the parties, or either of them, appear, or their nonappearance, if default is made;

(5) A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any setoff is pleaded, a similar statement of the setoff and the amount estimated, and every motion, rule, order, and exception, with the decision of the court thereon;

(6) Every continuance, stating at whose request, and for what time;

(7) The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and return of the jury;

(8) The names of the jurors who appear and are sworn; the names of witnesses sworn, and at whose request;

(9) The verdict of the jury, and when received; and if the jury disagrees and is discharged, the fact of such disagreement and discharge;

(10) The judgment of the court, and the time when rendered;

(11) The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt and costs, and the fees due to each person separately;

(12) The fact of an appeal having been made and allowed, and the time when;

(13) Satisfaction of the judgment, or any money paid thereon, and the time when;

(14) And such other entries as may be material. [1955 c 11 § 8; Code 1881 § 1724; 1873 p 339 § 31; 1854 p 227 § 25; RRS § 1770.]

**3.04.120 Separate docket for small claims department.** Each justice of the peace shall keep a separate docket for the small claims department of his court, in which he shall make a permanent record of all proceedings, orders and judgments had and made in such small claims department. [1919 c 187 § 12; RRS § 1777-12.]

*Small claims: Chapter 12.40 RCW.*

**3.04.130 Vacancy—Delivery of records—Completion of business.** If any justice of the peace dies, resigns, or removes out of the precinct or justice court district for which he was elected, or his term of office is in any other manner terminated, the docket books, records, and papers appertaining to his office, or relating to any suit, matter, or controversy committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, or in the case of a justice of a justice court district, to the justice of the nearest justice court district, who may thereupon proceed to hear, try, and determine such matter, suit, or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such suit or matter was commenced to have done.

If there is no other justice of the peace in the precinct, the docket books, records, and papers shall be delivered to the county auditor, who, on demand, shall deliver them to a justice of said precinct, when there is one qualified therein, who shall exercise the same powers as though they had been originally delivered to him. [1951 c 156 § 15; Code 1881 § 1704; 1854 p 224 § 11; RRS § 7553.]

**3.04.140 Penalty for default.** Every person whose duty it is to deliver over the dockets, books, records and papers as prescribed in RCW 3.04.130, shall forfeit and pay, for the use of the county, fifteen dollars for every three months' neglect to perform such duty, which sum may be recovered at the suit of any person. [Code 1881 § 1705; 1854 p 224 § 12; RRS § 7554.]

**3.04.150 Not to office with attorney—Exception.** No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice of the peace. [Code 1881 § 1708; 1873 p 333 § 15; 1854 p 226 § 21; RRS § 49.]

*Right of justice of peace to act as attorney: RCW 2.28.040.*

### Chapter 3.08 CONSTABLES

Sections	
3.08.010	Election of constables.
3.08.020	Conduct of election.
3.08.030	Oath.
3.08.040	Bond.
3.08.050	Vacancies.
3.08.060	Duties generally.
3.08.065	County commissioners may alter powers and duties.
3.08.070	Limitation of jurisdiction in class A counties.
3.08.080	County commissioners may abolish office.

**3.08.010 Election of constables.** At each general election for the election of county officers there may be elected by the qualified electors of each precinct as many constables as there are justices of the peace elected, or authorized to be elected therein. [1953 c 237 § 1; Code 1881 § 2796; 1854 p 225 § 13; RRS § 7555.]

**3.08.020 Conduct of election.** The election of constables shall be conducted, and the return of such election made, and certificates of election issued in the same manner as in elections of justice of the peace. [Code 1881 § 2798; 1854 p 225 § 15; RRS § 7557.]

**3.08.030 Oath.** Every person elected or appointed a constable, shall, within twenty days after receiving his certificate of election, take an oath before any person authorized to administer oaths, that he will support the Constitution of the United States, and the laws of this state, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be indorsed on the back of the certificate of election, or appointment, and filed, together with the certificate, in the office of the auditor of the proper county. [Code 1881 § 2799; 1854 p 225 § 16; RRS § 7558.]

**3.08.040 Bond.** Every person elected or appointed to the office of constable shall, within the time prescribed for filing his oath of office, enter into a bond to the state with two or more sureties, residents of the county, or a corporate surety, in the sum of one thousand dollars, conditioned that he will execute all process to him

directed and delivered, and pay over all moneys received by him by virtue of his office, and in every respect discharge all the duties of constable according to law. The bond shall be approved, by the board of county commissioners, if in session, and if not in session, by the chairman of such board and filed and recorded in the office of the county clerk. [1955 c 11 § 9; Code 1881 § 2800; RRS § 7559.]

**3.08.050 Vacancies.** All vacancies existing in the offices of constable, whether happening by death, resignation or failure to elect or otherwise, may be filled by appointment by the board of commissioners of the proper county; and every person so appointed shall hold his office until the next election. [Code 1881 § 2797; 1854 p 225 § 14; RRS § 7556.]

**3.08.060 Duties generally.** Any constable may, within his county, serve any writ, process or order, lawfully directed to him by any justice of the peace, judge of the superior court, or coroner, and generally do and perform all acts, by law required of constables. It shall be the duty of all constables to make complaint of all violations of the criminal law, which come to their knowledge, within their respective jurisdictions. [1955 c 11 § 10. Prior: (i) 1854 p 225 § 18; Code 1881 § 2801; RRS § 7560. (ii) 1869 p 264 § 311; Code 1881 § 2801; RRS § 4173, part.]

*Other duties of constables: RCW 12.04.060.*

**3.08.065 County commissioners may alter powers and duties.** The county commissioners of any county may, by resolution, broaden or restrict the powers and duties of constables in that county: *Provided*, That no constable shall be given powers or duties broader than those provided by law for constables or for deputy sheriffs: *Provided further*, That such a resolution shall not affect the length of term nor amount of compensation of any constable holding office at the time the resolution is adopted during the balance of his unexpired term. [1953 c 237 § 3.]

**3.08.070 Limitation of jurisdiction in class A counties.** In a class "A" county no constable shall have jurisdiction to serve a warrant for any criminal offense committed outside of the boundaries of his precinct or to serve a search warrant for the seizure of property located outside his precinct, nor shall he as such make any arrests or detain any person or persons for any violation of any law or laws concerning motor vehicles and the operation thereof, except when serving a warrant duly issued by the justice of the peace upon a complaint regularly filed with the justice of the peace. [1941 c 64 § 1; 1935 c 138 § 1; Rem. Supp. 1941 § 7560-1.]

**3.08.080 County commissioners may abolish office.** The county commissioners of any county may, by resolution, abolish the office of constable in that county: *Provided*, That the resolution shall not affect the length

of term nor the amount of compensation of any constable holding office at the time the resolution is adopted for the balance of his unexpired term. [1953 c 237 § 2.]

### Chapter 3.12 JUSTICES AND CONSTABLES IN CITIES

#### Sections

- 3.12.010 Number in cities of not more than five thousand.  
 3.12.021 Number in cities of five thousand or more.  
 3.12.041 Election of justices—Cities of five thousand or more—Term of office.  
 3.12.051 Increase in justices or constables—Vacancies.  
 3.12.071 Justices must be attorneys in cities of five thousand or more.  
 3.12.080 Exchange of service by justices in first class city.  
 3.12.090 Clerks.

Justice court districts: Chapter 3.14 RCW.

**3.12.010 Number in cities of not more than five thousand.** Each incorporated city in the state having a population of not more than five thousand inhabitants, together with the adjoining precincts, if any lying partly within and partly without such city shall, for the purposes of this title, and for fixing and limiting the number of justices of the peace to be elected in such city, be deemed and considered one precinct, and the qualified electors within the limits thereof shall vote for and elect two justices of the peace, and no more. [1955 c 11 § 11; 1888 p 120 § 3; RRS § 7562.]

**3.12.021 Number in cities of five thousand or more.** The number of justices of the peace to be elected in cities having a population of five thousand or more, according to the last census, shall be as follows: Five thousand to thirty thousand, one; thirty thousand to seventy-five thousand, two; seventy-five thousand to one hundred twenty-five thousand, three; one hundred twenty-five thousand to one hundred seventy-five thousand, four; and one additional for each one hundred fifty thousand or major fraction thereof above one hundred seventy-five thousand. [1957 c 203 § 1; 1955 c 11 § 12; 1951 c 156 § 1. Prior: (i) 1888 p 120 § 2; RRS § 7562. (ii) 1897 c 66 § 1; RRS § 7563. (iii) 1899 c 85 § 1; RRS § 7564. (iv) 1905 c 105 § 1; RRS § 7570. (v) 1913 c 41 § 1; 1915 c 110 § 1; RRS § 7565. (vi) 1913 c 41 § 2; RRS § 7566.]

**3.12.041 Election of justices—Cities of five thousand or more—Term of office.** All justices of the peace in cities of five thousand population or more shall be elected at the general election to be held in November, 1954, and quadrennially thereafter and their terms of office shall be for four years from the second Monday in January following their election. [1951 c 156 § 6.]

**3.12.051 Increase in justices or constables—Vacancies.** Whenever there is a vacancy or it shall appear that any city is entitled to an increase in the number of justices of the peace or constables, the board of county commissioners of the county in which such city is located shall immediately fill such vacancy and/or appoint such additional officers and they shall hold office

until their successors are elected at the next general election and duly qualified. [1951 c 156 § 7. Prior: 1913 c 41 § 2; RRS § 7566.]

**3.12.071 Justices must be attorneys in cities of five thousand or more.** Justices of the peace in cities of five thousand population or more shall be attorneys at law duly admitted to practice in this state. [1957 c 203 § 2; 1951 c 156 § 2. Prior: 1913 c 41 § 2; RRS § 7566.]

**3.12.080 Exchange of service by justices in first class city.** A justice of the peace of any city of the first class may hold the court of any other justice of the peace of said city at the written request of such other justice of the peace, and while so acting shall be vested with all the powers of the justice of the peace for whom he so holds court while holding the same, and all proceedings had before the attending justice of the peace shall be entered in the docket of the justice of the peace for whom he so holds court. [1931 c 63 § 1; RRS § 7565-1.]

**3.12.090 Clerks.** In cities of the first class of one hundred thousand population or more, where there are two or more justices of the peace, such justices acting as a board shall have the power to appoint one chief clerk at a salary to be fixed by the board of county commissioners and such assistant clerks as may be found necessary by said justices, not exceeding the number of justices unless authority to appoint additional clerks be obtained from the board of county commissioners, the salaries of said clerks to be designated by the county commissioners, and paid in the same manner and at the same time as said justices. The board of county commissioners may allow justices of the peace in cities of over ten thousand population and less than one hundred thousand population, one clerk, and the board of county commissioners shall furnish for the use of each of the justices provided for in this section a suitable office room; and also, they shall furnish to each of the said justices and constables all necessary books, blanks and stationery for conducting the public business of his office; said office room, books, blanks, and stationery to be paid for on the warrant of the auditor out of the general fund [current expense fund] of the county. [1943 c 21 § 1; 1917 c 102 § 1; 1891 c 7 § 8; Rem. Supp. 1943 § 7583.]

### Chapter 3.14 JUSTICE COURT DISTRICTS

#### Sections

- 3.14.020 Election of district justice—Term of office.  
 3.14.050 County to furnish office and clerical help.  
 3.14.060 Transfer of pending cases to district justice.

**3.14.020 Election of district justice—Term of office.** There shall be one justice of the peace elected for each justice court district at the general election to be held in November, 1954, and quadrennially thereafter, and their terms of office shall be for four years from the second Monday in January following their election and until their successors are elected and qualified. [1951 c 156 § 10.]



**3.14.050 County to furnish office and clerical help.** The board of county commissioners shall furnish for the use of each district justice of the peace suitable office space, books, stationery, clerical assistance and equipment necessary for conducting the public business, the cost thereof to be paid out of the current expense fund of the county. [1951 c 156 § 9.]

**3.14.060 Transfer of pending cases to district justice.** Upon the second Monday of January, 1955, each justice of the peace of a precinct which is a component part of a justice court district shall deliver to the justice of the justice court district, the docket books, records, accounts, funds, and papers pertaining to his office, or relating to any suit, matter, or controversy committed to him in his official capacity, and the justice of the justice court district may thereupon proceed to hear, try, and determine such matter, suit, or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such suit or matter was commenced to have done. [1951 c 156 § 13.]

### Chapter 3.16 SALARIES AND FEES

#### Sections

- 3.16.002 Justices' salaries—Cities of five to twenty thousand—Private practice.
- 3.16.004 Justices' salaries—Cities over twenty thousand—Full time—Allocation.
- 3.16.008 Payment of justices' salaries.
- 3.16.010 Constable salaries—Cities of five thousand to thirty-five thousand.
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- 3.16.120 Fee books to be kept—Salaried justices and constables—Cities over five thousand.
- 3.16.130 Procedure for remitting fees and fines—Salaried justices and constables—Cities over five thousand.
- 3.16.140 Fees payable in advance—Salaried justices and constables—Cities over five thousand.
- 3.16.150 Fees to salary fund—Salaried justices and constables—Cities over five thousand.
- 3.16.160 Fines and unclaimed fees of nonsalaried justice.

*Fees paid justice without jurisdiction—Disposition: RCW 3.20.080.*

**3.16.002 Justices' salaries—Cities of five to twenty thousand—Private practice.** The salaries of justices of the peace in cities having a population of five thousand but less than twenty thousand shall be two thousand four hundred dollars each per annum, and such justices of the peace may engage in private practice of law: *Provided*, That the county commissioners shall have the power to raise the salaries of such justices of the peace to an amount not to exceed three thousand six hundred dollars each per annum. [1953 c 206 § 5; 1951 c 156 § 3.]

**3.16.004 Justices' salaries—Cities over twenty thousand—Full time—Allocation.** Effective the second Monday in January, 1967, in cities having a population of more than twenty thousand, the justices of the peace shall devote their full time to the duties of the office and shall not engage in the practice of law; the annual salary shall be eighteen thousand dollars: *Provided further*, That where justices of the peace in cities over the population of twenty thousand are also acting as police judges, five thousand dollars of their salaries as hereinabove provided shall be charged against the counties and the remainder shall be paid by the municipality. [1969 c 52 § 2; 1965 ex.s. c 110 § 6; 1951 c 156 § 4.]

**3.16.008 Payment of justices' salaries.** The salaries of the justices of the peace shall be paid monthly out of the county treasury, and from the same funds out of which other salaried county officers are paid. The county auditor, on the first Monday of each month, shall draw his warrant upon the county treasurer in favor of each of the justices for the amount of the salary due him for the preceding month: *Provided*, That the auditor shall not draw his warrant for the salary of any justice of the peace for any month until the justice first shall have filed his duplicate receipt with the auditor, properly signed by the treasurer, showing that he has made the statement and settlement for that month. [1955 c 11 § 13; 1951 c 156 § 5. Prior: 1891 c 7 § 7; RRS § 7582.]

**3.16.010 Constable salaries—Cities of five thousand to thirty-five thousand.** In cities with a population of more than five thousand and not more than thirty-five thousand inhabitants, the constable shall receive an annual salary of seven hundred and twenty dollars. [1955 c 11 § 14; 1897 c 66 § 2; RRS § 7571.]

**3.16.020 Constable salaries—Cities of thirty-five thousand to one hundred thousand.** In cities with more than thirty-five thousand and not more than one hundred thousand inhabitants, each constable shall receive an annual salary of nine hundred and sixty dollars. [1955 c 11 § 15; 1905 c 105 § 3; RRS § 7572.]

**3.16.030 Constable salaries—Cities of more than one hundred thousand.** In cities with in excess of one hundred thousand inhabitants, according to the last federal census, each constable shall receive an annual salary of twelve hundred dollars. [1955 c 11 § 16; 1913 c 41 §§ 3, 4; 1909 c 145 § 3; RRS §§ 7567, 7568, 7575.]

**3.16.050 Payment of salaries.** The salaries of constables, as prescribed in this chapter, shall be paid monthly out of the county treasury, and from the same funds out of which other salaried county officers are paid, and the county auditor, on the first Monday of each month, shall draw his warrant upon the county treasurer in favor of each of said constables for the amount of salary due him for the preceding month: *Provided*, That the auditor shall not draw his warrant for the salary of any such officer for any month until the latter first shall

have filed his duplicate receipt with the auditor, properly signed by the treasurer, showing that he has made the statement and settlement for that month. [1955 c 11 § 17; 1951 c 156 § 5. Prior: 1891 c 7 § 7; RRS § 7582.]

**3.16.060 Travel expense of constables.** In addition to their salaries, the county commissioners shall pay the actual traveling expenses of salaried constables, in cities of five thousand or over, while on official duties, to be audited by such commissioners. [1955 c 11 § 18; 1891 c 7 § 9; RRS § 7584.]

**3.16.070 Fees of nonsalaried justices.** The fees and compensation of justices of the peace shall be as follows, to wit:

When each case is filed the sum of two dollars shall be paid by the plaintiff, which said sum shall include the docketing of the cause, the issuing of notice and summons, the trial of the case and the entering of judgment: *Provided*, That no further fee shall be required of either party to the suit for issuing subpoena, for approving any bond, including justification, incident to the case, or for orders and filing of publication of summons, or for any continuance by either party, or for issuing any writ of replevin, attachment and one writ of garnishment, or order, transcript and filings on change of venue. For each additional writ of garnishment a fee of fifty cents shall be charged.

The sum of two dollars shall be paid by the party taking the change of venue to the justice to whom the case is transferred: *Provided*, That said sum shall include all fees for transcripts of garnishments or other proceedings incident to the main action.

For transcript of judgment the sum of one dollar shall be paid by the party applying therefor, which said sum shall include all fees for transcript of garnishment or other proceedings incident to the main action and for approval of bonds on appeal.

For hearing of a cause occupying more than one day in the trial thereof an additional fee of two dollars shall be charged for each and every day so occupied after the first day of the trial: *Provided*, This section shall not apply to any continuance granted for any reason or cause other than as stated in this paragraph: *Provided further*, This provision shall not apply to justices of the peace receiving a fixed salary.

For order and filings for commission to take depositions .....	\$ .50
For issuing writ of venire .....	.50
For taking affidavits and acknowledgments, each .....	.25
For taking depositions, each folio .....	.10
For issuing warrants in criminal cases .....	.50
For taking recognizance of bail, including justification .....	.75

For committing to jail ..... .50  
[1919 c 143 § 1; 1915 c 138 § 1; 1907 c 121 § 1; 1893 c 66 § 1; RRS § 1864.]

**3.16.080 Fees before salaried justices.** In any civil action commenced before or transferred to a justice of the peace receiving a salary, the plaintiff may, at the time of such commencement or transfer, pay to such justice the sum of two dollars, which sum shall be all the fees and charges which any party to such action shall be compelled to pay to such justice up to and including the rendition of judgment in such action, unless process in replevin, attachment or garnishment shall issue therein, in which case the party procuring such process may pay to such justice the sum of one dollar as full payment for the fees and charges of such justice incident to the proceedings under such process; but in case said action is transferred from such justice before final judgment, such justice shall repay to any party making such payments any sum in excess of what said party would have been compelled to pay by RCW 3.16.070. [1893 c 66 § 2; RRS § 1865.]

**3.16.090 Compensation limited to schedule.** No justice of the peace in any civil action or proceeding shall be entitled to or receive any fees or compensations not provided for by RCW 3.16.070 or 3.16.080. [1893 c 66 § 3; RRS § 1866.]

**3.16.100 Constables' fees.** For serving any arrest warrant in a criminal action, or making an arrest in cases where an arrest may be lawfully made without a warrant, besides mileage, two dollars.

For other services he shall receive the same fees and mileage as is paid to a sheriff for like services. [1959 c 263 § 13; 1907 c 56 § 1, part; RRS § 7561, part.]

*Sheriff's fees: RCW 36.18.040.*

**3.16.110 Payment of fees and fines—Salaried justices and constables—Cities over five thousand.** The justices of the peace and constables shall charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, and on going out of office, all the fees now or hereafter allowed by law paid or chargeable in all cases, except such fees as are a charge against the county or state, and also on the first Monday in each month, and on going out of office, the said justices of the peace shall pay into the county treasury all moneys they shall have received on account of fines collected for violations of any state law: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice 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. [1969 ex.s. c 199 § 5; 1891 c 7 § 3; RRS § 7578.]

**3.16.120 Fee books to be kept—Salaried justices and constables—Cities over five thousand.** Each of the said justices of the peace and constables shall keep a fee book, open to public inspection during office hours, in which must be entered at once and in detail all fines

and fees or compensation of whatever nature, kind or description, collected or chargeable. On the first Monday of each and every month the said justices of the peace and constables must add up each column in their fee books to the first of each month and set down the totals, and on the expiration of the term of said officer they must deliver to the county auditor all fee books kept by them. [1891 c 7 § 4; RRS § 7579.]

**3.16.130 Procedure for remitting fees and fines—Salaried justices and constables—Cities over five thousand.** All fees and compensation collected from any source, and all fines collected for violations of any state law, shall be paid to the county treasurer on the first Monday of the following month, and the said justices and constable at the same time shall deliver to such treasurer a statement and copy of the fee book for the month last past, showing by items the sources from which such fees and fines were derived, and shall append thereto an affidavit that they have received no other money for fees or fines, not before paid over to such treasurer: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice 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. The treasurer shall file and preserve in his office said statements and affidavits, and shall issue to said justices and constables one original and one duplicate receipt therefor, and the said justices and constables shall preserve one in their offices and file the duplicate with the county auditor, whereupon the auditor shall charge the treasurer with the amount shown by the receipt. [1969 ex.s. c 199 § 6; 1891 c 7 § 5; RRS § 7580.]

**3.16.140 Fees payable in advance—Salaried justices and constables—Cities over five thousand.** Said justices and constables shall not in any case, except for the state or county and other cases provided by law, perform any official services unless the fees prescribed for such services are paid in advance, and on such payment the said justices and constables must perform the services required, and shall give receipts for all fees collected, whenever requested. For every failure or refusal to perform official duty when the fees are tendered, said justices and constables shall be liable on their official bonds. [1891 c 7 § 10; RRS § 7585.]

**3.16.150 Fees to salary fund—Salaried justices and constables—Cities over five thousand.** All fees directed by RCW 3.16.110 and 3.16.130 to be paid into the county treasury, when received shall be put into the salary fund of the county treasury. [1891 c 7 § 6; RRS § 7581.]

**3.16.160 Fines and unclaimed fees of nonsalaried justice.** It shall be the duty of every justice, on the first Mondays in January and July in every year, and on going out of office, to pay over to the treasurer of his county all money he may have received on account of fines, and all fees which may have remained unclaimed in his hands for twelve months; and he shall, at the

same time, deliver to such treasurer a statement in writing, showing by items the sources from which such money was derived, and shall append thereto an affidavit that he has received no other money for fines, not before paid over to such treasurer, and has no other fees unclaimed for twelve months, in his hands; and the treasurer's receipt therefor he shall file with the auditor, who shall give him a quietus: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice 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. [1969 ex.s. c 199 § 7; Code 1881 § 1901; 1863 p 379 § 181; RRS § 7577.]

**Chapter 3.20  
JURISDICTION AND VENUE**

Sections	
3.20.010	General powers of justice of the peace.
3.20.020	Civil jurisdiction.
3.20.030	Restrictions on civil jurisdiction.
3.20.040	Criminal jurisdiction.
3.20.050	Territorial jurisdiction—General.
3.20.060	Jurisdictional venue in civil actions.
3.20.070	Dismissal if brought in improper forum—Attorney's fee.
3.20.080	Fees paid justice without jurisdiction—Disposition.
3.20.090	Territorial jurisdiction—Civil.
3.20.100	Change of venue—Affidavit of prejudice.
3.20.110	Change of venue—General.
3.20.115	Removal of certain civil actions to superior court.
3.20.120	Restriction on criminal jurisdiction in certain counties.
3.20.131	Venue in criminal actions.

*Justice courts, civil procedure: Title 12 RCW.*  
*Venue as to motor vehicle violations: RCW 46.52.100.*

**3.20.010 General powers of justice of the peace.** Every justice of the peace elected in any city or town in this state is hereby authorized to hold a court for the trial of all actions enumerated in RCW 3.20.020, to hear, try, and determine the same according to 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 justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter. [1941 c 89 § 1; Code 1881 § 1709; 1854 p 226 § 22; Rem. Supp. 1941 § 43.]

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

**3.20.020 Civil jurisdiction.** (1) Every justice of the peace required by law to be a licensed attorney of this state and required by law to devote his full time to the office shall have jurisdiction and cognizance of the following civil actions and proceedings:

(a) Of an action arising on contract for the recovery of money only in which the sum claimed is less than one thousand dollars;

(b) Of an action 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, when

the amount of damages claimed is less than one thousand dollars; also of actions to recover the possession of personal property, when the value of such property, as alleged in the complaint, is less than one thousand dollars;

(c) Of an action for a penalty less than one thousand dollars;

(d) Of an action upon a bond conditioned for the payment of money, when the amount claimed is less than one 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;

(e) Of an action on an undertaking, or surety bond taken by him or his predecessor in office, when the amount claimed is less than one thousand dollars;

(f) Of an action for damages for fraud in the sale, purchase, or exchange of personal property, when the damages claimed are less than one thousand dollars;

(g) To take and enter judgment on confession of a defendant, when the amount of the judgment confessed is less than one thousand dollars;

(h) To issue writs of attachment upon goods, chattels, moneys, and effects, when the amount is less than one thousand dollars;

(i) Of all other actions and proceedings of which jurisdiction is specially conferred by statute, when the amount involved is less than one thousand dollars, and the title to, or right of possession of, or to a lien upon, real property is not involved.

(2) Every justice of the peace not required by law to be a licensed attorney of this state and not required by law to devote his full time to his office shall have jurisdiction and cognizance of the following civil actions and proceedings:

(a) Of an action arising on contract for the recovery of money only in which the sum claimed is less than five hundred dollars;

(b) Of an action 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, when the amount of damages claimed is less than five hundred dollars; also of actions to recover the possession of personal property, when the value of such property, as alleged in the complaint, is less than five hundred dollars;

(c) Of an action for a penalty less than five hundred dollars;

(d) Of an action upon a bond conditioned for the payment of money, when the amount claimed is less than five hundred 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;

(e) Of an action on an undertaking or surety bond taken by him or his predecessor in office, when the amount claimed is less than five hundred dollars;

(f) Of an action for damages for fraud in the sale, purchase, or exchange of personal property, when the damages claimed are less than five hundred dollars;

(g) To take and enter judgment on confession of a defendant, when the amount of the judgment confessed is less than five hundred dollars;

(h) To issue writs of attachment upon goods, chattels, moneys, and effects, when the amount is less than five hundred dollars;

(i) Of all other actions and proceedings of which jurisdiction is specially conferred by statute, when the amount involved is less than five hundred dollars, and the title to, or right of possession of, or to a lien upon, real property is not involved. [1965 c 96 § 1; 1955 c 11 § 19; 1891 c 73 § 1; 1883 p 44 § 1; Code 1881 § 1710; 1877 p 199 § 1; 1873 p 333 § 17; 1854 p 226 § 23; RRS § 44.]

*Jurisdiction of justices of the peace: State Constitution Art. 4 § 10 (Amendment 28).*

**3.20.030 Restrictions on civil jurisdiction.** The jurisdiction conferred by RCW 3.20.020, shall not however extend to the following civil actions:

(1) In which the title to real property shall come in question.

(2) Nor to an action for the foreclosure of a mortgage, or enforcement of a lien on real estate.

(3) Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction.

(4) Nor to any action against an executor or administrator as such. [Code 1881 § 1711; 1873 p 334 § 18; 1854 p 227 § 24; RRS § 45.]

**3.20.040 Criminal jurisdiction.** Justices of the peace shall have jurisdiction concurrent with the superior courts of all misdemeanors and gross misdemeanors committed in or which may be tried in their respective counties: *Provided*, That justices of the peace in cities of the first class shall in no event impose greater punishment than a fine of five hundred dollars, or imprisonment in the county jail for six months; and justices of the peace other than those elected in cities of the first class shall in no event impose greater punishment than a fine of one hundred dollars, or imprisonment in the county jail for thirty days. [1909 c 98 § 1; 1901 c 35 § 1; Code 1881 § 1886; 1875 p 51 § 1; 1873 p 181 § 184; 1860 p 279 § 171; RRS § 46.]

*Criminal procedure: Title 10 RCW.*

*Jurisdiction of justices of the peace*

*liquor law violations, RCW 66.44.180;*

*violations of fisheries laws, RCW 75.08.270;*

*violations of game laws, RCW 77.16.240.*

**3.20.050 Territorial jurisdiction—General.** The jurisdiction of justices of the peace elected in pursuance of the provisions of this title shall be coextensive with the limits of the county in which they are elected or appointed. [1941 c 89 § 2; Code 1881 § 1702; 1854 p 224 § 9; Rem. Supp. 1941 § 47.]

*Rules of court: JCR 4.*

*Issuance of process, extent: RCW 3.04.090.*

**3.20.060 Jurisdictional venue in civil actions.** All civil actions commenced in a justice court against a defendant, or defendants, residing in a city or town of five thousand or more population shall be brought before a justice of the peace of the city or town in which one or more of the defendants reside. In all other cases the action shall be commenced before either of the nearest two justices of the peace of justice court districts or incorporated cities or towns of the county, or before a justice of the peace of the county seat. [1953 c 206 § 2; 1941 c 89 § 3; 1929 c 75 § 1; 1925 ex.s. c 53 § 1; 1901 c 65 § 1; 1899 c 40 § 1; Rem. Supp. 1941 § 1756.]

**3.20.070 Dismissal if brought in improper forum—Attorney's fee.** Should any civil action be filed or commenced in any justice court other than as provided in RCW 3.20.060, no jurisdiction over the defendant shall be acquired thereby, and no judgment shall be entered therein against such defendant; and if, the action having been commenced before a justice court not having jurisdiction over the defendant, the defendant appears either specially or generally and objects to the jurisdiction of the court, the justice of the peace shall dismiss the action and enter judgment against the plaintiff in favor of the defendant for an attorney's fee of twenty-five dollars; and any such dismissal shall be a bar to any future action on the same cause of action until such attorney's fee shall have been paid. [1929 c 75 § 2; 1927 c 264 § 1; RRS § 1756-1.]

**3.20.080 Fees paid justice without jurisdiction—Disposition.** All fees paid to a justice of the peace not having jurisdiction of the defendant in accordance with RCW 3.20.060 shall be paid, by the justice of the peace receiving the same, into the current expense fund of the county treasurer of the county in which such justice court is located, as soon as it shall be ascertained that such justice is without jurisdiction of the defendant. [1929 c 75 § 3; RRS § 1756-2.]

**3.20.090 Territorial jurisdiction—Civil.** The jurisdiction of justices of the peace in all civil actions, except as provided in RCW 3.20.060 through 3.20.080, shall be coextensive with the limits of the county in which they are elected or appointed, and no other or greater, but every justice of the peace shall continue to perform all the duties of his office in the city or town for which he was elected or appointed, during his continuance in office. [1941 c 89 § 4; 1929 c 75 § 4; 1901 c 65 § 2; Rem. Supp. 1941 § 1757.]

*Rules of court: JCR 4.*

*Issuance of process, extent: RCW 3.04.090.*

**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.]

**3.20.110 Change of venue—General.** Change of venue may be allowed for the same causes for which they are allowed in the superior court. [Code 1881 § 1881; 1863 p 369 § 162; 1860 p 252 § 68; RRS § 1775.]

*Venue in superior court: Chapter 4.12 RCW.*

**3.20.115 Removal of certain civil actions to superior court.** See chapter 4.14 RCW.

**3.20.120 Restriction on criminal jurisdiction in certain counties.** In a class A county no justice of the peace shall have jurisdiction to receive a complaint or to issue a warrant for any criminal offense committed outside the boundaries of his precinct, or to issue a search warrant for the seizure of property located outside his precinct unless the same shall be approved in writing by the prosecuting attorney of such class A county. [1935 c 135 § 1; 1933 ex.s. c 4 § 1; RRS § 1925-1.]

*Rules of court: JCrR 2.02.*

**3.20.131 Venue in criminal actions.** All criminal actions before justices of the peace shall be brought before either of the nearest two justices of the peace to the place where the alleged violation occurred, or upon request of the defendant before a justice of the peace of the county seat. [1953 c 206 § 4.]

*Venue, motor vehicle violations: RCW 46.52.100.*

## Chapter 3.24 NIGHT COURTS

Sections	
3.24.010	Night courts established.
3.24.020	Appointment of judge—Vacancy.
3.24.030	Term of office.
3.24.040	Salaries—Judges—Court clerk.
3.24.050	Payment of salary.
3.24.060	Powers, duties and jurisdiction.
3.24.070	Transfer of cases to night court.
3.24.080	Trial fee.
3.24.090	Sessions.

**3.24.010 Night courts established.** That on and after June 7, 1923 there shall be created in cities having a population of over three hundred thousand in the state of Washington, a night court. [1923 c 14 § 1; RRS § 7576-1.]

**3.24.020 Appointment of judge—Vacancy.** Within ten days after June 8, 1927 the county commissioners of the county wherein said city is located shall appoint one of the duly elected and qualified justices of the peace of the precinct consisting in whole or in part of said city, who shall act as judge of the night court; and within ten days after the qualification of justices of the peace elected in said precinct in the election held in 1930, and quadrennially thereafter, and within ten days after the election and qualification of the justices of the peace for said precinct, shall appoint as judge of said night court, one of the justices of the peace so elected and qualified; and in event a vacancy occurs in the office of judge of said night court for any cause it shall be the duty of said county commissioners, within ten days after such vacancy occurs, to appoint one of the qualified justices of the peace of said precinct to fill the unexpired term created by such vacancy. Any judge of said court shall have power to appoint one clerk for the same. [1927 c 201 § 1; 1923 c 14 § 2; RRS § 7576-2.]

**3.24.030 Term of office.** The term of office of the judge of said night court will be for the term for which he is elected as justice of the peace. [1923 c 14 § 4; RRS § 7576-4.]

**3.24.040 Salaries—Judges—Court clerk.** The salary of the judge of the night court will be seventy-five dollars per month in addition to the salary now provided by law for justices of the peace in cities having a population of three hundred thousand or more with the power to appoint one clerk at a salary of twenty-five dollars per month. [1923 c 14 § 5; RRS § 7576-5.]

**3.24.050 Payment of salary.** The salaries of the justice of the night court and clerk thereof, heretofore provided for shall be paid monthly out of the county treasury and from the same funds out of which salaried county officers are paid and it shall be the duty of the county auditor on the first Monday of each month and every month to draw his warrant upon the county treasurer in favor of the justice of the night court and clerk thereof for the amount of salary due them under the provisions of this chapter for the preceding month. [1923 c 14 § 6; RRS § 7576-6.]

**3.24.060 Powers, duties and jurisdiction.** The powers, duties and jurisdiction of the judge of the night court shall be the same as now provided by law for justices of the peace in cities having a population of three hundred thousand or more in the state of Washington. [1923 c 14 § 3; RRS § 7576-3.]

**3.24.070 Transfer of cases to night court.** Upon good cause being shown, either plaintiff or defendant, in any action pending before a justice of the peace in cities wherein such night court is created, may have said cause transferred to the night court. [1923 c 14 § 7; RRS § 7576-7.]

**3.24.080 Trial fee.** Before any cause of action is tried in the night court, the party at the time of requesting the transfer as heretofore mentioned, shall pay to the justice before whom such request is made the sum of one dollar as a trial fee. [1923 c 14 § 8; RRS § 7576-8.]

**3.24.090 Sessions.** The night court shall be open from seven thirty in the evening until the finish of the night work, except during vacation. [1923 c 14 § 9; RRS § 7576-9.]

## Chapter 3.28 CONTEMPT

Sections	
3.28.010	When justice may punish for contempt.
3.28.020	Warrant—Hearing.
3.28.030	Summary arraignment if offender present.
3.28.040	Form of warrant.
3.28.050	Form of judgment.
3.28.060	Punishment.
3.28.070	Warrant of commitment.

*Arrest, offense in view of justice: RCW 10.04.020.*

*Contempts punishable as provided in this chapter: RCW 7.20.140.*

*Criminal contempts: Chapter 9.23 RCW, RCW 9.92.040.*

*Power of court to punish for contempt: RCW 2.28.010, 2.28.020.*

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

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

**3.28.010 When justice may punish for contempt.** In the following cases, and no others, a justice of the peace may punish for contempt:

(1) Persons guilty of disorderly, contemptuous and insolent behavior towards such justice while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tend to interrupt such proceedings, or impair the respect due to his authority.

(2) Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice.

(3) Persons guilty of resistance or disobedience to any lawful order or process made or issued by him. [Code 1881 § 1842; 1873 c 171 § 665; 1854 p 248 § 145; RRS § 1891.]

*Rules for Courts of Limited Jurisdiction: JCrR 3.11.*

**3.28.020 Warrant—Hearing.** No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defense; and for that purpose the justice may issue his warrant to bring the offender before him. [Code 1881 § 1844; 1873 p 173 § 668; 1854 p 249 § 147; RRS § 1893.]

**3.28.030 Summary arraignment if offender present.** If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon. [Code 1881 § 1845; 1873 p 172 § 667; 1854 p 249 § 148; RRS § 1894.]

**3.28.040 Form of warrant.** The warrant for contempt may be in the following form:

The state of Washington, }  
County, } ss.

To the sheriff or any constable of said county:

In the name of the state of Washington you are hereby commanded to apprehend A B, and bring him before J P, one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt alleged to have been committed on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_ , before the said justice, while engaged as a justice of the peace in a judicial proceeding.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_  
J P, Justice of the Peace.

[Code 1881 § 1846; 1854 p 249 § 149; RRS § 1895.]

**3.28.050 Form of judgment.** Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offense, and the judgment rendered thereon, and may be in the following form:

The state of Washington, }  
County, } ss.

Whereas, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_ , while the undersigned, one of the justices of the peace for said county, was engaged in the trial of an action between C D, plaintiff, and E F, defendant, in said county, A B, of the said county, did interrupt the said proceedings and impair the respect due to the authority of the undersigned, by (here describe the cause particularly.) And whereas, the said A B was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof. And whereas, the said A B did not show cause against the said charge—be it therefore ordered that the said A B is adjudged to be guilty and is convicted of the contempt aforesaid, and is adjudged by the undersigned to pay a fine of \_\_\_\_\_ dollars, (or be imprisoned, etc.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_  
J P, Justice of the Peace.

[Code 1881 § 1847; 1854 p 249 § 150; RRS § 1896.]

**3.28.060 Punishment.** Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding two days, at the discretion of the justice, unless otherwise provided by statute. [Code 1881 § 1843; 1873 p 172 § 166; 1854 p 249 § 146; RRS § 1892.]

**3.28.070 Warrant of commitment.** If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice. If he be adjudged to pay a fine, a process may be issued to collect the same; and when so collected, it shall

forthwith be paid by the justice into the county treasury: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice 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. [1969 ex.s. c 199 § 8; Code 1881 § 1848; 1854 p 250 § 151; RRS § 1897.]

**JUSTICE COURTS AND OTHER INFERIOR COURTS—1961 BASIC ACT**

**Chapter 3.30 JUSTICE COURTS**

Sections  
3.30.010 Definitions.  
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.

*County probation services for persons convicted in justice court: RCW 9.92.060, 9.95.210, 36.01.070.*

**3.30.010 Definitions.** As used herein:

"City" means an incorporated city or town.

"Department" means the designation of an administrative unit of a justice court established for the orderly and efficient administration of justice court business and may include, without being limited in scope thereby, a unit or units for determining one or more of the following: 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 by the Washington state census board and certified to the board of county commissioners on or before May 1, 1962 and on or before May 1st, 1966 and thereafter as estimated and certified by the planning and community affairs agency. The planning and community affairs agency, on or before May 1, 1970 and on or before May 1st each four years thereafter, shall estimate and certify to the board of county commissioners the population of each judicial district of each county. [1967 ex.s. c 42 § 1; 1961 c 299 § 1.]

**Saving—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.] This applies to RCW 3.30.010, 35.13.260 and 43.63A.150.

**Effective date—1967 ex.s. c 42:** "This 1967 amendatory act shall take effect on July 1, 1967." [1967 ex.s. c 42 § 5.] This applies to RCW 3.30.010, 35.13.260 and 43.63A.150.

*Planning and community affairs agency: Chapter 43.63A RCW.*

**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 class AA and class A counties:

*Provided*, That any city having a population of more than five 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 justices of the peace allocated to the county in RCW 3.34.010 shall be reduced by two and the number of full time justices of the peace 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 of the first, second, third, fourth, fifth, sixth, seventh, eighth, or ninth class upon a majority vote of its board of county commissioners. [1961 c 299 § 2.]

**3.30.030 Nomenclature for judges and courts.** The judges of the justice court of each justice 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. [1971 c 73 § 1; 1961 c 299 § 3.]

**3.30.040 Sessions.** The justice courts shall be open except on nonjudicial days. Sessions of the court shall be held at such places as shall be provided by the justice court districting plan. The court shall sit as often as business requires in each city of the justice court district which provides suitable courtroom facilities, to hear causes in which such city is the plaintiff. [1961 c 299 § 4.]

**3.30.050 Departments.** Each judge is authorized to organize his court not inconsistent with departments created by the districting plan. [1971 c 73 § 2; 1961 c 299 § 5.]

**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 justice courts: *Provided*, That the justice courts may adopt rules of procedure not inconsistent with state law or with the rules adopted by the supreme court. If the rules of the supreme court herein authorized shall be adopted, all procedural laws in conflict therewith shall thenceforth be of no effect. [1961 c 299 § 8.]

**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. 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 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 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. [1971 c 73 § 4; 1961 c 299 § 9.]

### Chapter 3.34 JUSTICES OF THE PEACE

#### Sections

3.34.010	Justices of the peace—Number for each county.
3.34.020	Justices of the peace—Number of full time.
3.34.030	Reallocation of number of justices.
3.34.040	Justices of the peace—Full time and part time.
3.34.050	Justices of the peace—Election.
3.34.060	Justices of the peace—Eligibility and qualifications.
3.34.065	Justices and district court judges in second class or larger counties—Required to be lawyers.
3.34.070	Justices of the peace—Term of office.
3.34.080	Oath.
3.34.090	Bonds—Insurance as reimbursable expense.
3.34.100	Vacancies.
3.34.110	Justices of the peace—Disqualification.
3.34.120	Justices of the peace—Disqualification of partners.
3.34.130	Justices of the peace pro tempore.
3.34.140	Exchange of justices.
3.34.150	Presiding judge.

**3.34.010 Justices of the peace—Number for each county.** The number of justices of the peace 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; Kitsap, two; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, two; Mason, one; Okanogan, two; Pacific, three; Pend Oreille, two; Pierce, eight; San Juan, one; Skagit, three; Skamania, one; Snohomish, eight; Spokane, eight; 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. [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.]

**3.34.020 Justices of the peace—Number of full time.** In each justice court district having a population of forty thousand or more but less than sixty thousand, there shall be elected one full time justice of the peace; in each justice court district having a population of sixty thousand but less than one hundred twenty-five thousand, there shall be elected two full time justices; in each justice court district having a population of one hundred twenty-five thousand but less than two hundred thousand, there shall be elected three full time justices; and in each justice court district having a population of two hundred thousand or more there shall be elected one additional full time justice for each additional one hundred thousand persons or fraction thereof: *Provided*, That if a justice court district having one or more full time justices should change in population, for reasons other than change in district boundaries, sufficiently to require a change in the number of judges previously authorized to it, the change shall be made by the county commissioners without regard to RCW 3.34.010 as now or hereafter amended and shall become effective on the second Monday of January of the year following: *Provided further*, That upon any redistricting of the county thereafter RCW 3.34.010, as now or hereafter amended, shall again designate the number of justices in the county: *Provided*, That in a justice court district having a population of one hundred twenty thousand people or more adjoining a metropolitan county of another state which has a population in excess of five hundred thousand there shall be one full time justice in addition to the number otherwise allowed by this section and without regard to RCW 3.34.030 or resolution of the county commissioners: *Provided further*, That the county commissioners may by resolution make a part time position a full time office if the district's population is not more than ten thousand less than the number required by this section for a full time justice of the peace: *Provided further*, That the county commissioners may by resolution provide for the election of one full time justice in addition to the number of full time justices authorized hereinbefore. [1973 1st ex.s. c 14 § 2; 1970 ex.s. c 23 § 2; 1969 ex.s. c 66 § 7; 1961 c 299 § 11.]

**3.34.030 Reallocation of number of justices.** Notwithstanding the limitations of RCW 3.34.010 and 3.34.020 in any district having more than one justice of the peace, if any city or town elects to select under the provisions of chapter 3.50 RCW a person other than a justice of the peace to serve as municipal judge, the board of county commissioners may reduce the number of justices of the peace required for the county and district by one for each one hundred and fifty thousand persons or fraction thereof residing in all such municipalities, electing to select a municipal judge who is not

also a justice of the peace: *Provided*, That in no case shall the number of justices of the peace in any county be less than one for each one hundred thousand persons or major fraction thereof in such county, nor shall the number of justices of the peace in any district be less than one for each one hundred and fifty thousand persons or major fraction thereof. [1969 ex.s. c 66 § 2; 1961 c 299 § 12.]

**3.34.040 Justices of the peace—Full time and part time.** Justices of the peace serving districts having a population of forty thousand or more persons, and justices receiving a salary greater than fifteen thousand dollars for serving as a justice, shall be deemed full time justices and shall devote all of their time to the office and shall not engage in the practice of law. Other justices shall devote sufficient time to the office to properly fulfill the duties thereof and may engage in other occupations but such justice shall not use the office or supplies furnished by the judicial district for his private business but shall maintain a separate office for his private business nor shall he use the services of any clerk or secretary paid for by the county for his private business. [1974 1st ex.s. c 95 § 2; 1971 ex.s. c 147 § 2; 1961 c 299 § 13.]

**3.34.050 Justices of the peace—Election.** At the general election in November, 1962 and quadrennially thereafter, there shall be elected by the voters of each justice court district the number of justices of the peace authorized for such district by the justice court districting plan. Justices of the peace shall be elected for each district by the qualified electors of the justice court 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 justices of the peace for justice court districts entitled to more than one justice of the peace, the county auditor shall designate each such office of justice of the peace to be filled by a number, commencing with the number one and numbering the remaining offices consecutively. Each candidate at the time of the filing of his declaration of candidacy shall designate by number which one, and only one, of the numbered offices for which he is a candidate and the name of such candidate shall appear on the ballot for only the numbered office for which the candidate filed his declaration of candidacy.

In all elections for justices of the peace, if any candidate in the primary receives a majority of all of the votes cast for the position, only the name of the person receiving the highest vote shall be printed on the general election ballot under the designation for that position, followed by a space for the writing in of any other name by a voter. [1961 c 299 § 14.]

**3.34.060 Justices of the peace—Eligibility and qualifications.** To be eligible to file a declaration of candidacy for and to serve as a justice of the peace, a person must:

- (1) Be a registered voter of the justice court district; 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, municipal judge or police judge in Washington; or

(c) In those districts having a population of less than ten thousand persons, a person who has taken and passed such qualifying examination for the office of justice of the peace as shall be provided by rule of the supreme court. [1961 c 299 § 15.]

**3.34.065 Justices and district court judges in second class or larger counties—Required to be lawyers.** After the next respective judicial elections following July 16, 1973, in counties of the second class and larger counties all justices of the peace and district court judges are required to have been admitted to the practice of law in the state of Washington before they may exercise the functions of their office. [1973 1st ex.s. c 14 § 3.]

**3.34.070 Justices of the peace—Term of office.** Every justice of the peace shall hold office for a term of four years from and after the second Monday in January next succeeding his selection and continuing until his successor is elected and qualified. [1961 c 299 § 16.]

**3.34.080 Oath.** Each justice of the peace, justice of the peace pro tempore and justice court commissioner shall, before entering upon the duties of such 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 ability. [1961 c 299 § 17.]

**3.34.090 Bonds—Insurance as reimbursable expense.** The county commissioners shall provide for the bonding of each district judge, justice of the peace, justice of the peace pro tempore, justice court commissioner, clerk of the district court and court employee, at the expense of the county, in such amount as the county commissioners shall prescribe, conditioned that each such person will pay over according to law all moneys which shall come into his hands in causes filed in his 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 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. [1971 c 73 § 5; 1961 c 299 § 18.]

**3.34.100 Vacancies.** If any justice dies, resigns, is convicted of a felony, or ceases to reside in the district or fails to serve for any reason except temporary disability, or if his term of office is terminated in any other manner, the office shall be deemed vacant. The board of county commissioners shall fill all vacancies by appointment and the justice thus appointed shall hold

office until the next general election and until his successor is elected and qualified. Justices of peace shall be granted sick leave in the same manner as other county employees. [1961 c 299 § 19.]

**3.34.110 Justices of the peace—Disqualification.** A justice of the peace shall not act as judge in any of the following cases:

(1) In an action to which he is a party, or in which he is directly interested, or in which he has been an attorney for a party.

(2) When he or one of the parties believes that the parties cannot have an impartial trial before him: *Provided*, That only one change of judges shall be allowed each party under this subsection.

When a justice is disqualified under this section, the case shall be heard before another justice or justice pro tempore of the same county. [1961 c 299 § 20.]

**3.34.120 Justices of the peace—Disqualification of partners.** If a justice of the peace be a lawyer, his partner and associates shall not practice law before him. [1961 c 299 § 21.]

**3.34.130 Justices of the peace pro tempore.** Each justice court shall designate one or more justices of the peace pro tempore who shall serve during the temporary absence, disqualification, or incapacity of a justice of the peace of the district. The qualifications of a justice of the peace pro tempore shall be the same as for a justice of the district: *Provided*, That if no qualified person is available, then the court shall appoint a registered voter of the county in which the justice court district or portion thereof is located. A justice of the peace pro tempore may sit in any district of the county for which he is appointed. A justice of the peace pro tempore shall be paid for each day he holds a session one-two hundred fiftieth of the annual salary of a full time justice of the district. For each day that a justice of the peace pro tempore serves in excess of thirty days during any calendar year, the annual salary of the justice of the peace in whose place he serves shall be reduced by an amount equal to one-two hundred fiftieth of such salary. [1961 c 299 § 22.]

**3.34.140 Exchange of justices.** Any justice of the peace may hold a session in any justice court district in the state, at the request of the justice or majority of justices in such district if the visiting justice of the peace determines that the state of justice court business in his district will permit him to be absent: *Provided*, That the board of county commissioners of the county in which such justice court is located shall first approve such temporary absence and no justice of the peace pro tempore shall be required to serve during his absence. A visiting justice shall be entitled to his actual traveling and living expenses while so acting, to be paid by the visited district: *Provided*, That no such traveling or living expenses shall be paid to the visiting justice unless the county commissioners of the county in which the visited district is located shall have consented and approved thereto prior to such visit. [1961 c 299 § 23.]

**3.34.150 Presiding judge.** Where a justice court district has more than one justice, the supreme court may by rule provide for the manner of selection of one of the justices to serve as presiding judge and prescribe his duties. [1961 c 299 § 24.]

### Chapter 3.38 JUSTICE COURT DISTRICTS

#### Sections

3.38.010	Justice court districting committee—Membership.
3.38.020	Justice court districting committee—Duties.
3.38.022	Location of offices and courtrooms.
3.38.030	Justice court districting plan—Adoption.
3.38.031	Justice court districting plan—Transitional provisions.
3.38.040	Amendment.
3.38.050	Justice court districts—Standards.
3.38.060	Joint justice court districts.

**3.38.010 Justice court districting committee—Membership.** There is established in each county a justice 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 him;

(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 commissioners;

(4) A judge of an inferior court of the county selected by the president of the Washington state magistrates' association; and

(5) The mayor, or his representative, 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 his representative, of each fourth class city shall be a member;

(7) The chairman of the board of county commissioners; and

(8) The county auditor. [1961 c 299 § 25.]

**3.38.020 Justice court districting committee—Duties.** Upon the classification of any county as a class A county, or upon the adoption of a resolution by majority vote of the board of county commissioners of any county of the first, second, third, fourth, fifth, sixth, eighth or ninth class electing to make the provisions of chapters 3.30 through 3.74 RCW applicable to their county, the justice court districting committee shall become activated and shall meet at the call of the prosecuting attorney to prepare a plan for the districting of the county into one or more justice court districts in accordance with the provisions of chapters 3.30 through 3.74 RCW, which plan shall include the following:

(1) The boundaries of each justice court district proposed to be established;

(2) The number of justices to be elected in each justice court district;

(3) The location of the central office, courtrooms and records of each court;

(4) The other places in the justice court district, if any, where the court shall sit;

(5) The number and location of justice court commissioners to be authorized, if any;

(6) The departments, if any, into which each justice court shall be initially organized, including municipal departments provided for in chapter 3.46 RCW;

(7) The name of each justice court district; and

(8) The allocation of the time and allocation of salary of each justice who will serve part time in a municipal department.

Not later than three months after the classification of the county as class A or the adoption of the elective resolution by the county commissioners, the plan shall be transmitted to the county commissioners. [1965 ex.s. c 110 § 1; 1961 c 299 § 26.]

**3.38.022 Location of offices and courtrooms.** The districting plan may provide that the offices and courtrooms of more than one justice court 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. [1963 c 213 § 1.]

**3.38.030 Justice court districting plan—Adoption.** Upon receipt of the justice court districting plan, the county commissioners 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 commissioners find 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 commissioners find that such plan does not conform to the standards as provided in chapters 3.30 through 3.74 RCW, they may modify, revise or amend the plan and adopt such amended or revised plan as the county's justice court districting plan. The plan decided upon shall be adopted by the county commissioners not later than six months after the classification of the county as class A or the adoption of the elective resolution. [1965 ex.s. c 110 § 2; 1961 c 299 § 27.]

**3.38.031 Justice court districting plan—Transitional provisions.** As a part of the justice court districting plan, the county commissioners shall designate a date on which the terms of the justices of the peace of the county shall end.

For each justice position under the districting plan, the county commissioners shall appoint a person qualified under RCW 3.34.060 who shall take office on the date designated by the county commissioners and shall serve until the next quadrennial election of justices of the peace as provided in RCW 3.34.050.

Pending cases, proceedings, and matters shall be transferred to the appropriate court as provided in RCW 3.74.900. [1965 ex.s. c 110 § 3.]

**3.38.040 Amendment.** The districting committee may meet for the purpose of amending the districting plan at any time on call of the county commissioners, the chairman of the committee or a majority of its members. Amendments to the plan shall be submitted to the county commissioners not later than March 15th of each year for adoption by the commissioners 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 such amendment which would reduce the salary or shorten the term of any judge shall not be effective until the next regular election for justice of the peace. All other amendments may be effective on a date set by the county commissioners. [1969 ex.s. c 66 § 3; 1961 c 299 § 28.]

**3.38.050 Justice court districts—Standards.** Justice court districts shall be established in accordance with the following standards:

(1) Every part of the county shall be in some justice court district.

(2) The whole county may constitute one justice court district.

(3) There shall not be more justice court districts than there are justices of the peace authorized for the county.

(4) No justice court district boundary shall intersect the boundary of an election precinct.

(5) No city shall lie in more than one justice court district.

(6) Whenever a county is divided into more than one justice court district, each district shall be so established as best to serve the convenience of the people of such 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. [1961 c 299 § 29.]

**3.38.060 Joint justice court districts.** Joint justice court districts may be established containing all or part of two or more counties. The county containing the largest portion of the population of such joint district shall be known as the "principal county" and each joint justice court district shall be deemed to lie within the principal county for the purpose of chapters 3.30 through 3.74 RCW. A joint justice court district may be established by resolution of one county concurred in by a resolution of each other county: *Provided*, That the county commissioners 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 justice court district without concurrence of the other counties.

Elections of justices in joint justice court districts shall be conducted and canvassed in the same manner as elections of superior court judges in joint judicial districts. [1961 c 299 § 30.]

## Chapter 3.42 JUSTICE COURT COMMISSIONERS

Sections	
3.42.010	Justice court commissioners—Appointment—Qualifications—Term of office.
3.42.020	Powers of commissioners.
3.42.030	Transfer of cases to justice of the peace.
3.42.040	Compensation.

**3.42.010 Justice court commissioners—Appointment—Qualifications—Term of office.** When so authorized by the justice court districting plan, one or more justice court commissioners may be appointed in any justice court district by the justices of the peace of such district. Each commissioner shall be a registered voter of the county in which the justice court district or a portion thereof is located, and shall hold office during the pleasure of the justices of the peace appointing him. [1961 c 299 § 31.]

**3.42.020 Powers of commissioners.** Each justice court commissioner shall have such power, authority and jurisdiction in criminal matters as the justices of the peace who appointed him possess and shall prescribe. Justice court commissioners shall not have power to hear and determine civil matters. [1961 c 299 § 32.]

**3.42.030 Transfer of cases to justice of the peace.** Any party may have a case transferred from a justice court commissioner to a justice of the peace of the same district for hearing, by filing a motion for transfer. The commissioner shall forthwith transfer the case to such justice. [1961 c 299 § 33.]

**3.42.040 Compensation.** Justice court commissioners shall receive such compensation as the county commissioners or city council shall provide. [1969 ex.s. c 66 § 4; 1961 c 299 § 34.]

## Chapter 3.46 MUNICIPAL DEPARTMENTS

Sections	
3.46.010	Municipal department authorized.
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3.46.040	Petition.
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3.46.130	Facilities.
3.46.140	Personnel.
3.46.145	Court commissioners.
3.46.150	Abolition of municipal department.

**3.46.010 Municipal department authorized.** Any city may secure the establishment of a municipal department of the justice court, to be designated "The Municipal Department of (city)." Such department may also be designated "The Municipal Court of (city)." [1961 c 299 § 35.]

**3.46.020 Judges.** Each judge of a municipal department shall be a justice of the peace of the district in which the municipal department is situated. Such judge may be alternately designated as a municipal judge or police judge. [1961 c 299 § 36.]

**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. [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 board of county commissioners. Such petition shall be filed with the commissioners 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 justices of the peace. 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 justice 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 board of county commissioners, and thereupon the municipal department pursuant to this chapter shall not be established. [1961 c 299 § 38.]

**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 five hundred thousand, the municipal judges shall be elected. [1961 c 299 § 39.]

**3.46.060 Selection of part time judges.** In justice court districts having more than one justice of the peace, appointment of part time municipal judges shall be made from the justices of the peace of the district by the mayor in such manner as the city legislative body shall determine. [1961 c 299 § 40.]

**3.46.070 Election.** In each justice 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 justice of the peace, 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. [1961 c 299 § 41.]

**3.46.080 Term and removal.** A municipal judge shall serve in such capacity for his term as justice of the peace, and may be removed from so serving in the same manner and for the same reasons as he may be removed from the office of justice of the peace. [1961 c 299 § 42.]

**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 justice of the peace 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 justice has been allocated to each. Salaries of court commissioners serving the municipal department shall be paid by the city. [1969 ex.s. c 66 § 5; 1961 c 299 § 43.]

**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 justice of the peace 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 justices of the district, including any justice appointed by the county commissioners to fill an unexpired term. [1961 c 299 § 44.]

**3.46.110 Night sessions.** A city may authorize its municipal department to hold night sessions. [1961 c 299 § 45.]

**3.46.120 Revenue.** All revenue received by a municipal department including penalties, fines, bail forfeitures, fees and costs shall be paid to the city treasurer for the use of the city. [1961 c 299 § 46.]

**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.]

**Reviser's note:** The first sentence of this section was vetoed. It read: "All personnel of a municipal department shall be appointed by the city".

**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 Abolition of municipal department.** Any city, having established a municipal department as provided in this chapter may, by written notice to the board of county commissioners not less than thirty days prior to February 1st of any year require the abolition

of the municipal department created pursuant to this chapter. [1961 c 299 § 49.]

**Chapter 3.50**  
**MUNICIPAL DEPARTMENTS—ALTERNATE**  
**PROVISION**

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**3.50.010 Municipal court authorized in cities of twenty thousand or less.** Any city or town with a population of twenty 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 generally conferred in this state by either common law or by express statute upon said court. [1961 c 299 § 50.]

**3.50.020 Jurisdiction.** The municipal court shall have 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 is empowered to forfeit cash bail or bail bonds and issue execution thereon; to hear and determine all causes, civil or criminal, arising under such ordinances and to pronounce judgment in accordance therewith. [1961 c 299 § 51.]

**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 under the city or town ordinance which may be processed by the violations bureau. 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. 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 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 a city employee. [1961 c 299 § 52.]

**3.50.040 Municipal judges—Appointed—Term, qualifications—Justice of peace as part time municipal judge.** Within thirty days after the effective date of the ordinance, the mayor of each city or town shall, with the approval of the legislative body thereof, appoint a municipal judge or judges of the municipal court for a term of four years, commencing January 15, 1962. Succeeding appointments shall be made in like manner by the fifteenth day of December preceding the end of every four year term.

The person appointed as municipal judge shall be a citizen of the United States of America and of the state of Washington; and an attorney duly admitted to practice law before the courts of record of the state of Washington and practicing law in the municipality or residing in the municipality where the department is located: *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 duly elected justice of the peace as its municipal judge when the municipal judge is not required to serve full time. In the event of the appointment of a justice of the peace, the city or town shall pay a pro rata share of his salary. [1961 c 299 § 53.]

**3.50.050 Municipal judge may be elective position—Qualifications, term.** The legislative authority of each 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 concurrent with other city officials of the city or town. [1961 c 299 § 54.]

**3.50.060 Termination, establishment of court before and after January, 1966.** A city or town electing to establish a municipal court pursuant to this chapter may terminate such court by ordinance adopted on or before January 2, 1966 or not more than ten days before January 2nd of any fourth year thereafter.

On and after January 2, 1966, a city or town electing to establish a municipal court pursuant to this chapter shall do so by resolution adopted not more than ten days before January 2, 1966 or any fourth year thereafter. [1961 c 299 § 55.]

**3.50.070 Additional judges—Appointment.** Additional full or part time judges may be appointed by the mayor, subject to the approval of the legislative body of the city or town in the same manner as set forth in RCW 3.50.040, when public interest and the administration of justice makes necessary the appointment of an additional judge or judges. [1961 c 299 § 56.]

**3.50.080 Salary of judges—Payment from city funds—Status of judges and employees as city employees.** The salary of the municipal court judge or judges, together with all costs of operating the municipal court, shall be paid wholly out of the funds of the city or town and the compensation of the municipal court judge and all employees of the municipal court shall, for all purposes, be deemed employees of the city or town. [1961 c 299 § 57.]

**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. 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. [1961 c 299 § 58.]

**3.50.100 Revenue—Deposits.** All fees, costs, fines, forfeitures and other moneys imposed or collected by any municipal court for the violation of any municipal or town ordinances, together with any other revenues received by the court, 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. [1961 c 299 § 59.]

**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 such municipal court shall not be open on nonjudicial days. [1961 c 299 § 60.]

**3.50.120 Criminal prosecutions—Complaints.** Each criminal prosecution in a municipal court shall be instituted by a complaint. The complaint shall contain and shall be sufficient if it contains a plain, concise and definite statement of the essential facts constituting the specific offense or offenses with which the defendant is charged. [1961 c 299 § 61.]

*Rules for Courts of Limited Jurisdiction: Complaints – JCrR 2.01.*

**3.50.130 Complaint to be sworn—Examination—Filing.** The complaint shall be sworn to before the municipal court judge and shall be filed by him when, from his examination of the complainant and other witnesses, if any, he has reasonable grounds to believe that an offense of which he has jurisdiction has been committed and that the defendant committed it. No objection to a complaint on grounds that it was not signed or sworn to as herein required may be made after a plea to the merits has been entered. [1961 c 299 § 62.]

*Rules for Courts of Limited Jurisdiction: Complaints – JCrR 2.01.*

**3.50.140 When oath to complaint not required—Penalty for false certification.** No oath shall be required when the complaint is made by a county or municipal prosecutor or city attorney and if it contains or be verified by a written declaration that it is made under the penalties of perjury.

Any other person who wilfully certifies falsely to any matter set forth in any such complaint shall be guilty of a gross misdemeanor. [1961 c 299 § 63.]

*Rules for Courts of Limited Jurisdiction: Complaints – JCrR 2.01.*

**3.50.150 Amendments to complaint.** The court may permit a complaint to be amended at any time before judgment if no additional or different offense is charged, and if substantial rights of the defendant are not thereby prejudiced. [1961 c 299 § 64.]

**3.50.160 Warrant for arrest.** If, from the examination of the complainant and other witnesses, if any, the court has reasonable ground to believe that an offense has been committed and that the defendant has committed it, a warrant shall issue for the arrest of the defendant. [1961 c 299 § 65.]

*Rules for Courts of Limited Jurisdiction: Warrants for arrest – JCrR 2.02.*

**3.50.170 Form and contents of warrant.** The warrant shall be in writing and in the name of the state, shall be signed by the municipal court judge with the title of his office, and shall state the date when issued and the municipality where issued. It shall specify the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged against the defendant. It shall command that the defendant be arrested and brought before the court at a stated place, without unnecessary delay, unless he deposits bail as stated in the warrant and is released for appearance in court on a date certain stated therein. [1961 c 299 § 66.]

*Rules for Courts of Limited Jurisdiction: Warrants for arrest – JCrR 2.02.*

**3.50.180 Execution of warrant—Procedure.** The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer. It shall be executed by the arrest of the defendant and may be executed in any county or municipality of the state by any peace officer in the state. The officer need not have the warrant in his possession at the time of arrest, but in that case he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued; and, upon request, shall show the warrant to the defendant as soon as possible. [1961 c 299 § 67.]

*Rules for Courts of Limited Jurisdiction: Warrants for arrest – JCrR 2.02.*

**3.50.190 Return of warrant—Unexecuted warrants.** The officer executing a warrant shall forthwith make return thereof to the court issuing it. Any unexecuted warrants shall be returned to the municipal court by whom issued and may be canceled by him. While a complaint is pending, a warrant returned unexecuted and not canceled, or a duplicate thereof, may be delivered by the municipal court to a peace officer for execution or service. [1961 c 299 § 68.]

*Rules for Courts of Limited Jurisdiction: Warrants for arrest – JCrR 2.02.*

**3.50.200 Arrest with or without warrant.** An officer making an arrest under a warrant shall take the arrested person without unnecessary delay and, in any event, within twenty-four hours, exclusive of nonjudicial days,

before the municipal court or admit him to bail as commanded in the warrant. Any person making an arrest without a warrant shall take the arrested person without unnecessary delay and, in any event within forty-eight hours, exclusive of nonjudicial days, before the municipal court in the municipality in which the arrest is made. When a person is arrested without a warrant and brought before the municipal court, a complaint shall be filed forthwith. [1961 c 299 § 69.]

**3.50.210 Bail.** Judges of the municipal court may accept money as bail for the appearance of persons charged with bailable offenses. The amount of 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. [1961 c 299 § 70.]

**3.50.220 Bail bonds.** A person required or permitted to give bail may execute a bond conditioned upon his appearance at all stages of the proceedings until final determination of the cause, unless otherwise ordered by the court. One or more sureties may be required; cash may be accepted; and, in proper cases, no security need be required. Bail given on appeal shall be deposited with the clerk of the court from which the appeal is taken. [1961 c 299 § 71.]

**3.50.230 Justification of sureties—Approval of bond by judge.** Every surety, except an approved corporate surety, shall justify by affidavit and shall describe in the affidavit the property which he proposes to justify and the encumbrances thereon; the numbered amount of bonds and undertakings for bail entered into by him and remaining undischarged and all of his other liabilities: *Provided*, That persons engaged in the bail bond business shall justify annually. No bond shall be approved unless the surety thereon shall be financially responsible. The municipal court judge shall approve all bonds. [1961 c 299 § 72.]

**3.50.240 Defendant's rights—Arraignment.** When a person arrested either under a warrant or without a warrant is brought before the court, he shall then be informed of the charge against him, advised of his constitutional rights and he shall be arraigned then or within a reasonable time set by the court. The arraignment shall be conducted in open court and shall consist of stating to him the substance of the charge and calling on him to plead thereto. The defendant shall be given a copy of the complaint if he requests the same. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court. [1961 c 299 § 73.]

*Rules for Courts of Limited Jurisdiction: JCrR 3.01–3.06.*

**3.50.250 Plea.** The defendant may plead guilty; not guilty, and a former conviction or acquittal of the offense charged, which may be pleaded with or without a plea of not guilty. The court may refuse to accept a plea



of guilty, and shall not accept a plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead, or if the court refuses to accept a plea of guilty, the court shall enter a plea of not guilty. The court may strike out a plea of guilty and enter a plea of not guilty, if it deems such action necessary in the interest of justice. [1961 c 299 § 74.]

*Rules for Courts of Limited Jurisdiction: JCrR 3.01–3.06.*

**3.50.260 Continuances.** The municipal court may, in its discretion grant continuances for good cause shown. If a continuance is granted, the cost thereof shall abide the event of the prosecution in all cases. If a continuance is granted, the court may recognize the defendant and the witnesses to appear from time to time, in the same manner as is provided in other criminal examination. [1961 c 299 § 75.]

*Rules for Courts of Limited Jurisdiction: JCrR 3.08.*

**3.50.270 Sentence, acquittal.** If the complaint is for a crime within the jurisdiction of the court, and the defendant pleads guilty, the court shall sentence him upon a proper showing of a prima facie case against him.

If the defendant pleads not guilty or pleads a former conviction or acquittal of the offense charged, the court shall hear and determine the cause, and either acquit or convict and punish. [1961 c 299 § 76.]

*Rules for Courts of Limited Jurisdiction: JCrR 5.03.*

**3.50.280 Jury trials, when allowed—No change of venue or affidavit of prejudice.** In all trials for offenses in municipal court, a jury trial shall be allowed only in offenses involving the revocation or suspension of a driver's license or other gross misdemeanor. No change of venue shall be taken from the municipal court, and the defendant shall not be entitled to file an affidavit of prejudice against any judge of the municipal court. [1961 c 299 § 77.]

*Rules for Courts of Limited Jurisdiction: JCrR 4.07.*

**3.50.290 Sentence to be without delay—New bail.** Sentence shall be imposed by the court without unreasonable delay. Pending sentence, the court may commit the defendant or may allow the defendant to post bail anew. [1961 c 299 § 78.]

**3.50.300 Execution of sentence—Hard labor—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, he may be committed to jail to be placed at hard labor 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. [1969 c 84 § 1; 1961 c 299 § 79.]

**3.50.310 Conviction of corporation.** If a corporation is convicted of any offense, the court may give judgment thereon and may cause the judgment to be enforced in the same manner as a judgment in a civil action. [1961 c 299 § 80.]

**3.50.320 Deferral of sentence—Change of plea, dismissal.** After a conviction, the court may defer sentencing the defendant and place him on probation and prescribe the conditions thereof, but in no case shall it extend for more than one year from the date of conviction. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw his plea of guilty, permit him to enter a plea of not guilty, and dismiss the charges against him. [1961 c 299 § 81.]

**3.50.330 Continuing jurisdiction of court after sentence.** For a period not to exceed one year after imposition of sentence, the court shall have continuing jurisdiction and authority to suspend the execution of all or any part of its sentence upon stated terms, including installment payment of fines. [1961 c 299 § 82.]

**3.50.340 Revocation of deferred or suspended sentence—Maximum sentence—Credit for time or fine.** 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. [1961 c 299 § 83.]

**3.50.350 Correction of clerical mistakes, errors, etc.** Clerical mistakes in judgments, orders or other parts of the record, and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court may order.

If an appeal has been taken, such mistakes may be so corrected until the record has been filed in the appellate court and thereafter, while the appeal is pending, may be so corrected with leave of the appellate court. [1961 c 299 § 84.]

**3.50.360 Presence of defendant, counsel.** The defendant shall be present in person or by counsel at the arraignment and shall be present at every later stage of the trial. A corporation may appear by counsel for all purposes. [1961 c 299 § 85.]

**3.50.370 Review by superior court—Methods—Grounds.** All criminal proceedings before the municipal court, and judgments rendered therein, shall be subject

to review in superior court of the county wherein the municipal court is located by appeal as provided in RCW 3.50.380, or by a writ of review.

The writ of review shall be sought by the city only in those instances wherein the municipal court dismisses an action solely for reasons of law, and shall not be available after a trial on the merits. The procedure thereby used in seeking a writ of review shall be substantially the same as that provided for in appeal. [1961 c 299 § 86.]

**3.50.380 Appeal to superior court—Procedure.** The appeal shall be to the superior court of the county in which the municipal court is located. The appeal shall be taken by serving a copy of a written notice of appeal upon the attorney for the plaintiff and filing the original thereof with an acknowledgment of service or affidavit of service with the municipal court within ten days after entry of judgment.

After notice of appeal is given, as herein required, the appellant shall diligently prosecute his appeal and, within thirty days from the date of entry of judgment, the municipal judge or his clerk shall file with the clerk of the superior court a transcript duly certified by the municipal court judge and furnished by the municipal court free of charge containing a copy of all written pleadings and docket entries of the police court. The municipal court judge shall notify the defendant or his attorney of such filing.

Within ten days after notice is given that the transcript is filed, the appellant shall note the case for trial. The case shall be set for trial at the earliest open date thereafter and the clerk of the superior court shall, in writing, notify the respondent's counsel of the date thereof. [1961 c 299 § 87.]

*Rules for Courts of Limited Jurisdiction: Appeals – JCrR 6.01–6.03.*

**3.50.390 Dismissal of appeal.** If the appellant fails to proceed with the appeal within the time and manner provided in RCW 3.50.380, then the superior court shall, upon motion of the respondent, dismiss the appeal if the transcript has been there filed. Upon dismissal of the appeal for failure of the appellant to proceed diligently with the appeal and as herein required, or for any other cause, the judgment of the lower court shall be enforced by the municipal judge. If, at the time of the dismissal, cash deposit or appeal bond as hereinafter required has been furnished and is in the custody of the superior court, the same shall be returned to the lower court after any deduction therefrom for costs allowed by law. Upon voluntary dismissal by the city or verdict of not guilty cash bail shall be returned to the party posting the same. The municipal court shall have power to forfeit the cash bail or appeal bond and issue execution thereon for breach of any condition under which it is furnished. [1961 c 299 § 88.]

*Rules for Courts of Limited Jurisdiction: Appeals – JCrR 6.01–6.03.*

**3.50.400 Appeal bond—Disposition of bail, exhibits pending appeal.** The appellant shall be committed to the city jail until he shall recognize or give bond to the city

in such reasonable sum with such sureties as said municipal court may require that he will diligently prosecute the appeal and that he will within ten days after he has received notice from said municipal court judge or his clerk that the judgment in the lower or municipal court has been filed with the clerk of the superior court, together with the transcript duly certified by the lower court judge containing a copy of all records and proceedings in the lower court; that he will cause the case to be set for trial at the earliest open date; that he will appear at the court appealed to and comply with any sentence of the superior court and will, if the appeal is dismissed for any reason, comply with the sentence of the lower court.

Whenever the transcript is filed in the superior court and any cash bail or bail bond has been filed with the lower court, the judge thereof shall transfer the same to the superior court in which the appeal is pending, there to be held pending disposition of the appeal and shall also deliver to the court any exhibits introduced into evidence in the trial before the lower court, which exhibits, subject to the proper rulings of the appellant court, may be offered in evidence if the trial is had in the superior court; otherwise, to be returned to the custody of the lower court judge. [1961 c 299 § 89.]

*Rules for Courts of Limited Jurisdiction: Appeals – JCrR 6.01–6.03.*

**3.50.410 Superior court trial de novo—Jury trial—Maximum punishment—Appeal to supreme court or court of appeals.** In the superior court the trial shall be de novo, subject to the right of the respondent to file an amended complaint therein. The defendant in the superior court may have a trial by jury. If the defendant be convicted in the superior court, he shall be sentenced anew by the superior court judge with a fine of not to exceed five hundred dollars or imprisonment in the city jail not to exceed ninety days, or by both such fine and imprisonment. Appeals shall lie to the supreme court or the court of appeals of the state of Washington as in other criminal cases in the superior court. [1971 c 81 § 15; 1961 c 299 § 90.]

**3.50.420 Superior court judgment mailed to municipal court.** Upon conclusion of the case in the superior court, the clerk thereof shall forthwith mail a true and correct copy of the judgment to the municipal court appealed from. [1961 c 299 § 91.]

**3.50.430 Prosecution in city's name for violation of ordinances.** All prosecutions for the violation of any city ordinance shall be conducted in the name of the city and may be upon the complaint of any person. [1961 c 299 § 92.]

**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 hundred dollars or imprisonment in the city jail for a period not to exceed ninety days, or both such fine and imprisonment. [1961 c 299 § 93.]

**3.50.450 Pleadings, practice and procedure not provided for governed by justice 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 justice courts. [1961 c 299 § 94.]

**3.50.460 Transfer of pending matters, records, furniture, etc., to municipal court.** All cases, proceedings and matters pending before justices of the peace who immediately before January 15, 1962, were acting as municipal or police judges, shall on January 15, 1962, be transferred to the municipal courts established by this chapter, together with all files, records and proceedings relating to such cases, and shall be disposed of therein in due course of law.

This chapter shall not affect any appeal from any police justice or municipal judge, commenced and pending prior to January 15, 1962, but such appeal shall be conducted and concluded as if this chapter had not been enacted, except that if remanded from the superior court, the municipal court shall have authority and power to enforce the judgment of the lower court.

All furniture and equipment belonging to the city or town in which the court is located, now under the care and custody of the justice of the peace and/or municipal judge, shall be transferred to the municipal court established by this chapter on or before January 15, 1962, for use in the operation and maintenance of the municipal court. [1961 c 299 § 95.]

**3.50.470 Chapter cumulative—Continuation under existing law.** Although self-executing, the provisions of this chapter shall be cumulative and, notwithstanding any provision hereof, any city or town may elect to continue under any existing statutes relating to police courts, municipal courts, or laws relating to justices of the peace. [1961 c 299 § 96.]

### Chapter 3.54 CLERKS AND DEPUTY CLERKS

Sections	
3.54.010	Compensation.
3.54.020	Powers and duties.

**3.54.010 Compensation.** The clerk and deputy clerks of district courts shall receive such compensation as shall be provided by the county commissioners. [1971 c 73 § 6; 1961 c 299 § 98.]

**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 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. [1971 c 73 § 7; 1961 c 299 § 99.]

### Chapter 3.58 SALARIES AND EXPENSES

Sections	
3.58.010	Salaries of full time justices of the peace.
3.58.020	Salaries of part time justices of the peace.
3.58.030	Payment of salaries.
3.58.040	Travel expenses.
3.58.050	Other court expenses—Lease, construction, of court-rooms and offices.

**3.58.010 Salaries of full time justices of the peace.** The annual salary of each full time justice of the peace shall be twenty-three thousand two hundred and fifty dollars: *Provided*, That in cities having a population in excess of five hundred thousand, the city which pays the salary may increase such salary of its municipal judges to an amount not more than the salary paid the superior court judges in the county in which the court is located: *Provided further*, That no full time justice of the peace shall perform any civil marriage between 8:00 a.m. and 5:00 p.m. Monday through Friday. [1974 1st ex.s. c 149 § 6 (Initiative Measure No. 282); 1972 ex.s. c 100 § 4; 1969 c 52 § 1; 1965 c 147 § 1; 1961 c 299 § 100.]

**Severability—1974 1st ex.s. c 149 (Initiative Measure No. 282):** See note following RCW 43.03.010.

*Municipal courts, cities over 500,000, judges' salaries: RCW 35.20.160.*

*Salary schedule for public officials: See notes following RCW 43.03.010.*

**3.58.020 Salaries of part time justices of the peace.** (1) The annual salaries of part time justices of the peace shall be set by the county commissioners in each county in accordance with the minimum and maximum salaries provided in this subsection:

(a) In justice court districts having a population under two thousand five hundred persons, the salary shall be not less than one thousand dollars nor more than four thousand dollars;

(b) In justice court districts having a population of two thousand five hundred persons or more, but less than five thousand, the salary shall be set at not less than one thousand two hundred dollars nor more than five thousand dollars;

(c) In justice court districts having a population of five thousand persons or more, but less than seven thousand five hundred, the salary shall be set at no less than one thousand two hundred dollars or more than six thousand dollars;

(d) In justice court districts having a population of seven thousand five hundred persons or more, but less than ten thousand, the salary shall be set at not less than one thousand five hundred dollars or more than seven thousand dollars;

(e) In justice court districts having a population of ten thousand persons or more, but less than twenty thousand, the salary shall be set at no less than two thousand dollars or more than nine thousand dollars;

(f) In justice court districts having a population of twenty thousand persons or more, but less than thirty thousand, the salary shall be set at not less than three

thousand five hundred dollars or more than twelve thousand dollars; and

(g) In justice court districts having a population of thirty thousand persons or more, the salary shall be set at not less than five thousand dollars or more than fifteen thousand dollars. [1974 1st ex.s. c 95 § 1; 1969 ex.s. c 192 § 1; 1961 c 299 § 101.]

**3.58.030 Payment of salaries.** The compensation of justices of the peace, 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. [1961 c 299 § 102.]

**3.58.040 Travel expenses.** Justices of the peace, justices of the peace pro tempore, court commissioners and justice court employees shall receive their reasonable traveling expenses when engaged in the business of the court as provided by RCW 36.17.030 as now or hereafter amended. [1961 c 299 § 103.]

**3.58.050 Other court expenses—Lease, construction, of courtrooms and offices.** The county commissioners shall furnish all necessary facilities for the justice 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: *Provided*, That the county commissioners shall not be required to furnish courtroom space in any place other than as provided in the districting plan. [1963 c 213 § 3; 1961 c 299 § 104.]

### Chapter 3.62 INCOME OF COURT

#### Sections

3.62.010	Nonsuspension of costs.
3.62.015	Distribution of income percentages—Establishment—Use—Annual review.
3.62.020	Fees, fines, forfeitures and penalties except city cases.
3.62.040	Costs, fines, forfeitures and penalties from city cases.
3.62.050	Quarterly disbursements.
3.62.055	Quarterly calculation for transfers to state funds.
3.62.060	Filing fees in civil cases.
3.62.070	Filing fees in criminal cases.

**3.62.010 Nonsuspension of costs.** The court may at the time of sentencing or at any time thereafter suspend a portion or all of a fine or penalty except that costs of the action shall not be suspended: *Provided*, That the court may suspend costs in the case of juvenile or indigent defendants. "Costs" for the purpose of this section, does not include jury fees, witness fees or sheriff's fees. [1961 c 299 § 105.]

**3.62.015 Distribution of income percentages—Establishment—Use—Annual review.** The state auditor shall establish distribution percentages for use by the county treasurer and state treasurer in remitting justice court income, except for (1) fines, forfeitures, and penalties assessed and collected because of the violation of city and/or county ordinances[,] (2) fees and costs assessed and collected because of a civil action

and (3) penalty assessments assessed and collected pursuant RCW 46.61.515(2). A separate percentage shall be established for each city within the county, and for each county, and for the amount that each county shall remit to the state treasurer. These percentages shall be established by reviewing the financial records of each county for the six years prior to January 1, 1969, and determining the average percentage of the net income, from that county's justice courts, that each city, and the county, and the state has received for that period of time. The percentages determined by this procedure shall then be provided to each county treasurer for his use in distributing justice court income. Percentages shall be established for each state fund, now receiving justice court income, by determining the average percentage of justice court income that each fund has received from the total income remitted to the state by the counties for this period of time, except that any state fund receiving less than five hundred dollars each year for the two years 1967 and 1968 shall not have a percentage established for it and the amounts of income in such situation shall be added to the amounts remitted to the state general fund for the purpose of calculating average distribution percentages.

The state auditor, with the assistance of the administrator for the courts, shall review the distribution percentages annually. This review shall be based upon the annual percentages of types of violations, in relationship to the total cases processed, to determine if the original percentages established by this section are still proportionately accurate within a margin of plus or minus five percent. In the event the annual review indicates that the existing percentages are not proportionately accurate, the state auditor shall revise the distribution percentages to the percentages indicated in the annual review and notify the county and state treasurer within fifteen days in advance of any quarterly distribution of the revised percentages and the statistics supporting the revision. [1974 1st ex.s. c 130 § 2; 1969 ex.s. c 199 § 1.]

**3.62.020 Fees, fines, forfeitures and penalties except city cases.** All fees, fines, forfeitures and penalties assessed by district courts, except fines, forfeitures and penalties assessed and collected because of the violation of city ordinances, shall be collected and 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. The county treasurer shall place these moneys into the justice court suspense fund. [1971 c 73 § 8; 1969 ex.s. c 199 § 2; 1961 c 299 § 106.]

**3.62.040 Costs, fines, forfeitures and penalties from city cases.** All costs, fines, forfeitures and penalties assessed and collected by justice courts because of violations of city ordinances shall be remitted at least monthly directly to the treasurer of the city wherein the violation occurred. [1961 c 299 § 108.]

**3.62.050 Quarterly disbursements.** Quarterly, the county treasurer shall determine the total expenditures of the justice 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. The treasurer shall then transfer an amount, equal to the total expenditures, from the justice court suspense fund to the current expense fund. The treasurer shall then, using the percentages established as in RCW 3.62.015 provided remit the appropriate amounts of the remaining balance in the justice court suspense fund to the state general fund and to the appropriate city treasurer(s). The final remaining balance of the justice court suspense fund shall then be remitted as specified by the county commissioners. [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.]

**3.62.055 Quarterly calculation for transfers to state funds.** Quarterly, the state treasurer, using RCW 3.62-.015, shall calculate the appropriate amounts to be transferred to each appropriate state fund. [1969 ex.s. c 199 § 4.]

**3.62.060 Filing fees in civil cases.** In any civil action commenced before or transferred to a justice court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of six dollars. Fees for the support of county law libraries provided for in RCW 27.24.070 shall be paid by the clerk out of the filing fee provided for in this section. 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. [1969 c 25 § 1; 1965 c 55 § 1; 1961 c 299 § 110.]

**3.62.070 Filing fees in criminal cases.** Except in traffic cases wherein bail is forfeited to a violations bureau, and except in cases filed in municipal departments established pursuant to chapter 3.46 RCW, in every criminal action filed by a city for an ordinance violation the city shall be charged a four dollar filing fee. In such criminal actions the cost of providing services necessary for the preparation and presentation of a defense at public expense are not within the four dollar filing fee and shall be paid by the city. In all other criminal actions, no filing fee shall be assessed or collected: *Provided*, That in such cases, for the purposes of RCW 3.62.010, four dollars of each fine or penalty shall be deemed filing costs. [1973 1st ex.s. c 10 § 2; 1961 c 299 § 111.]

**Chapter 3.66  
JURISDICTION AND VENUE**

Sections	
3.66.010	General powers of justice 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 deferral or suspension—Limitations.
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 justice 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 justice court for the trial of all actions enumerated in chapters 3.30 through 3.74 RCW or assigned to the justice 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 justice court as far as the same may be applicable and not inconsistent with the provisions of chapters 3.30 through 3.74 RCW. The justice 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: *Provided*, That in the trial of actions brought for violating any city ordinance, a jury trial shall be allowed only for offenses involving the revocation or suspension of a driver's license or other gross misdemeanor. [1961 c 299 § 112.]

**3.66.020 Civil jurisdiction.** The justice court shall have jurisdiction and cognizance of the following civil actions and proceedings:

- (1) Of an action arising on contract for the recovery of money only in which the sum claimed does not exceed one thousand dollars;
- (2) Of an action 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, when the amount of damages claimed does not exceed one thousand dollars; also of actions to recover the possession of personal property when the value of such property as alleged in the complaint, does not exceed one thousand dollars;
- (3) Of an action for a penalty not exceeding one thousand dollars;
- (4) Of an action upon a bond conditioned for the payment of money, when the amount claimed does not exceed one 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) Of an action on an undertaking or surety bond taken by him or his predecessor in office, when the amount claimed does not exceed one thousand dollars;

(6) Of an action for damages for fraud in the sale, purchase, or exchange of personal property, when the damages claimed do not exceed one thousand dollars;

(7) To take and enter judgment on confession of a defendant, when the amount of the judgment confessed does not exceed one thousand dollars;

(8) To issue writs of attachment, garnishment and replevin upon goods, chattels, moneys, and effects, when the amount does not exceed one thousand dollars; and

(9) Of all other actions and proceedings of which jurisdiction is specially conferred by statute, when the amount involved does not exceed one thousand dollars and the title to, or right of possession of, or a lien upon real property is not involved.

The amounts of money referred to in subparagraphs (1) through (9) shall be exclusive of interest, costs and attorney's fees. [1965 c 95 § 1; 1961 c 299 § 113.]

**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, subsections (1), (2) except for the recovery of possession of personal property, (4), (6), (7), and (9) may be brought in any justice court 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 justice court district where the defendant or defendants is or are served must be within the county in which the said defendant or defendants reside.

(2) An action arising under RCW 3.66.020, subsection (2) for the recovery of possession of personal property and subsection (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, subsection (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, subsection (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. [1961 c 299 § 115.]

**3.66.050 Transfer of proceedings.** If a civil action is brought in the wrong justice court district, the action may nevertheless be tried therein unless the defendant, at the time he 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. [1961 c 299 § 116.]

**3.66.060 Criminal jurisdiction.** The justice 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: *Provided*, That it shall in no event impose a greater punishment than a fine of five hundred dollars, or imprisonment for six months in the county or city jail as the case may be, or both such fine and imprisonment, unless otherwise expressly provided by statute; and it may suspend and revoke vehicle operator's licenses in the cases provided by law; (2) to sit as committing magistrates 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. [1961 c 299 § 117.]

**3.66.065 Assessment of punishment.** If a defendant is found guilty, a justice holding office pursuant to chapters 3.30 through 3.74 RCW, and not the jury, shall assess his punishment, notwithstanding the provisions of RCW 10.04.100. If such justice determines that the punishment he is authorized to assess is inadequate to the gravity of the offense he may order such defendant to enter recognizance to appear in the superior court of the county and may also recognize the witnesses and shall proceed as a committing magistrate. [1965 ex.s. c 110 § 7.]

*Sentence and judgment: Rules of court: JCrR 5.04.*

**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 him on probation and prescribe the conditions thereof, but in no case shall it extend for more than one year from the date of conviction. During the time of the deferral, the court may, for

good cause shown, permit a defendant to withdraw his plea of guilty, permit him to enter a plea of not guilty, and dismiss the charges against him. [1969 c 75 § 1.]

**3.66.068 Assessment of punishment—Suspension of sentence—Terms.** For a period not to exceed one year after imposition of sentence, the court shall have continuing jurisdiction and authority to suspend the execution of all or any part of its sentence upon stated terms, including installment payment of fines. [1969 c 75 § 2.]

**3.66.069 Assessment of punishment—Revocation of deferral or suspension—Limitations.** 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. [1969 c 75 § 3.]

**3.66.070 Venue—Criminal actions.** All criminal actions shall be brought in the justice court 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 and (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. [1961 c 299 § 118.]

**3.66.080 Criminal venue corrected.** If a criminal action is commenced in an improper district under RCW 3.66.070, the justice court of the district may of its own volition or at the request of either party order the case removed for trial to a proper district. [1961 c 299 § 119.]

**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 justice court of another district in the same county, if any, otherwise to the justice 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. [1967 c 241 § 1; 1961 c 299 § 120.]

**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.] This 1967 amendatory act [1967 c 241] is codified as RCW 3.66.090, 35.20.100, 35.20.130, 35.20.190, 35.22.485, 35.23.625, 35.23.620, 35.24.465 and 35.27.535.

**3.66.095 Removal of certain civil actions to superior court.** See chapter 4.14 RCW.

**3.66.100 Territorial jurisdiction—Process.** Every justice having authority to hear a particular case may issue civil process in and to any place in the county or counties in which his district is located, and criminal process in and to any place in the state. [1961 c 299 § 121.]

**3.66.110 Advertising authority to solemnize marriages is breach of judicial ethics.** It shall be a breach of judicial ethics for any justice of the peace to advertise in any manner that he is authorized to solemnize marriages. Any violation of this section shall be grounds for forfeiture of office. [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 inferior court judges, including but not limited to justices of the peace, police court judges and municipal court judges. [1961 c 299 § 123.]

**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 inferior court judges, 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. [1961 c 299 § 124.]

**3.70.030 Expenses of members.** For attendance at the annual meetings of the association, beginning in 1962 and thereafter, an inferior court judge shall be entitled to receive from the county or city responsible for the operating cost of the court over which he presides twenty dollars per day or major portion thereof; while attending meetings of the association, plus first class

transportation or mileage allowance at the rate of ten cents per mile: *Provided*, That 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. [1961 c 299 § 125.]

**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 justice courts not inconsistent with the law or rules of the supreme court relating to such courts. [1961 c 299 § 126.]

### Chapter 3.74 MISCELLANEOUS

#### Sections

3.74.010	Justices of the peace to be members of state retirement system.
3.74.020	Full time justices ineligible for any other office or public employment than judicial.
3.74.030	Mandatory retirement for justice court judges.
3.74.900	Transfer of proceedings—1961 c 299.
3.74.910	Saving—1961 c 299.
3.74.920	Effect of act on existing courts, judges, etc.
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—1965 ex.s. c 110.

**3.74.010 Justices of the peace to be members of state retirement system.** All justice court judges under chapters 3.30 through 3.74 RCW shall remain members of the state retirement system. [1961 c 299 § 130.]

**3.74.020 Full time justices ineligible for any other office or public employment than judicial.** The full time judges of the justice 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. [1961 c 299 § 131.]

**3.74.030 Mandatory retirement for justice court judges.** A justice court judge shall retire from judicial office at the end of the calendar year in which he 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. [1969 ex.s. c 6 § 1.]

**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.]

**3.74.910 Saving—1961 c 299.** The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall be in existence at the date this act becomes effective; nor shall the transfer of cases, proceedings and matters under the provisions of RCW 3.74.900, have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall be in existence at the date of such transfer. [1961 c 299 § 128.]

**Reviser's note:** The language "this act" refers to 1961 c 299 which is codified as chapters 3.30, 3.34 RCW, RCW 3.38.010, 3.38.020, 3.38.030, 3.38.040, 3.38.050, 3.38.060, chapter 3.42 RCW, RCW 3.46.010 through 3.46.140, 3.46.150, chapters 3.50, 3.54, 3.58 RCW, RCW 3.62.010, 3.62.020, 3.62.040, 3.62.050, 3.62.060, 3.62.070, 3.66.010 through 3.66.060, 3.66.070 through 3.66.110, chapter 3.70 RCW, RCW 3.74.010, 3.74.020, 3.74.900, 3.74.910 through 3.74.930 and which became effective at midnight June 7, 1961, see preface 1961 session laws.

**3.74.920 Effect of act on existing courts, judges, etc.** All justice courts and inferior courts in counties affected by this act on the effective date of this act shall continue to function until the second Monday in January, 1963 as if this act had not been enacted: *Provided*, That no elections for justice of the peace shall be held in such counties in 1962 except as provided in this act: *Provided further*, That in such counties the terms of office of all justices of the peace, municipal judges and police court judges whose terms commenced prior to the second Monday in January, 1963 shall, except as otherwise provided in this act, expire on the second Monday in January, 1963. [1961 c 299 § 129.]

**Reviser's note:** "this act", see note following RCW 3.74.910.

**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.]

**Reviser's note:** 1965 ex.s. c 110 is codified as RCW 3.16.004, 3.34.010, 3.38.020, 3.38.030, 3.38.031, 3.66.065, 3.74.931, and 3.74.940.

**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.]



**Reviser's note:** 1967 c 241 is codified as RCW 3.66.090, 35.20.100, 35.20.130, 35.20.190, 35.22.485, 35.23.625, 35.23.620, 35.24.465 and 35.27.535.

**3.74.940 Validation—1965 ex.s. c 110.** Any prior action by the county commissioners of any county of the first, second, third, fourth, fifth, sixth, seventh, eighth or ninth class 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. [1965 ex.s. c 110 § 4.]



# TITLE 4

## CIVIL PROCEDURE

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### Chapter 4.04

#### RULE OF DECISION—FORM OF ACTIONS

##### Sections

- 4.04.010 Extent to which common law prevails.
- 4.04.020 Only one form of action—Civil action.
- 4.04.030 Designation of parties.

General definitions: Chapter 1.16 RCW.

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**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.]

Common law supplements penal statutes: RCW 9.01.150.

**4.04.020 Only one form of action—Civil action.** There shall be in this state hereafter but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be called a civil action. [Code 1881 § 2; 1877 p 3 § 2; 1871 p 3 § 1; 1860 p 5 § 1; 1854 p 131 § 1; RRS § 153.]

*Rules of court: This section superseded by CR 2. See comment by court after CR 2.*

**4.04.030 Designation of parties.** The party commencing the action shall be known as the plaintiff, and the opposite party the defendant. [Code 1881 § 3; 1877 p 3 § 4; 1854 p 131 § 2; RRS § 154.]

*Rules of court: This section superseded by CR 17(-). See comment by court after CR 17(-).*

### Chapter 4.08 PARTIES TO ACTIONS

#### Sections

4.08.010	Real party in interest to prosecute action.
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4.08.190	Intervention.
4.08.200	Practice in intervention.
4.08.210	Physician and dentist members of committees to evaluate credentials and qualifications of physicians and dentists—Immunity from civil suit.

**4.08.010 Real party in interest to prosecute action.** Every action shall be prosecuted in the name of the real party in interest, except as is otherwise provided by law. [Code 1881 § 4; 1877 p 4 § 4; 1875 p 4 § 1; 1869 p 3 § 4; 1854 p 131 § 3; RRS § 179.]

*Rules of court: Cf. CR 17(a).*

*Unlawful institution or prosecution of action in the name of another: RCW 9.62.020.*

**4.08.020 Certain fiduciaries may sue in own name.** An executor or administrator, or guardian of a minor or person of unsound mind, a trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the suit is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another. [Code 1881 § 5; 1877 p 4 § 5; 1869 p 4 § 5; 1854 p 131 § 4; RRS § 180.]

*Rules of court: This section superseded by CR 24. See comment by court after CR 24. See also CR 9(a), CR 17(a).*

**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.]

*Rules of court: This section superseded by CR 19(e). See comment by court after CR 19(e).*

**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.]

*Rules of court: This section superseded by CR 20(c). See comment by court after CR 20(c).*

**4.08.050 Guardian ad litem for infant.** When an infant is a party 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. Said guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he 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 be of the age of fourteen years, and applies within thirty days after the service of the summons; if he 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. [1891 c 30 § 1; Code 1881 § 12; 1854 p 132 §§ 6, 7; RRS § 187.]

*Eminent domain by cities, guardian ad litem: RCW 8.12.180.*

**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.]

*Eminent domain by cities, guardian ad litem: RCW 8.12.180.*

**4.08.070 One or more may sue or defend for others similarly situated.** When the question is one of common or general interest to many persons, or where the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole. [Code 1881 § 14; 1877 p 5 § 15; 1854 p 132 § 9; RRS § 190.]

*Rules of court: Class actions, CR 23.*

**4.08.080 Actions 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.]

**4.08.090 Actions against persons severally liable on obligation.** Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the plaintiff. [Code 1881 § 16; 1877 p 6 § 16; 1854 p 132 § 10; RRS § 192.]

*Rules of court: This section superseded by CR 20(a). See comment by court after CR 20(a).*

**4.08.100 Actions 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 Actions 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.]

*Verification of pleadings: RCW 4.36.020.*

**4.08.120 Actions 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.]

*Verification of pleadings: RCW 4.36.020.*

**4.08.130 New parties may be brought in.** The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall cause them to be brought in. [Code 1881 § 20; 1877 p 6 § 20; 1869 p 6 § 20; RRS § 196.]

*Rules of court: This section superseded by CR 19, 20 and 21. See comment by court after CR 19 and 20.*

**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 Actions 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 Actions 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 Actions 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.]

**4.08.190 Intervention.** Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation in the success of either party, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff, in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff or by demanding anything adversely to both the plaintiff and the defendant, and is made by a complaint setting forth the grounds upon which the intervention rests, filed by leave of the court or judge on the ex parte motion of

the party desiring to intervene. [Code 1881 § 23; 1877 p 7 § 23; RRS § 202.]

**Rules of court:** *This section superseded by CR 24. See comment by court after CR 24.*

**4.08.200 Practice in intervention.** When leave is given to intervene, a copy of the intervenor's complaint shall be served upon the parties to the action or proceedings who have not appeared, or publication of a notice of the intervention containing a brief statement of the nature of the intervenor's demand shall be made in all cases where there are absent or nonresident defendants. The notice shall be published in the same manner and for the same length of time as prescribed for publication of summons. And the complaint shall also be served upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint. The court shall determine upon the rights of the intervenor at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention: *Provided*, That no intervention shall be cause for delay in the trial of an action between the original parties thereto. [1957 c 9 § 1; Code 1881 § 24; 1877 p 7 § 24; RRS § 203.]

**Rules of court:** *Cf. CR 5, CR 7(c), CR 24.*

**4.08.210 Physician and dentist members of committees to evaluate credentials and qualifications of physicians and dentists—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.
4.12.025	Actions to be brought where defendant resides—Residence of corporations—Optional venue of actions against corporations.
4.12.026	Actions against nonresidents.
4.12.027	Actions brought in wrong county—Proceeding.
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.
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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.

*Actions against state as consequence of criminal act, jurisdiction of courts abolished:* RCW 7.68.040.

**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.]

**4.12.025 Actions to be brought where defendant resides—Residence of corporations—Optional venue of actions against corporations.** 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 RCW 4.12.025, 4.12.026 and 4.12.027, the residence of a corporation defendant shall be deemed to be in any county 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 hereinafter otherwise provided. The venue of any action brought against a corporation, at the option of the plaintiff, shall be (1) in the county where the tort was committed; (2) in the county where the work was performed for said corporation; (3) in the county where the agreement entered into with the corporation was made; or (4) in the county where the corporation has its principal place of business. [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.]

**Severability—1965 c 53:** See RCW 23A.98.020.

**4.12.026 Actions against nonresidents.** An action against a nonresident of the state may be brought in any county where service of process may be had. [1927 c 173 § 2; RRS § 205-2.]

**Rules of court: Venue—CR 82(a).**

**Actions against nonresident motorist: RCW 46.64.040.**

**4.12.027 Actions brought in wrong county—Proceeding.** If an action is brought in the wrong county, the action may nevertheless be tried therein unless the defendant, at the time he appears and demurs or answers, files an affidavit of merits and demands that the trial be had in the proper county. [1927 c 173 § 3; RRS § 208. Prior: 1891 p 71 § 1, part; Code 1881 § 50, part; 1877 p 11 § 51, part; 1875 p 5 § 7.]

**Rules of court: Venue—CR 82(b). Demurrers abolished—CR 7(c).**

**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.** 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 supreme court or the administrator for the court, and the chief justice of the supreme court shall direct a visiting judge to hear and try such action as soon as convenient and practical.

The presiding judge in judicial districts where there is more than one judge, or the chief justice of the supreme court for 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. [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 improvidently 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

4.16.010 Commencement of actions limited—Objections, how taken.

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.

4.16.090 Action to cancel tax deed.

4.16.100 Actions limited to two years.

4.16.110 Actions limited to one year.

4.16.115 Special provisions for action on penalty.

4.16.130 Actions 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.
- 4.16.350 Actions against hospitals, hospital personnel, and members of the healing arts.

*Claims against counties: RCW 36.32.330; chapter 36.45 RCW.*

*Claims against estates: RCW 11.40.060.*

*Criminal procedure, limitation of actions: RCW 10.01.020.*

*Garnishment writ, dismissal after one year: RCW 7.33.270.*

*Tax liability, action by another state, limitation: RCW 4.24.140.*

*Usury, business organizations engaged in lending or real estate development cannot bring action: RCW 19.52.080.*

**4.16.010 Commencement of actions limited—Objections, how taken.** Actions can only be commenced within the periods herein prescribed after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute; but the objection that the action was not commenced within the time limited can only be taken by answer or demurrer. [1891 c 51 § 1; 1885 p 74 § 1; Code 1881 § 25; 1873 p 8 § 25; 1869 p 8 § 25; 1863 p 85 § 16; 1860 p 289 § 1; 1854 p 362 § 1; RRS § 155.]

*Rules of court: Section superseded in part or modified by CR 7 and 8. See comment by court after CR 7 and 8.*

**4.16.020 Actions to be commenced within ten years.** The period prescribed in RCW 4.16.010 for the commencement of actions shall be as follows:

Within ten years:

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. [Code 1881 § 26; 1877 p 7 § 26; 1854 p 363 § 2; RRS § 156.]

*Adverse possession, limitation tolled when personal disability: RCW 7.28.090.*

*Adverse possession, 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.** Within six years:

(1) 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.

(2) An action upon a contract in writing, or liability express or implied arising out of a written agreement.

(3) An action for the rents and profits or for the use and occupation of real estate. [1927 c 137 § 1; Code 1881 § 27; 1854 p 363 § 3; RRS § 157.]

**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.]

*Infants: Chapter 26.28 RCW.*

*Probate, actions by and against executors, etc.: Chapter 11.48 RCW.*

*Probate, guardianship: Chapters 11.88, 11.92 RCW.*

*Probate, 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.** 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) 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.

(7) An action for seduction and breach of promise to marry. [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;"

**4.16.090 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."

*Action to cancel treasurer's deed for irrigation district assessments: RCW 87.03.365.*

**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.]

*Claims against the state must be presented within two years: RCW 43.09.160.*

*Limitation of action for recovery of transportation charges: RCW 81.28.270.*

**4.16.110 Actions limited to one year.** Within one year:

(1) An action against a sheriff, or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(2) An action by an heir, legatee, creditor or other party interested, against an executor or administrator, for alleged misfeasance, malfeasance or mismanagement of the estate within one year from the time of final settlement, or, the time such alleged misconduct was discovered. [Code 1881 § 30; 1877 p 8 § 30; 1869 p 9 § 30; 1854 p 364 § 5; RRS § 161.]

*Escape: Chapter 9.31 RCW.*

*Probate, actions against executors, etc.: Chapter 11.48 RCW.*

*Sheriff, civil liability: RCW 36.28.150.*

**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 Actions 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 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. [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.]

**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 insane, 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. [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.]

**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.** 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. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time and within one year after the issuing of letters testamentary or of administration. [Code 1881 § 38; 1877 p 9 § 38; 1854 p 364 § 12; RRS § 170.]

*Decedents, liability for debts: RCW 11.04.270.*

*Decedents, 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. [1967 c 75 § 1.]

**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. [1967 c 75 § 2.]

**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.]

**4.16.350 Actions against hospitals, hospital personnel, and members of the healing arts.** Any civil action for damages against a hospital which is licensed by the state of Washington or against the personnel of any hospital, or against a member of the healing arts including, but not limited to, a physician licensed under chapter 18.71 RCW or chapter 18.57 RCW, chiropractor licensed under chapter 18.25 RCW, a dentist licensed under chapter 18.32 RCW, or a nurse licensed under chapter 18.88 or 18.78 RCW, based upon alleged professional negligence shall be commenced within (1) three years from the date of the alleged wrongful act, or (2) one year from the time that plaintiff discovers the injury or condition was caused by the wrongful act, whichever period of time expires last. [1971 c 80 § 1.]

## 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	Workmen's 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, or heirs.

*Action for injury or death of a child: RCW 4.24.010.*

*Actions by and against executors: Chapter 11.48 RCW.*

**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 of the person whose death shall have been so caused. If there be no wife or husband or 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. [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 Workmen's 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] 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.]

**4.20.060 Action for personal injury survives to surviving spouse, child, 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, or leaving no surviving spouse or issue, 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 children, or if no surviving spouse, in favor of such child or children, or if no surviving spouse or 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. [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

### COMPARATIVE NEGLIGENCE—IMPUTED NEGLIGENCE

Sections	
4.22.010	Contributory negligence no bar to action—Comparative negligence.
4.22.020	Negligence of one spouse not imputable to other.
4.22.900	Effective date—1973 1st ex.s. c 138.
4.22.910	Severability—1973 1st ex.s. c 138.

**4.22.010 Contributory negligence no bar to action—Comparative negligence.** Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages caused by negligence resulting in death or in injury to person or

property, but any damages allowed shall be diminished in proportion to the percentage of negligence attributable to the party recovering. [1973 1st ex.s. c 138 § 1.]

**4.22.020 Negligence of one spouse not imputable to other.** The negligence of one marital spouse shall not be imputed to the other spouse to the marriage so as to bar recovery in an action by the other spouse to the marriage, or his or her legal representative, to recover damages from a third party caused by negligence resulting in death or in injury to the person. [1973 1st ex.s. c 138 § 2.]

**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.]

**Chapter 4.24  
SPECIAL RIGHTS OF ACTION AND SPECIAL IMMUNITIES**

Sections

- 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.
- 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 wilful injury to 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.
- 4.24.240 Physician and dentist members of committees to evaluate credentials and qualifications of physicians and dentists—Immunity from civil suit.

- 4.24.250 Physicians and dentists filing charges or presenting evidence—Immunity—Records of medical or dental boards not subject to process.
- 4.24.260 Physicians filing charges or presenting evidence before medical disciplinary board—Immunity.
- 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.

*Action for money damages due to gambling violations: RCW 9.47.420.*

*Consent to treatment of minor for venereal disease, liability: RCW 70.24.110.*

*Special proceedings: Title 7 RCW.*

**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.

*Seduction: RCW 9.79.070.*

**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.

*Fire, crimes relating to: Chapter 9.40 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, 4.24.060, 9.40.060, 9.40.070, and 9.40.080, in the same manner as if the privilege granted by this section had not been allowed. [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, 4.24.060, 9.40.060, 9.40.070, and 9.40.080, but it may be pursued, notwithstanding the fines or penalties set forth in RCW 9.40.070 and 9.40.060; 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. [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 9.47 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 caused by or resulting from the sole negligence of the indemnitee, his agents or employees is against public policy and is void and unenforceable. [1967 ex.s. c 46 § 2.]

**4.24.130 Action for change of name.** Any person desiring a change of his name or that of his child or ward, may apply therefor to the superior court of the county in which he 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. [Code 1881 § 635; 1877 p 132 § 638; RRS § 998.]

**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: RCW 4.16.080(6), 4.16.100, 4.16.115.*

**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 justice 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. [1969 ex.s. c 199 § 9; Code 1881 § 660; 1869 p 153 § 600; RRS § 966.]

*Disposition of fines collected: Chapter 3.16 RCW, RCW 10.82.060.*

*Disposition of fines, fees, penalties and forfeitures: RCW 10.82.070.*

**4.24.190 Action against parent for wilful injury to 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 wilfully or maliciously destroy property, real or personal or mixed, shall be liable to the owner of such property in a civil action at law for damages in an amount not to exceed one thousand dollars. This section shall in no way limit the amount of recovery against the parent or parents for their own common law negligence. [1967 ex.s. c 46 § 1; 1961 c 99 § 1.]

**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.** Any public or private landowners or others in lawful possession and control of agricultural or forest lands or water areas or channels and rural 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 hunting, fishing, camping, picnicking, swimming, hiking, pleasure driving, the pleasure driving of all-terrain 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: *Provided*, That 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: *Provided further*, That nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. [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.*

*All-terrain 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.]

*Criminal action for being detained for investigation of shoplifting, reasonable grounds a defense: RCW 9.01.116.*

*Shoplifting: RCW 9.78.010.*

**4.24.240 Physician and dentist members of committees to evaluate credentials and qualifications of physicians and dentists—Immunity from civil suit.** Physicians licensed under chapters 18.71 or 18.57 RCW and dentists licensed under chapter 18.32 RCW who are members of review committees for medical or dental societies, and licensed hospitals, or committees whose duties require evaluation of credentials and qualifications of physicians and dentists shall be immune from civil action for damages arising out of the performance of their duties on such committees, where such actions are being brought by or on behalf of the person who is being evaluated. [1969 ex.s. c 157 § 1.]

**4.24.250 Physicians and dentists filing charges or presenting evidence—Immunity—Records of medical or dental boards not subject to process.** Physicians licensed under chapter 18.71 RCW or chapter 18.57 RCW, and dentists licensed under chapter 18.32 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 a regularly constituted review committee or board of a medical or dental 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, shall be immune from civil action for damages arising out of such activities. The written records of such committees or boards shall not be subject to subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees. [1971 ex.s. c 144 § 1.]

**4.24.260 Physicians filing charges or presenting evidence before medical disciplinary board—Immunity.** Physicians licensed under chapter 18.71 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 shall be immune from civil action for damages arising out of such activities. [1971 ex.s. c 144 § 2.]

**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.

## Chapter 4.28

### COMMENCEMENT OF ACTIONS

Sections	
4.28.005	Computation of time.
4.28.010	Civil actions, how commenced.
4.28.011	Tolling statute of limitations—Action deemed commenced, when.
4.28.020	Jurisdiction acquired, when—Effect of voluntary appearance.
4.28.030	Requisites of summons.
4.28.040	Contents of summons.
4.28.050	Form of summons.
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4.28.070	Who may serve summons.
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4.28.081	Summons, how served—When corporation in hands of receiver.
4.28.090	Service on corporation without officer in state upon whom process can be served.
4.28.100	Service of summons by publication—When authorized.
4.28.110	Manner of publication and form of summons.
4.28.120	Publication of notice in eminent domain proceedings.
4.28.130	Process against unknown heirs.
4.28.140	Affidavit as to unknown heirs.
4.28.150	Title of cause—Unknown claimants—Service by publication.
4.28.160	Rights of unknown claimants and heirs—Effect of judgment—Lis pendens.
4.28.180	Personal service out of state.
4.28.185	Personal service out of state—Acts submitting person to jurisdiction of courts—Saving.
4.28.190	Service on joint defendants—Procedure after service.
4.28.200	Right of one constructively served to appear and defend or reopen.
4.28.210	Appearance, what constitutes.
4.28.220	Notice—Time of service—Requisites.
4.28.230	Notices, upon whom served.
4.28.240	Manner of serving notice.
4.28.250	Service by mail.
4.28.260	Service by mail, how made.
4.28.270	Service where no attorney appears.
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4.28.290	Assessment of damages without answer.
4.28.300	Service of papers by telegraph.
4.28.310	Proof of service, how made.
4.28.320	Lis pendens in actions affecting title to real estate.
4.28.325	Lis pendens in actions in United States district courts affecting title to real estate.
4.28.330	Notice to alien property custodian.
4.28.340	Notice to alien property custodian—Definitions.
4.28.350	Notice to alien property custodian—Duration.

*Rules of court: CR 3; CR 4; CR 5.*

*Claims against cities and towns: Chapter 35.23, 35.31, 35A.31 RCW.*

*Claims against counties: Chapter 36.45 RCW.*  
*Claims against political subdivisions, municipal corporations, and quasi municipal corporations: Chapter 4.96 RCW.*  
*Claims against state: Chapter 4.92 RCW, RCW 44.18.010.*  
*Claims against towns: Chapter 45.52 RCW.*  
*Foreign corporations, actions against: RCW 23A.32.100.*  
*Nonadmitted foreign corporations, actions against: Chapter 23A.36 RCW.*  
*Proceedings as to mentally ill: Chapter 71.02 RCW.*  
*Publication of legal notices: Chapter 65.16 RCW.*  
*Sheriff's fees for service of process and other official services: RCW 36.18.040.*  
*Service of papers on foreign corporation: RCW 23A.32.100.*  
*Service of process on foreign savings and loan association: RCW 33.32.050.*  
*Service of process on nonadmitted foreign corporation: RCW 23A.36.040.*  
*Service of process on nonresident motor vehicle operator: RCW 46.64.040.*  
*Service of process on sabbath prohibited: RCW 9.76.030.*  
*Subpoenas, service: RCW 5.56.040.*

**4.28.005 Computation of time.** The time within which an act is to be done shall be computed by excluding the first day and including the last. If the last day falls on a Sunday it shall be excluded. [1893 c 127 § 26; RRS § 252. Formerly RCW 1.12.040, part.]

*Rules of court: Cf. CR 6(a).*  
*Computation of time: RCW 1.12.040.*

**4.28.010 Civil actions, how commenced.** Civil actions in the several superior courts of this state shall be commenced by the service of a summons, as hereinafter provided, or by filing a complaint with the county clerk as clerk of the court: *Provided*, That unless service has 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: *Provided further*, That an action shall not be commenced for the purpose of tolling any statute of limitations unless pursuant to the provisions of RCW 4.16.170. [1971 ex.s. c 131 § 2; 1895 c 86 § 1; 1893 c 127 § 1; RRS § 220.]

*Rules of court: This section superseded by CR 3(a). See comment by court after CR 3(a). Cf. CR 5(d), CR 5(e).*  
*Clerk of superior court, fees: RCW 36.18.020.*

**4.28.011 Tolling statute of limitations—Action deemed commenced, when.** See RCW 4.16.170.

**4.28.020 Jurisdiction acquired, when—Effect of voluntary appearance.** 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. A voluntary appearance of a defendant is equivalent to a personal service of the summons upon him. [1895 c 86 § 4; 1893 c 127 § 15; RRS § 238.]

*Rules of court: Last sentence of this section superseded by CR 4(d)(4). See comment by court after CR 4(d)(4).*

**4.28.030 Requisites of summons.** The summons must be subscribed by the plaintiff or his attorney, and directed to the defendant requiring him to answer the complaint, and serve a copy of his answer on the person whose name is subscribed to the summons, at a place within the state therein specified in which there is a post office, within twenty days after the service of the summons, exclusive of the day of service. [1893 c 127 § 2; RRS § 221.]

*Rules of court: This section superseded by CR 4(a). See comment by court after CR 4(a).*

**4.28.040 Contents of summons.** The summons shall also contain—

(1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant.

(2) A direction to the defendants summoning them to appear within twenty days after service of the summons, exclusive of the day of service, and defend the action.

(3) A notice that, in case of failure so to do, judgment will be rendered against them, according to the demand of the complaint. It shall be subscribed by the plaintiff, or his attorney, with the addition of his post office address, at which the papers in the action may be served on him by mail. There may, at the option of the plaintiff, be added at the foot, when the complaint is not served with the summons, and the only relief sought is the recovery of money, whether upon tort or contract, a brief notice specifying the sum to be demanded by the complaint. [1893 c 127 § 3; RRS § 222.]

*Rules of court: This section superseded by CR 4(b). See comment by court after CR 4(b).*

**4.28.050 Form of summons.** Such summons shall be substantially in the following form:

----- Court, ----- County.  
 A B, Plaintiff, }  
 vs. }  
 C D, Defendant. }

The State of Washington, -----, to the said -----, defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, which will be filed with the clerk of said court, or a copy of which is herewith served upon you.

E F, Plaintiff's Attorney  
 P.O. Address, ----- County, Wash.

[1893 c 127 § 4; RRS § 223.]

*Rules of court: This section superseded by CR 4(b). See comment by court after CR 4(b).*

**4.28.060 Complaint must accompany summons, when.**

A copy of the complaint must be served upon the defendant with the summons unless the complaint itself be filed in the office of the clerk of the superior court of the county in which the action is commenced within five days after service of such summons, in which case the service of the copy may be omitted; but the summons in such case must notify the defendant that the complaint will be filed with the clerk of said court; and if the defendant appears within ten days after the service of the summons, the plaintiff must serve a copy of the complaint on the defendant or his attorney within ten days after the notice of such appearance, and the defendant shall have at least ten days thereafter to answer the same; and no judgment shall be entered against him for want of an answer in such case till the expiration of the time. [1893 c 127 § 5; RRS § 224.]

*Rules of court:* This section superseded by CR 4(d). See comment by court after CR 4(d).

**4.28.070 Who may serve summons.** In all cases, except when service is made by publication, as hereinafter provided, the summons shall be served by the sheriff of the county wherein the service is made or by his deputy, or by any person eighteen years of age or over, who is competent to be a witness in the action, other than the plaintiff. [1971 ex.s. c 292 § 4; 1893 c 127 § 6; RRS § 225.]

*Rules of court:* This section superseded by CR 4(c). See comment by court after CR 4(c).

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**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.

(2) If against any town or incorporated city in the state, to the mayor thereof.

(3) If against a school district, to the clerk thereof.

(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, 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, 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) 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. [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).

Service of papers on foreign corporation: RCW 23A.32.100.

Service of process on foreign savings and loan association: RCW 33.32.050.

Service of process on nonadmitted foreign corporation: RCW 23A.36.040.

Service of process on 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 such corporation may be commenced in any county where the cause of action may arise, or said corporation may have property, and service may be made upon such 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 such corporation: *Provided,* A copy of said summons, writ, or other process, shall be deposited in the post office, postage paid, directed to the secretary or other proper officer of such corporation, at the place where the main business of such corporation is transacted, when such

place of business is known to the plaintiff, and be published at least once a week for six weeks in some newspaper printed and published at the seat of government of this state, before such service shall be deemed perfect. [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 (of which the return of the sheriff of the county in which the action is brought, that the defendant cannot be found in the county, is prima facie evidence), 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. [1953 c 102 § 1. Prior: 1929 c 81 § 1; 1915 c 45 § 1; 1893 c 127 § 9; RRS § 228.]

**4.28.110 Manner of publication and form of summons.** The publication shall be made in a newspaper printed and published in the county where the action is brought (and if there be no newspaper in the county, then in a newspaper printed and published in an adjoining county, and if there is no such newspaper in an adjoining county, then in a newspaper printed and published at the capital of the state) once a week for six

consecutive weeks: *Provided*, That publication of summons shall not be had 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 as aforesaid. 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 such summons; and said summons for publication shall also contain a brief statement of the object of the action. Said 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.

[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.*

**4.28.130 Process against unknown heirs.** When the heirs of any deceased person are proper parties defendant to any action relating to real property in this state, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of "The unknown heirs" of the deceased. [1903 c 144 § 1; RRS § 229.]

*Rules of court: Section superseded by CR 10(a). See comment by court after CR 10(a).*

**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.

(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. [1959 c 131 § 2.]

*Rules of court: Cf. CR 4(e), CR 12(a), CR 82(a).*

**4.28.190 Service on joint defendants—Procedure after service.** When the action is against two or more defendants and the summons is served on one or more but not on all of them, the plaintiff may proceed as follows:

(1) If the action is against the defendants jointly indebted upon a contract, he may proceed against the defendants served unless the court otherwise directs; and if he recovers judgment it may be entered against all the defendants thus jointly indebted so far only as it may be enforced against the joint property of all and the separate property of the defendants served.

(2) If the action is against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

(3) Though all the defendants may have been served with the summons, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them alone. [1893 c 127 § 13; RRS § 236.]

*Rules of court: Section superseded by CR 20(d). See comment by court after CR 20(d).*

**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).*

**4.28.220 Notice—Time of service—Requisites.** When a party to an action has appeared in the same, he shall be entitled to at least three days' notice of any trial, hearing, motion, application, sale or proceeding

therein; which notice shall be in writing specifying the time and place where the same will be had or made, and which shall be served on him or his attorney, but if neither such party nor his attorney reside in the county in which the action or proceeding is pending or where such application or motion is made, then service by mail may be had on such party or his attorney by mailing to either of them a copy of such notice, properly addressed with postage thereon fully prepaid, at least ten days before the time appointed for such hearing, application or sale. [1897 c 95 § 1; Code 1881 § 2140; RRS § 242.]

*Rules of court: Section superseded by CR 55(a)(3). See comment by court after CR 55(a)(3). Cf. CR 6(a), CR 6(e).*

**4.28.230 Notices, upon whom served.** Notices shall be in writing; and notices and other papers may be served on the party or attorney in the manner prescribed in RCW 4.28.240, 4.28.250, and 4.28.260 where not otherwise provided by statute. [1893 c 127 § 18; RRS § 244.]

*Rules of court: Section superseded by CR 5. See CR 5(f).*

**4.28.240 Manner of serving notice.** The services may be personal or by delivery to the party or attorney on whom service is required to be made, or it may be as follows:

(1) If upon an attorney, it may be made during his absence from his office by leaving the papers with his clerk therein, or with a person having charge thereof; or, when there is no person in the office, by leaving it between the hours of six in the morning and nine in the evening in a conspicuous place in the office; or, if it is not open to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion.

(2) If upon a party, it may be made by leaving the papers at his residence between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion. [1893 c 127 § 19; RRS § 245.]

*Rules of court: Section superseded by CR 5. See CR 5(f).*

**4.28.250 Service by mail.** Service by mail may be made when the person making the service and the person on whom it is to be made reside in different places between which there is a regular communication by mail. [1893 c 127 § 20; RRS § 246.]

*Rules of court: Section superseded by CR 5. See CR 5(f).*

**4.28.260 Service by mail, how made.** In case of service by mail, the papers shall be deposited in the post office, addressed to the person on whom it is served, at his place of residence, and the postage paid; and in such case the time of service shall be double that required in case of personal service. [1893 c 127 § 21; RRS § 247.]

*Rules of court: Section superseded by CR 5. See CR 5(f). Additional time after service by mail—CR 6(e).*

**4.28.270 Service where no attorney appears.** Where a plaintiff or defendant who has appeared resides out of the state and has no attorney in the action, the service may be made by mail if his residence is known; if not known, on the clerk for him. But where a party, whether resident or nonresident, has an attorney in the action, the service of papers shall be upon the attorney instead of the party. But if the attorney shall have removed from the state, such service may be made upon him personally either within or without the state, or by mail to him at his place of residence, if known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. And if the residence of neither the party or attorney are known, the service may be made upon the clerk for the attorney. [1893 c 127 § 22; RRS § 248.]

*Rules of court: Section superseded by CR 5. See CR 5(f).*

**4.28.280 Provisions as to notice not applicable to summons, process, etc.** The provisions of RCW 4.28.240, 4.28.250, 4.28.260 and 4.28.270 do not apply to the service of a summons or other process, or of any paper to bring a party into contempt. [1893 c 127 § 23; RRS § 249.]

*Rules of court: Section superseded by CR 5. See CR 5(f).*

**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.]

**4.28.300 Service of papers by telegraph.** Any writ or order in any civil suit or proceeding, and all the papers requiring service may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order or paper so transmitted, may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect, in all respects, as the original thereof might be, if delivered to him, and the officer or person serving or executing the same, shall have the same authority and be subject to the same liabilities as if the said copy were the original. The original, when a writ or order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent; in sending it, either the original or certified copy may be used by the operator for that purpose. [Code 1881 § 2358; 1866 p 69 § 17; RRS § 254.]

*Rules of court: Section superseded by CR 5(b). See comment by court after CR 5(b).*

*Telegraphic communications: Chapter 5.52 RCW.*

**4.28.310 Proof of service, how made.** Proof of service shall be as follows:

(1) If served by the sheriff or his deputy, the return of such sheriff or his deputy indorsed upon or attached to the summons;

(2) If by any other person, his affidavit thereof indorsed upon or attached to the summons; or

(3) In case of publication, the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or

(4) The written admission of the defendant;

(5) In case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or a clerk of a court of record. In case of service otherwise than by publication, the return, admission or affidavit must state the time, place and manner of service. [1893 c 127 § 14; RRS § 237.]

*Rules of court: Section superseded by CR 4(g). See comment by court after CR 4(g).*

*Affidavit of publication: RCW 65.16.030.*

**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.]

## Chapter 4.32 PLEADINGS

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*Notary public seal not required on court papers: RCW 42.28.060.*

**4.32.010 Rules to determine sufficiency.** All the forms of pleadings heretofore existing in civil actions inconsistent with the provisions of this code, are abolished, and hereafter the forms of pleading and the rule by which the sufficiency of the pleadings is to be determined, shall be as herein prescribed. [Code 1881 § 73; 1877 p 17 § 73; 1869 p 17 § 71; 1854 p 138 § 36; RRS § 255.]

*Rules of court: Section superseded by CR 7 through 15. See comment by court after CR 7.*

*Criminal procedure, forms of pleading abolished: RCW 10.01.030.*

**4.32.020 Pleadings specified.** The only pleadings on the part of the plaintiff shall be:

- (1) The complaint.
- (2) The demurrer.
- (3) The reply.

And on the part of the defendant:

- (1) The demurrer.

(2) The answer. [Code 1881 § 74; 1877 p 17 § 74; 1869 p 20 § 72; 1854 p 139 § 37; RRS § 256.]

*Rules of court: Section superseded by CR 7. See comment by court after CR 7.*

**4.32.030 Complaint.** The first pleading on the part of the plaintiff shall be the complaint. [Code 1881 § 75; 1877 p 17 § 75; 1854 p 139 § 38; RRS § 257.]

*Rules of court: Section superseded by CR 7. See comment by court after CR 7.*

**4.32.040 Requisites of complaint.** The complaint shall contain—

(1) The title of cause, specifying the name of the court, the name of the county in which the action is brought and the name of the parties to the action, plaintiff and defendant.

(2) A plain and concise statement of facts, constituting the cause of action, without unnecessary repetition.

(3) A demand for the relief which plaintiff claims; if the recovery of money or damages be demanded, the amount thereof shall be stated. [1891 c 62 § 1; Code 1881 § 76; 1877 p 17 § 76; 1854 p 139 § 39; RRS § 258.]

*Rules of court: Cf. CR 8(a), CR 8(e), CR 10(a).*

**4.32.050 Demurrer, grounds of.** The defendant may demur to the complaint when it shall appear upon the face thereof either—

(1) That the court has no jurisdiction of the person of the defendant or of the subject matter of the action.

(2) That the plaintiff has no legal capacity to sue; or—

(3) That there is another action pending between the same parties for the same cause; or—

(4) That there is a defect of parties, plaintiff or defendant; or—

(5) That several causes of action have been improperly united.

(6) That the complaint does not state facts sufficient to constitute a cause of action.

(7) That the action has not been commenced within the time limited by law. [1891 c 62 § 2; 1886 p 75 § 1; Code 1881 § 77; 1854 p 139 § 40.]

*Rules of court: Section superseded by CR 7 and 12. See comment of court after CR 7.*

**4.32.060 Grounds of demurrer, how specified.** The demurrer may specify the grounds of objection in the statutory language of RCW 4.32.050, or the grounds may be distinctly specified; it may be taken to the whole complaint; or to any one of the alleged causes of action stated therein. [Code 1881 § 78; 1877 p 18 § 78; 1854 p 139 § 41; RRS § 260.]

*Rules of court: Section superseded by CR 7 and 12. See comment of court after CR 7.*

**4.32.070 Objections 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.]

**4.32.080 Requisites of answer.** The answer of the defendant must contain:

(1) A general or specific denial of each material allegation of the complaint controverted by the defendant or of any knowledge or information thereof sufficient to form a belief.

(2) A statement of any new matter constituting a defense or counterclaim, in ordinary and concise language without repetition. [Code 1881 § 82; 1877 p 18 § 82; 1854 p 139 § 44; RRS § 264.]

*Rules of court: Section superseded by CR 8, 12 and 13. See comment by court after CR 8.*

**4.32.090 Defenses and counterclaims.** The defendant may set forth by answer as many defenses and counterclaims as he may have whether they be such as have been heretofore denominated legal or equitable, or both. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in such a manner that they may be intelligibly distinguished. [Code 1881 § 83, part; 1877 p 19 § 83, part; 1869 p 21 § 81, part; 1854 p 140 § 45; RRS § 273.]

*Reviser's note:* In accordance with codification practice which has been followed since 1897 we have divided Code 1881 § 83 into two sections (RCW 4.32.090, 4.32.100).

*Rules of court: Section superseded by CR 8, 10, 12 and 13. See comment by court after CR 8.*

**4.32.100 Counterclaim defined.** The counterclaim mentioned in RCW 4.32.080, must be one existing in favor of a defendant, and against a plaintiff between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

(1) A cause of action arising out of the contract, or transaction set forth in the complaint, as the foundation of the plaintiff's claim, or connected with the subject of the action.

(2) In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action. [Code 1881 § 83, part; 1877 p 19 § 83, part; 1869 p 21 § 81, part; RRS § 265.]

*Reviser's note:* See note following RCW 4.32.090.

*Rules of court: Section superseded by CR 13. See comment by court after CR 13.*

**4.32.110 Setoff, when allowed.** The defendant in a civil action upon a contract expressed or implied, may set off any demand of a like nature against the plaintiff in interest, which existed and belonged to him at the time of the commencement of the suit. And in all such actions, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, he may also set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, and was such a demand as might have been set off against such

person to whom he was originally liable, or such assignee while the contract belonged to him. [Code 1881 § 497; 1877 p 107 § 501; RRS § 266.]

*Rules of court: Section superseded by CR 13(j). See comment by court after CR 13(j). See also CR 54(b).*

**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 cases 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 cases 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.]

**4.32.160 Procedure when complaint is amended.** If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court; and if he omits to do so, the plaintiff may proceed to obtain judgment as in other cases of failure to answer. [Code 1881 § 80; 1877 p 18 § 80; 1869 p 20 § 78; RRS § 262.]

*Rules of court: Section superseded by CR 15. See comment by court after CR 15.*

**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.]

**4.32.180 Defendant may demur and answer.** The defendant may demur to one or more of several causes of action stated in the complaint, and answer the residue. [Code 1881 § 84; 1877 p 19 § 84; 1854 p 140 § 46; RRS § 274.]

*Rules of court: Section superseded by CR 7 and 12. See comment by court after CR 7.*

**4.32.190 Objections not taken deemed waived—Exceptions.** If no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting always the objection that the court has no jurisdiction, or that the complaint does not state facts sufficient to constitute a cause of action, which objection can be made at any stage of the proceedings, either in the superior or supreme court. [Code 1881 § 81; 1877 p 18 § 81; 1854 p 139 § 43; RRS § 263.]

*Rules of court: Section superseded by CR 7 and 12. See comment by court after CR 7.*

**4.32.200 Demurrer to answer.** The plaintiff may demur to an answer containing new matter, when it appears upon the face thereof, that such new matter does not constitute a defense or counterclaim, or he may for like cause demur to one or more of such defenses or counterclaims, and reply to the residue. [Code 1881 § 87; 1877 p 19 § 87; 1869 p 22 § 85; 1854 p 140 § 48; RRS § 276.]

*Rules of court: Section superseded by CR 7 and 12. See comment by court after CR 7.*

**4.32.210 Reply.** When the answer contains new matter, constituting a defense or counterclaim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer. [Code 1881 § 86; 1877 p 19 § 86; 1869 p 22 § 84; 1854 p 140 § 48, part; RRS § 277.]

*Rules of court: Section superseded by CR 7 and 8. See comment by court after CR 7.*

**4.32.220 Demurrer or motion to reply.** The defendant may demur to any new matter contained in the reply, when it appears upon the face thereof that such new matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous and irrelevant replies may be stricken out in like manner and on the same terms as like answers and defense. [Code 1881 § 89; 1877 p 20 § 89; 1869 p 22 § 87; 1854 p 140 § 50; RRS § 279.]

*Rules of court: Section superseded by CR 7 and 12. See comment by court after CR 7.*

**4.32.230 Court rules fixing time for pleading.** The court shall establish the rules prescribing the time in which pleadings subsequent to the complaint shall be filed. [Code 1881 § 90; 1877 p 20 § 90; 1857 p 10 § 10; RRS § 280.]

*Rules of court: Cf. CR 12(a), CR 15(a), CR 16(b).*

**4.32.240 Amendments.** The court may, in furtherance of justice, and on such terms as may be proper, amend any pleadings or proceedings by adding or striking out the name of any party, or by correcting a

mistake in the name of a party, or a mistake in any other respect, and may upon like terms, enlarge the time for answer or demurrer. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may, upon like terms, allow an answer to be made after the time limited by this code, and may, upon such terms as may be just, and upon payment of costs, relieve a party, or his legal representatives, from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. [1891 c 62 § 3; Code 1881 § 109; 1875 p 11 § 20; 1854 p 144 § 69; RRS § 303.]

**Rules of court:** Section superseded by CR 6, 15 and 60. See comment by court after CR 15.

*Vacation and modification of judgments: Chapter 4.72 RCW.*

**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, except that the time for bringing a writ of error or appeal shall in no case be enlarged, or a party permitted to bring such writ of error or appeal after the time therefor has expired. [1893 c 127 § 24; RRS § 250.]

**Rules of court:** Cf. CR 6(b).

**4.32.260 Time for filing pleadings.** All pleadings in any civil action shall be filed with the clerk of the court, on or before the day when the case is called for trial, or the day when any application is made to the court for an order therein, and in case the moving party shall fail, or neglect to cause the pleadings to be filed with the clerk of the court as above required, the adverse party may apply to the court, without notice, for an order on such moving party to file such pleadings forthwith, and for a failure to comply with such order the court may order the cause dismissed unless good cause is shown for granting an extension of time within which to file such pleadings. [1893 c 127 § 37; RRS § 321.]

**Rules of court:** Section superseded by CR 5(d). See comment by court after CR 5(d).

### Chapter 4.36 GENERAL RULES OF PLEADING

#### Sections

- 4.36.010 Subscription and verification.
- 4.36.020 Verification by public corporations.
- 4.36.030 When verification may be omitted.

- 4.36.040 Pleading written instruments or accounts—Bill of particulars.
- 4.36.050 Pleadings liberally construed.
- 4.36.060 Irrelevant, redundant and indefinite matter.
- 4.36.070 Pleading judgments.
- 4.36.080 Conditions precedent, how pleaded.
- 4.36.090 Private statutes, how pleaded.
- 4.36.100 Existence of city or town, how pleaded.
- 4.36.110 Ordinances, 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.
- 4.36.150 Joinder of causes of action.
- 4.36.160 Uncontroverted allegations, effect of.
- 4.36.170 Material allegation defined.
- 4.36.180 Variance, when material—Procedure.
- 4.36.190 Effect of immaterial variance.
- 4.36.200 Failure of proof.
- 4.36.210 Variance in action to recover personal property.
- 4.36.220 Informal pleadings stricken—Amendment—Pleading over.
- 4.36.230 Defendant may be fictitiously designated, when.
- 4.36.240 Harmless error disregarded.
- 4.36.250 Supplemental pleadings.

**4.36.010 Subscription and verification.** Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, if there be several parties united in interest and pleading together, by one at least of such parties, if such party be within the county and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action or defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer thereof, upon whom service of a notice [summons] might be made; and when the state, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known. When the party is absent from or a nonresident of the county in which suit is brought, the verification may be made by the agent or attorney of said party. [1888 p 29 § 1; Code 1881 § 91; 1869 p 23 § 89; 1867 p 92 § 1; 1854 p 141 §§ 53, 54; RRS § 281.]

**Rules of court:** Section superseded by CR 11. See comment by court after CR 11.

**4.36.020 Verification by public corporations.** In such actions the pleadings of the public corporation shall be verified by any of the officers representing it in its corporate capacity in the same manner as if such officer was a defendant in the action, or by the agent or attorney thereof, as in ordinary actions. [Code 1881 § 663; 1877 p 137 § 666; 1869 p 154 § 603; RRS § 952.]

**Reviser's note:** "such actions" refers to Code 1881 §§ 661 (RCW 4.08.110) and 662 (RCW 4.08.120).

*Rules of court: Section superseded by CR 11. See comment by court after CR 11.*

*Actions by and against public corporations: RCW 4.08.110, 4.08.120.*

**4.36.030 When verification may be omitted.** When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering, to a criminal prosecution, the verification of the answer to such allegation may be omitted. No pleading shall be used in a criminal prosecution against the party, as evidence of a fact alleged in such pleading. [Code 1881 § 92; 1877 p 20 § 92; 1869 p 23 § 90; 1854 p 141 § 54; RRS § 282.]

*Rules of court: Section superseded by CR 11. See comment by court after CR 11.*

*Immunity from prosecution: RCW 10.52.090.*

**4.36.040 Pleading written instruments or accounts—Bill of particulars.** It shall not be necessary for a party to set forth in a pleading a copy of the instrument of writing, or the items of an account therein alleged; but unless he files a verified copy thereof with such pleadings, and serves the same on the adverse party, he shall, within ten days after a demand therefor, in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or judge thereof, may order a further account, when the one delivered is defective; and the court may, in all cases, order a bill of particulars of the claim of either party to be furnished. [Code 1881 § 93; 1877 p 21 § 93; 1854 p 142 § 55; RRS § 284.]

*Rules of court: Section superseded by CR 8 and 12. See comment by court after CR 8.*

**4.36.050 Pleadings liberally construed.** In the construction of a pleading, for the purpose of determining its effect, its allegation shall be liberally construed, with a view to substantial justice between the parties. [Code 1881 § 94; 1877 p 21 § 94; 1854 p 143 § 56; RRS § 285.]

*Rules of court: Section superseded by CR 8. See comment by court after CR 8.*

**4.36.060 Irrelevant, redundant and indefinite matter.** If irrelevant or redundant matter be inserted in a pleading it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment, or may dismiss the same. [Code 1881 § 95; 1877 p 21 § 95; 1854 p 142 § 57; RRS § 286.]

*Rules of court: Section superseded by CR 12(e). See comment by court after CR 12(e). Cf. CR 12(f).*

**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: Section superseded, in part, by CR 9(e). See comment by court after 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: Section superseded, in part, by CR 9(c). See comment by court after CR 9(c).*

**4.36.090 Private statutes, how pleaded.** In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof. [Code 1881 § 98; 1877 p 21 § 98; 1854 p 142 § 60; RRS § 289.]

*Rules of court: Section superseded by CR 9(j). See comment by court after CR 9(j).*

**4.36.100 Existence of city or town, how pleaded.** In pleading the existence of any city or town in this state, it shall be sufficient to state in such pleading that the same is an existing city or town, incorporated or organized under the laws of Washington. [Code 1881 § 2063; RRS § 290.]

*Rules of court: Section superseded by CR 9(h). See comment by court after CR 9(h).*

**4.36.110 Ordinances, how pleaded.** In pleading any ordinance of a city or town in this state it shall be sufficient to state the title of such ordinance and the date of its passage, whereupon the court shall take judicial knowledge of the existence of such ordinance and the tenor and effect thereof. [Code 1881 § 2064; RRS § 291.]

*Rules of court: Section superseded by CR 9(i). See comment by court after CR 9(i).*

*City or town ordinances as evidence: RCW 5.44.080.*

**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: Section superseded, in part, by CR 8. See comment after CR 8. Cf. CR 12.*

*Slander, falsely charging sex crime: RCW 4.24.120.*

**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.]

**4.36.150 Joinder of causes of action.** The plaintiff may unite several causes of action in the same complaint, when they all arise out of,—

- (1) Contract, express or implied; or
- (2) Injuries, with or without force, to the person; or
- (3) Injuries, with or without force, to property; or
- (4) Injuries, to character; or
- (5) Claims to recover real property, with or without damages for the withholding thereof; or
- (6) Claims to recover personal property, with or without damages for the withholding thereof; or
- (7) Claims against a trustee, by virtue of a contract or by operation of law.
- (8) The same transaction.

But the causes of action so united must affect all the parties to the action, and not require different places of trial, and must be separately stated. [1907 c 92 § 1; Code 1881 § 102; 1869 p 25 § 100; 1861 p 51 § 5; 1854 p 143 § 64; RRS § 296.]

*Rules of court: Section superseded by CR 18. See comment by court after CR 18.*

**4.36.160 Uncontroverted allegations, effect of.** Every material allegation of the complaint, not controverted by the answer, and every material allegation of new matter in the answer, not controverted by the reply, shall, for the purpose of action, be taken as true; but the allegation of new matter in a reply, is to be deemed controverted by the adverse party, as upon a direct denial or avoidance, as the case may require. [Code 1881 § 103; 1877 p 22 § 103; 1869 p 26 § 101; RRS § 297.]

*Rules of court: Section superseded by CR 8 and 12. See comment by court after CR 8.*

**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.]

**4.36.180 Variance, when material—Procedure.** No variance between the allegation in a pleading, and the proof, shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled, and, thereupon, the court may order the pleading to be amended upon such terms as shall be just. [Code 1881 § 105; 1877 p 23 § 105; 1854 p 143 § 66; RRS § 299.]

*Rules of court: Cf. CR 15.*

**4.36.190 Effect of immaterial variance.** When the variance is not material, as provided in RCW 4.36.180, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs. [Code 1881 § 106; 1877 p 23 § 106; 1854 p 144 § 67; RRS § 300.]

*Rules of court: Section superseded by CR 15. See comment by court after CR 15.*

**4.36.200 Failure of proof.** When, however, the allegation of the cause of action or defense, to which the proof is directed, is not proved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within RCW 4.36.180 and 4.36.190, but a failure of proof. [Code 1881 § 107; 1877 p 23 § 107; 1854 p 144 § 68; RRS § 301.]

**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.]

**4.36.220 Informal pleadings stricken—Amendment—Pleading over.** Any pleading not duly verified and subscribed, may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be stricken out of the case. When a motion to strike out is allowed, the court may, upon such terms as may be proper, allow the party to file an amended pleading; or, if the motion be disallowed, and it appears to have been made in good faith, the court may, upon like terms, allow the party to plead over. [Code 1881 § 111; 1877 p 24 § 111; 1869 p 27 § 109; RRS § 305.]

*Rules of court: Section superseded by CR 8 and 12. See comment by court after CR 8.*

**4.36.230 Defendant may be fictitiously designated, when.** When the plaintiff shall be ignorant of the name of the defendant, it shall be so stated in his pleading,

and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly. [Code 1881 § 112; 1877 p 24 § 112; 1869 p 28 § 110; 1854 p 144 § 70; RRS § 306.]

*Rules of court: Section superseded by CR 10(a)(2).*

**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.]

**4.36.250 Supplemental pleadings.** The court may, on motion, allow supplemental pleadings, showing facts which occurred after the former pleadings were filed. [Code 1881 § 114; 1877 p 24 § 114; 1854 p 144 § 72; RRS § 308.]

*Rules of court: Section superseded by CR 15. See comment by court after CR 15.*

## Chapter 4.40 ISSUES

### Sections

4.40.010	Issues defined—Kinds.
4.40.020	Issue of law.
4.40.030	Issue of fact—Issues of law and fact in same action.
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.]

**4.40.020 Issue of law.** An issue of law arises upon a demurrer to the complaint, answer or reply. [1893 c 127 § 29; Code 1881 § 201; 1877 p 42 § 205; 1854 p 163 § 180; RRS § 310.]

*Rules of court: Section superseded by CR 7, 12 and 56. See comment by court after CR 7.*

**4.40.030 Issue of fact—Issues of law and fact in same action.** An issue of fact arises—First, upon a material allegation in the complaint controverted by the answer; or, second, upon new matter in the answer, controverted by the reply; or, third, upon new matter in the reply, except when an issue of law is joined thereon; issues both of law and of fact may arise upon different and distinct parts of the pleadings in the same action. [1893 c 127 § 30; Code 1881 §§ 202, 203; 1877 p 42 §§ 206, 207; 1854 p 163 §§ 181, 182; RRS § 311. Formerly RCW 4.40.030 and 4.40.040.]

*Rules of court: Section superseded by CR 7, 12 and 56. See comment by court after CR 7.*

**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

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*Juries: Chapter 2.36 RCW.*

*Juries, crimes relating to: Chapter 9.51 RCW.*

*Justice court, civil trial: Chapter 12.12 RCW.*

**4.44.010 Trial defined.** A trial is the judicial examination of the issues between the parties, whether they are issues of law or of fact. [1893 c 127 § 31; RRS § 312.]

*Rules of court: Section superseded by CR 38(-). See comment by court after CR 38(-).*

**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).*

**4.44.030 Issue may be brought to trial by either party.** Either party, after the notice of trial, whether given by himself or the adverse party, may bring the issue to trial, and, in the absence of the adverse party, unless

the court for good cause otherwise directs, may proceed with his case, and take a dismissal of the action, or a verdict or judgment, as the case may require. [1893 c 127 § 36; RRS § 320.]

*Rules of court: Cf. CR 40(a).*

**4.44.040 Motion for continuance.** A motion to continue a trial on the ground of the absence of evidence, shall only be made upon 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 residence of the witness or witnesses. The court may also require the moving party to state, upon affidavit the evidence which he expects to obtain; and if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party. [Code 1881 § 205; 1877 p 43 § 209; 1869 p 50 § 209; 1854 p 164 § 184; RRS § 322.]

*Rules of court: Section superseded by CR 40(e). See comment by court after CR 40(e).*

**4.44.050 Findings and conclusions.** Upon the trial of an issue of fact by the court, its decisions shall be given in writing and filed with the clerk. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly. [Code 1881 § 246; 1877 p 51 § 250; 1869 p 60 § 250; 1854 p 168 § 205; RRS § 367.]

*Rules of court: Cf. CR 52(a).*

**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.]



**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.]

*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.** Right to jury trial upon an issue of fact in an action at law. See RCW 4.48.010.

*Rules of court: Cf. CR 38(a).*

**4.44.100 Jury trial—Number—Fee—Waiver.** In all civil actions triable by a jury in the superior court any party to the action may, at or prior to the time the case is called to be set for trial, serve upon the opposite party or his attorney, and file with the clerk of the court a statement of himself, or attorney, that he elects to have such case tried by jury. If such a statement is served and filed, any party may likewise state that he elects to have a jury of twelve persons. Unless such statement is filed and a jury fee paid as provided by law, the parties shall be deemed to have waived trial by jury, and if such a statement is served and filed, unless a jury of twelve persons is so requested and such additional fee as may be required by law therefor is paid by the party requesting same, the parties shall be deemed to have waived a trial by a jury of twelve persons and the jury shall consist of six persons: *Provided*, That, in the superior courts of counties of the first class such parties shall serve and file such statement, in manner herein provided, at any time not later than two days before the time the case is called to be set for trial. [1972 ex.s. c 57 § 2; 1961 c 304 § 2; 1909 c 205 § 1; 1903 c 43 § 1; RRS § 316. FORMER PART OF SECTION: Code 1881 § 248 now in RCW 4.48.010.]

*Rules of court: Section modified or superseded by CR 38. See comments by court after CR 38(b), (d) and (e).*

*Jury trial fees: RCW 36.18.020.*

**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, justice 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 conviction for a felony.

(2) A want of any of the qualifications prescribed by law for a juror.

(3) Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror. [Code 1881 § 210; 1877 p 44 § 214; 1869 p 52 § 214; RRS § 327.]

**4.44.170 Particular causes of challenge.** Particular causes of challenge are of two 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 trier in the exercise of a sound discretion, that he 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. [Code 1881 § 211; 1877 p 44 § 215; 1869 p 52 § 215; RRS § 329.]

*Reviser's note: The word "code" appeared in Code 1881 § 211.*

**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.]

**4.44.200 Exemption not cause of challenge.** An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted. [Code 1881 § 214; 1877 p 45 § 218; 1869 p 53 § 218; RRS § 332.]

**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.

*Custody of jury, criminal cases:* RCW 10.49.110.

*Separation of jury:* RCW 2.36.140.

**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 51(b).

*Admonitions to jury, separation:* RCW 4.44.280.

*Custody of jury in criminal case:* RCW 10.49.110.

*Separation of jury:* RCW 2.36.140.

**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.]

**4.44.320 Additional instructions.** After the jury have retired for deliberation, if they desire to be informed of any point of law arising in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the information required shall be given in the presence of, or after notice to, the parties or their attorneys. [1891 c 60 § 1; Code 1881 § 232; 1877 p 48 § 236; 1869 p 57 § 236; 1854 p 166 § 196; RRS § 352.]

*Rules of court:* Section superseded by CR 51. See comment by court after CR 51.

**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. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds the facts only, leaving the judgment to the court. [Code 1881 § 240; 1877 p 49 § 244; 1869 p 59 § 244; 1854 p 167 § 198; RRS § 362.]

**Rules of court:** Section superseded, in part, by CR 49(-), (a). See comments by court after CR 49(-) and (a).

**4.44.420 Verdict in actions 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.]

**4.44.430 Rendition of general or special verdicts.** In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered in the minutes. [Code 1881 § 242; 1877 p 50 § 246; 1869 p 59 § 246; 1854 p 167 § 200; RRS § 364.]

**Rules of court:** Cf. CR 49(b).

**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).

[Title 4—p 34]

**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**

Sections

- 4.48.010 Reference by consent—Right to jury trial.
- 4.48.020 Reference without consent.
- 4.48.030 To whom reference may be ordered.
- 4.48.040 Qualifications of referees.
- 4.48.050 Challenges to referees.
- 4.48.060 Trial procedure—Powers of referee.
- 4.48.070 Referee's report—Contents—Evidence, filing of, frivolous.
- 4.48.080 Proceedings on filing of report.
- 4.48.090 Judgment on referee's report.
- 4.48.100 Fees of referees.

*Rules of court: Judicial ethics, appointment and compensation of referee—CJE cannon 12.*

**4.48.010 Reference by consent—Right to jury trial.** All or any of the issues in the action, whether of fact or law, or both, may be referred upon the written consent of the parties; but either party shall have the right in an action at law, upon an issue of fact, to demand a trial by jury. [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).*

**4.48.020 Reference without consent.** Where the parties do not consent the court or judge may upon the application of either, 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. [Code 1881 § 249; 1877 p 51 § 253; 1869 p 61 § 253; 1854 p 168 § 207; RRS § 370.]

**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 parties do not agree the court or judge may appoint one or

more, not exceeding three. [Code 1881 § 250; 1877 p 51 § 254; 1869 p 61 § 254; 1854 p 168 § 208; RRS § 371.]

**4.48.040 Qualifications of referees.** When the appointment of referees is made by the court or judge, each referee 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. [Code 1881 § 251; 1877 p 51 § 255; 1859 p 61 § 255; 1854 p 169 § 209; RRS § 372.]

**4.48.050 Challenges to referees.** When the referees are chosen by the court, each party shall have the same right of challenge as to such referees, which 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. [Code 1881 § 252; 1877 p 52 § 256; 1869 p 61 § 256; RRS § 373.]

**4.48.060 Trial procedure—Powers of referee.** Subject to the limitations and directions prescribed in the order of reference, the trial by referees shall be conducted in the same manner as a trial by the court. They 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. [Code 1881 § 253; 1877 p 52 § 257; 1869 p 62 § 257; 1854 p 169 § 210; RRS § 374.]

**4.48.070 Referee's report—Contents—Evidence, filing of, frivolous.** The report of the referees 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 referees shall file with their 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. [Code 1881 § 254; 1877 p 52 § 258; 1869 p 62 § 258; 1854 p 169 § 210; RRS § 375.]

**4.48.080 Proceedings on filing of report.** The report shall be filed with the clerk. Either party may, within such time as may be prescribed by the rules of the 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. [1957 c 9 § 3; Code 1881 § 255; 1877 p 52 § 259; 1869 p 62 § 259; RRS § 376.]

**4.48.090 Judgment on referee's report.** The court may affirm or set aside the report 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. [Code 1881 § 256; 1877 p 52 § 260; 1869 p 62 § 260; RRS § 377.]

**4.48.100 Fees of referees.** The fees of referees shall be five dollars to each, for every day necessarily spent in the business of the reference and twenty cents per folio for writing testimony; but the parties may agree in writing upon any rate of compensation, and thereupon such rate shall be allowed. [Code 1881 § 514; 1877 p 109 § 518; 1854 p 202 § 376; RRS § 483.]

*"Folio" defined: RCW 1.16.040.*

*Supplemental proceedings, fees of referees: RCW 6.32.280.*

#### Chapter 4.52 AGREED CASES

##### Sections

- 4.52.010 Controversies 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 Controversies 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

- 4.56.010 Judgment defined.

- 4.56.020 Order and motion defined.  
4.56.030 Judgment for or against any of the parties.  
4.56.040 Judgment may be against one or more defendants.  
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 actions to recover personal property.  
4.56.090 Assignment of judgment—Filing.  
4.56.100 Satisfaction of judgments.  
4.56.110 Interest on judgments.  
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.  
4.56.160 Judgment by default.  
4.56.170 Setting aside default.  
4.56.180 Judgment on the pleadings for failure to plead to new matter.  
4.56.190 Lien of judgment.  
4.56.200 Commencement of lien on real estate.  
4.56.210 Cessation of lien—Extension prohibited.  
4.56.225 Revival of judgments.

*Enforcement of judgments: Title 6 RCW.*

*Judgments, financial support of child: RCW 13.04.105.*

*Liens, cessation, financial support of child: RCW 13.04.105.*

*Pleading judgments: RCW 4.36.070.*

*Time limit for decision: State Constitution Art. 4 § 20.*

**4.56.010 Judgment defined.** A judgment is the final determination of the rights of the parties in the action. [Code 1881 § 283; 1877 p 57 § 287; 1869 p 69 § 285; 1854 p 171 § 220; RRS § 404.]

*Rules of court: Section superseded by CR 54(a). See comment by court after CR 54(a).*

**4.56.020 Order and motion defined.** Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order. An application for an order is a motion. [1897 c 10 § 1; RRS § 405.]

*Rules of court: Cf. CR 54(a).*

**4.56.030 Judgment for or against any of the parties.** Judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves. [Code 1881 § 284; 1877 p 58 § 289; 1869 p 69 § 286; 1854 p 171 § 221; RRS § 406.]

*Rules of court: Section superseded by CR 54(b). See comment by court after CR 54(b).*

**4.56.040 Judgment may be against one or more defendants.** In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others. [Code 1881 § 285; 1877 p 58 § 288; 1869 p 69 § 287; 1854 p 171 § 222; RRS § 407.]

*Rules of court: Section superseded by CR 54(b). See comment by court after CR 54(b).*

**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 actions 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.** 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. 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. [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 such contracts, not in any case, however, to exceed ten percent per annum: *Provided*, That said interest rate is set forth in the judgment.

(2) Except as provided under subsection (1) of this section, judgments shall bear interest at the rate of eight percent per annum from 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: *Provided, however*, That in any case where notice of appeal or petition for writ of review is filed prior to June 12, 1969, interest shall accrue from the date of entry of judgment and shall not date back to the date the verdict was rendered. [1969 c 46 § 1; 1899 c 80 § 6; 1895 c 136 § 4; RRS § 457.]

**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).*

**4.56.160 Judgment by default.** Judgment may be had if the defendant fail to answer to the complaint, as follows:

(1) In any action arising on contract for the recovery of money only, the plaintiff may file with the clerk proof of personal service of the summons and complaint on one or more of the defendants. The court shall thereupon enter judgment for the amount claimed, against the defendant or defendants, or against one or more of the several defendants in the cases provided for in RCW 4.28.190. Where the defendant, by his answer, in any such action, shall not deny the plaintiff's claim, but shall set up a counterclaim amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of said claim over the said counterclaim.

(2) In other actions the plaintiff may, upon the like proof, apply to the court after the expiration of the time for answering, for the relief demanded in the complaint. If the taking of an account, or of the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. Where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if to determine the amount of damages, the examination of a long account be necessary, by a reference as above provided. If the defendant give notice of appearance in the action, before the expiration of the time for answering, he shall be entitled to five days' notice of the time and place of application to the court for the relief demanded in the complaint.

(3) In action where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of service by publication, apply for judgment; and the court must thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover, or for such other relief as he may be entitled to. [Code 1881 § 289; 1877 p 59 § 293; 1869 p 70 § 291; 1854 p 171 § 225; RRS § 411.]



**Rules of court:** Section superseded by CR 55(b). See comment by court after CR 55(b).

**4.56.170 Setting aside default.** The court may, in its discretion, before final judgment, set aside any default, upon affidavit showing good and sufficient cause, and upon such terms as may be deemed reasonable. [Code 1881 § 290; 1877 p 60 § 294; 1869 p 72 § 292; 1854 p 171 § 225, subd. 4; RRS § 412.]

**Rules of court:** Section superseded by CR 55(c). See comment by court after CR 55(c).

**4.56.180 Judgment on the pleadings for failure to plead to new matter.** If the answer contain a statement of new matter constituting a defense or counterclaim, and the plaintiff fail to reply or demur thereto within the time prescribed by law, the defendant may move the court for such judgment as he is entitled to on the pleadings, and if the case require it he may have a jury called to assess the damages. [Code 1881 § 88; 1877 p 19 § 88; 1869 p 22 § 86; 1854 p 140 § 49; RRS § 278.]

**Rules of court:** Section superseded by CR 7 and 12. See comment by court after CR 7.

**4.56.190 Lien of judgment.** The real estate of any judgment debtor, and such as he 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, any judgment of the supreme court, court of appeals, or superior court of this state, and any judgment of any justice of the peace rendered in this state, and every such judgment shall be a lien thereupon to commence as hereinafter provided and to run for a period of not to exceed six years from the day on which such judgment was rendered: *Provided, however,* That any such judgment rendered upon a contract made prior to the ninth day of June, 1897, any judgment upon, or reviving or continuing such judgment, and any revival thereof, shall cease to be a lien upon the real estate of the judgment debtor at the end of five years from the rendition thereof, and in case of an appeal from any such judgment of the superior court, the date of the final judgment in the supreme court or court of appeals shall be the time from which said five years shall commence to run. Personal property of the judgment debtor shall be held only from the time it is actually levied upon. [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.]

**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.]

*Execution of judgments:* RCW 6.04.010.

**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 justice of peace 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 justice of the peace 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 justice of the peace 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 justice of the peace was originally filed. [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, 4.56.190-4.56.225, 4.64.070, 4.64.090, 4.64.110 and 4.64.120.

**4.56.210 Cessation of lien—Extension prohibited.** After the expiration of six 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, and no suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien or duration of such judgment, claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment, except as in RCW 4.56.225 provided.

[1929 c 60 § 7; RRS §§ 459, 460. Formerly RCW 4.56-.210 and 4.56.220. Prior: 1897 c 39 §§ 1, 2.]

**4.56.225 Revival of judgments.** If any judgment heretofore or hereafter rendered in this state upon a contract made prior to the ninth day of June, 1897, or any judgment upon, or reviving or continuing such judgment, or any revival thereof, shall remain unsatisfied, in whole or in part, at the end of five years from the date of its rendition, the judgment creditor may sue thereon, or the lien thereof may be revived and continued, as in this section provided:

(1) The judgment creditor, his assignee, or the party to whom the judgment is due and payable, shall file a motion with the clerk of the court where the judgment is entered, to revive and continue the lien of the same, with leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry, the amount claimed to be due thereon, or the particular property, of which the possession was thereby adjudged to such party, remaining undelivered. The motion shall be subscribed in the same manner as an original complaint.

(2) At any time after filing such motion, the party filing it may cause notice to be served on the judgment debtor in like manner and with like effect as a summons; said notice shall be attached to a copy of said motion by the clerk of the court, and be served by the sheriff or other officer as an original summons and shall cite the judgment debtor to appear and show cause why said motion should not be allowed. The time in which the judgment debtor shall be required to appear, shall be the same as is prescribed for answer to a complaint and the law applicable to service of a summons, shall apply to the service of such notice. In case the judgment debtor be dead, the notice may be served upon his legal representative.

(3) The judgment debtor, or in case of his death, his legal representative, may file an answer or demurrer to such motion, within the time allowed by law to answer a complaint, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed, the motion shall be allowed as of course. The moving party may demur or reply to the answer. The pleadings shall be subscribed and verified, and the proceedings concluded as in original actions.

(4) The word "representatives" in this section shall be deemed to include any and all persons in whose possession property of the judgment debtor which is liable to be taken and sold or delivered in satisfaction of the execution, may be, and not otherwise.

(5) The order allowing the motion shall specify the amount due upon such unsatisfied judgment for which execution is to issue, or the particular property the possession of which is to be delivered, and shall be entered in the journal and docket as a judgment, and a final record shall be made of the proceedings in the same manner as a judgment.

Such motion shall not be granted unless it is established by the oath of the party, or other satisfactory proof, that the judgment or some part thereof remains unsatisfied. The order of the court allowing the motion

and granting leave to issue an execution shall operate as a revival of the judgment for the amount found to be due at the time of such revival and the same shall be and continue a lien upon the real estate of the judgment debtor situated in the county wherein the order is entered, for a period of five years from and after the date of such order, in like manner with the original judgment, and upon the real estate of the judgment debtor situated in any other county upon the filing of a duly certified transcript of such order with the county clerk of the county in which the real estate to be affected is situated. Revival judgments shall bear the same rate of interest and be in all respects similar to original judgments as to lien and enforcement of collection: *Provided, however,* That no judgment upon a contract made prior to the ninth day of June 1897, and subsequent to the ninth day of June, 1891, nor any judgment upon, or reviving or continuing such judgment, nor any revival thereof, shall be sued upon, or shall be revived or continued unless such suit or proceedings for such revival or continuance shall be commenced within six years after the date of its rendition, and *Provided, further,* That in all cases of an appeal from any judgment mentioned in this section, the date of final judgment in the supreme court or court of appeals of this state shall be the time from which said period of five years, or six years, as the case may be, shall commence to run. [1971 c 81 § 18; 1929 c 60 § 8; RRS §§ 462, 463. Prior: 1891 c 84 § 1; Code 1881 §§ 323, 324.]

#### 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	By persons 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 By persons 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 journal.

4.64.040	Judgment roll.
4.64.050	Identification of judgment roll.
4.64.060	Execution docket.
4.64.070	Clerk's record index.
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 justice's docket.
4.64.120	Entry of abstract or transcript of judgment.

**4.64.010 Time of entering judgment—Motions—Filing—Recording.** In any action tried by jury in which a verdict is returned, judgment in conformity with the verdict may be entered by the court at any time after two days from the return of such verdict. Any motion for judgment notwithstanding the verdict, or any motion for a new trial, or any motion attacking the verdict for other causes, shall be served on the adverse party and filed with the clerk of the court within two days after the return of the verdict, and no judgment shall be entered in the cause until after the disposition of such motion. The judgment shall be in writing, signed by the judge of the court in which the action is pending, and shall be filed with the clerk and recorded in the journal of the court. [1921 c 65 § 1; RRS § 431. Prior: 1903 c 148 § 1; 1891 c 38 § 1; Code 1881 § 30; 1877 p 62 § 305; 1869 p 74 § 303; 1854 p 173 § 229.]

*Rules of court: Section superseded by CR 54(a) and (b), CR 59(b). See comment by court after CR 58(d). Cf. CR 50(b).*

**4.64.020 Entry of verdict in execution docket—Effect.** The clerk on the return of a verdict shall forthwith enter the same in the execution docket, specifying the amount thereof, and the names of the parties to the action and 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 such execution docket. Beginning at eight o'clock a. m. the day after the entry of such verdict as herein provided, the same 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. [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 journal.** All judgments shall be entered by the clerk, subject to the direction of the court, in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action. [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).*

**4.64.040 Judgment roll.** Immediately after entering the judgment the clerk shall attach the following papers in the case, which shall constitute the judgment roll:

(1) If the complaint has not been answered by any defendant and no pleading has been filed by an intervenor, he shall attach together in the order of their filing, issuing and entry the complaint, summons and proof of service, and a copy of the entry of judgment.

(2) In all other cases he shall attach together in like manner the summons and proof of service, the pleadings, bill of exceptions, all orders relating to change of parties, together with a copy of the entry of judgment and all other journal entries or orders in any way involving the merits and necessarily affecting the judgment. [1891 c 38 § 3; Code 1881 § 306; 1877 p 65 § 321; 1854 p 173 § 233; RRS § 442.]

**4.64.050 Identification of judgment roll.** In all cases the clerk shall attach upon the outside of the judgment roll a blank sheet of paper upon which he shall indorse the name of the court, the title of the action, for whom judgment was given, and the amount or nature thereof and the date of its entry. [1891 c 38 § 4; RRS § 443.]

**4.64.060 Execution docket.** Every clerk shall keep in his 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. [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.** It shall be the duty of the county clerk to keep a proper record index, both direct and inverse, of any and all judgments, abstracts and transcripts of judgments in his office, and all renewals thereof, and such index shall refer to each party against whom the judgment is rendered or whose property is affected thereby, and shall, together with the records of judgments, be open to public inspection during regular office hours. [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.** He shall leave space on the same page, if practicable, with each case, in which he shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in said case until its final satisfaction, including the time when and to what county the execution is issued, and 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 his 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; and when the money is paid, or any part thereof, the amount and time when paid shall be entered; also, 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 entry of such judgment. [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 \$----- [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 his 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 a fee of fifty cents therefor, enter and index the same in the execution docket in the same manner as an abstract of judgment. On the entry thereof the same shall have the same effect in such county as in the county where 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 thereof has ceased, and transmit such certificate to the clerk of any court to which an abstract was forwarded, and such clerk receiving the certificate, on payment of a fee of fifty cents therefor, shall enter the same in the execution docket, and then and thereupon the lien of such verdict or judgment shall cease. Nothing in this section or RCW 4.64.010 or RCW 4.64.020 shall be construed as authorizing the issuance of an execution in any other county than that in which the judgment is rendered. [1921 c 65 § 3; RRS § 431-2.]

*Fees of superior court clerks: RCW 36.18.020.*

*Fees of supreme and appellate court clerks: RCW 2.32.070.*

**4.64.110 Transcript of justice's docket.** A transcript of the docket of a justice of the peace shall contain an exact copy of the judgment from the justice's docket. [1957 c 7 § 9. Prior: 1929 c 60 § 3, part; 1893 c 42 § 4; RRS § 452.]

**4.64.120 Entry of abstract or transcript of judgment.**

It shall be the duty of the county clerk to enter in his execution docket any duly certified transcript of a judgment of a justice of the peace and any duly certified abstract of any judgment of any court mentioned in RCW 4.56.200, filed in his office, and to index the same in the same manner as judgments originally rendered in the superior court for the county of which he is clerk. [1929 c 60 § 4; RRS § 453. Prior: 1893 c 42 § 5.]

**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 in RCW 4.28.190, 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. [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.
- 4.72.040 Procedure.
- 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.

*Amendments to pleadings: RCW 4.32.240.*

**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: Section superseded, in part, by CR 60(b). See comment by court after 60(b). Cf. CR 52(d). 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: Section superseded, in part, by CR 60(b). See comment by court after 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: Section superseded, in part, by CR 60(b). See comment by court after CR 60(b).*

**4.72.040 Procedure.** In such proceedings the party shall be brought into court in the same way, on the same notice as to time, mode of service and mode of return, and the pleadings shall be governed by the same principles, and issues be made up by the same form, and all the proceedings conducted in the same way, as near as can be, as in original action by ordinary proceedings, except that the facts stated in the petition shall be deemed denied without answer, and defendant shall introduce no new cause, and the cause of the petition shall alone be tried. [1891 c 27 § 3; Code 1881 § 440; 1877 p 97 § 442; 1875 p 22 § 5; RRS § 468.]

*Rules of court: Section superseded by CR 60(b) and (e). See comment by court after CR 60(b) and (e).*

**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.]

*Rules of court: Section superseded, in part, by CR 60(e). See comment by court after CR 60(e).*

**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.]

*Rules of court: Cf. CR 60(e).*

**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.
4.76.020	Grounds for granting.
4.76.030	Increase or reduction of verdict as alternative to new trial.
4.76.040	Specification of grounds for new trial.
4.76.050	Affidavits may be used.
4.76.060	Time for filing and serving.
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.]

**4.76.020 Grounds for granting.** The former verdict or other decision may be vacated and a new trial granted, on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery, whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and excepted to at the time by the party making the application. [1933 c 138 § 1; 1909 c 34 § 1; Code 1881 § 276; 1869 p 67 § 278; 1854 p 170 § 216; RRS § 399.]

*Rules of court: Cf. CR 59(a), CR 63(b).*

**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.] This applies to RCW 4.76.020 and 4.76.030.

*Judgment to recover realty, new trial: RCW 7.28.260.*

**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.]

**4.76.040 Specification of grounds for new trial.** In no case of motion for a new trial hereafter made in the courts of this state shall it be necessary to specify the grounds thereof, otherwise than in the language of RCW 4.76.020, specifying the grounds upon which a motion for a new trial may be made. [1888 p 30 § 1; RRS § 400.]

*Rules of court: Cf. CR 59(a).*

**4.76.050 Affidavits may be used.** The motion for a new trial shall state the grounds or causes for which a new trial is asked, and if made for any of the causes mentioned in RCW 4.76.020(1), (2), (3), or (4), the facts upon which it is based may be shown by affidavit. [Code 1881 § 278; 1877 p 57 § 282; 1869 p 68 § 283; RRS § 401.]

**4.76.060 Time for filing and serving.** The party moving for a new trial must, within two days after the verdict of a jury, if the action was tried by a jury, or two days after notice in writing of the decision of the court or referee, if the action was tried without a jury, file with the clerk, and serve upon the adverse party, his motion for a new trial, designating the grounds upon which it will be made. If the motion is made upon affidavits, the moving party must, within two days after serving the motion, or such further time as the court in which the action is pending, or the judge thereof may allow, file such affidavits with the clerk, and serve a copy thereof upon the adverse party, who shall have two days to file counter affidavits, or such further time as the court may allow, a copy of which must be served upon the moving party. [1897 c 14 § 1; 1891 c 59 § 1; Code 1881 §§ 279, 280; 1877 p 57 § 283; 1869 p 68 § 282; RRS § 402.]

*Rules of court: Cf. CR 50(b), CR 50(c), CR 59(b), CR 59(c).*

**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.
4.80.050	Review on appeal.
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; ROA I-35; CAROA 35.*

**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.*

**4.80.050 Review on appeal.** Alleged error in any order, ruling or decision to which it is provided in this chapter that no exception need be taken, or in any report, finding of fact, conclusion of law, charge, refusal to charge, or other ruling or decision which shall have been excepted to by any party as prescribed in this chapter, shall be reviewed by the supreme court or the court of appeals, upon an appeal taken by the party against whom any such ruling or decision was made, or in which he has joined, from any other appealable order or from the final judgment in the cause, where such error, if found to exist, would materially affect the correctness of the judgment or order appealed from: *Provided*, The ruling or decision, the alleged error in which is sought to be so reviewed, together with the exception thereto, if any, was a matter of record in the cause in the first instance, or before the hearing of the appeal has been brought into the record in the manner prescribed in this chapter. And any such alleged error shall also be considered in the court wherein or by a judge whereof the same was committed, upon hearing and decision of a motion for a new trial, a motion for judgment notwithstanding a verdict, or a motion to set aside a referee's report or decision, made by a party against whom the ruling or decision to be reviewed was made, whether the alleged erroneous ruling or decision is a part of the record or not, where the alleged error, if found to exist, would materially affect the decision of the motion. But no exception to any appealable order or to any final judgment shall be necessary or proper in order to secure a review of such order or judgment upon direct appeal therefrom. [1971 c 81 § 20; 1893 c 60 § 7; RRS § 387.]

**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 courts of justices of the peace or other inferior courts or tribunals from which an appeal does not lie directly to the supreme court or court of appeals. [1971 c 81 § 21; 1893 c 60 § 17; RRS § 397, part.]

### 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 justice 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.
- 4.84.180 Costs in review proceedings.
- 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 one thousand dollars or less—Allowed to prevailing party—Amount.
- 4.84.260 Attorneys' fees as costs in damage actions of one thousand dollars or less—When plaintiff deemed prevailing party.
- 4.84.270 Attorneys' fees as costs in damage actions of one thousand dollars or less—When defendant deemed prevailing party.
- 4.84.280 Attorneys' fees as costs in damage actions of one thousand dollars or less—Offers of settlement in determining.
- 4.84.290 Attorneys' fees as costs in damage actions of one thousand dollars or less—Prevailing party on appeal.
- 4.84.300 Attorneys' fees as costs in damage actions of one thousand dollars or less—Application.
- 4.84.310 Attorneys' fees as costs in damage actions of one thousand dollars or less—Assigned claims.

*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 his expenses in the action, which allowances are termed costs. [Code 1881 § 505; 1877 p 108 § 509; 1869 p 123 § 459; 1854 p 201 § 367; RRS § 474.]

*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 costs and disbursements; but the plaintiff shall in no case be entitled to costs taxed as attorneys' fees in actions within the jurisdiction of a justice of the peace when commenced in the superior court. [1890 p 337 § 1; 1883 p 42 § 1; Code 1881 §§ 506, 507; 1854 p 201 §§ 368, 369; RRS § 476.]

**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 settled before issue is joined, five dollars.
- (2) In all actions where judgment is rendered without a jury, ten dollars.
- (3) In all actions where judgment is rendered after impanelling a jury, fifteen dollars.
- (4) In all actions removed to the supreme court and settled before argument, ten dollars.
- (5) In all actions where judgment is rendered in the supreme court, after argument, fifteen dollars. [Code 1881 § 512; 1877 p 108 § 516; 1869 p 124 § 464; 1854 p 202 § 374; RRS § 481.]

*Costs: RCW 4.84.180, 4.84.190, 4.88.260.*

*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 justice courts.** In all civil actions tried before a justice of the peace, 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 justice of

the peace, such appellant shall pay all costs. [Code 1881 § 518; 1877 p 110 § 522; 1854 p 203 § 380; RRS § 487.]

*Justice 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.]

**4.84.180 Costs in review proceedings.** When the decision of a court of inferior jurisdiction, in an action or special proceeding, is brought before the supreme court, court of appeals, or a superior court for review, such proceedings shall, for purpose of costs, be deemed an action at issue upon a question of law, from the time the same is brought into the supreme court or superior court, and costs thereon may be awarded and collected in such manner as the court shall direct, according to the nature of the case. [1971 c 81 § 23; Code 1881 § 523; 1877 p 110 § 527; 1854 p 204 § 385; RRS § 492.]

*Costs on appeal: RCW 4.84.080, 4.84.190, 4.88.260.*

**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, 4.84.180, 4.88.260.*

**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 one thousand dollars or less—Allowed to prevailing party—Amount.** 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 one thousand 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. [1973 c 84 § 1.]

**4.84.260 Attorneys' fees as costs in damage actions of one 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 one 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, recovers nothing, or if the recovery, exclusive of costs, is the same as or less than the amount offered in settlement by the defendant, or the party resisting relief, as set forth in RCW 4.84.280. [1973 c 84 § 3.]

**4.84.280 Attorneys' fees as costs in damage actions of one 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. 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. [1973 c 84 § 4.]

**4.84.290 Attorneys' fees as costs in damage actions of one 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 one 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 justice court or superior court: *Provided*, That this section shall not be construed as conferring jurisdiction on either court. [1973 c 84 § 6.]

**4.84.310 Attorneys' fees as costs in damage actions of one thousand dollars or less—Assigned claims.** The provisions of RCW 4.84.250 through 4.84.310 shall not apply to actions on assigned claims. [1973 c 84 § 7.]

### Chapter 4.88 APPEALS

#### Sections

4.88.260 Costs on appeal.

**Rules of court:** ROA 1-1, CAROA 1.

**Rule making power of court of appeals:** RCW 2.06.030, 2.06.040.

**Rule making power of supreme court:** RCW 2.04.180-2.04.210.

**4.88.260 Costs on appeal.** A party who substantially prevails in an opinion of the supreme court or court of appeals shall, when the opinion becomes final, be allowed costs for expenses incurred by him, irrespective of costs taxed in the case in the court below, as follows: The fee of the clerk of the appellate court; the fee of the clerk of the superior court for preparing, certifying and transmitting to the appellate court the transcript on appeal, or any supplementary transcript, and the statement of facts, including all exhibits; attorney fees in the amount of twenty-five dollars; the actual amount incurred in the printing of briefs required by the appellate rules, the actual amount incurred by the appellant, as stenographer's fees for preparing the statement of facts and one copy; and the actual cost of the premium on an appeal and/or supersedeas bond. When the judgment of the superior court is affirmed and remanded for trial, the awarding of costs shall abide the final determination of the cause. When the judgment is affirmed in part, reversed in part, modified or remanded for further proceedings, all or partial costs may be awarded to either party or it may be provided that costs shall abide the final result of the further proceedings. When an opinion is filed by the supreme court finally determining a cause reviewed by the court of appeals, the supreme court shall allow costs for the above items incurred in both the supreme court and court of appeals. When an order is entered in a case, the court shall have discretion to allow costs for any or all of the

items set forth above. When in the opinion of the court a brief, statement of facts, or transcript is improper in substance or unnecessarily long with regard to the issues raised on the appeal, the court, may in its discretion order the disallowance as costs of any part or the whole of the cost thereof. [1971 ex.s. c 107 § 3; 1941 c 86 § 1; 1893 c 61 § 29; Rem. Supp. 1941 § 1744.]

**Rules of court:** ROA 1-55; CAROA 55.

**Attorneys' fees as costs in supreme court:** RCW 4.84.080(4), (5).

**Costs:** RCW 4.84.180, 4.84.190.

### Chapter 4.92 ACTIONS AGAINST STATE

#### Sections

- 4.92.010 Where brought—Cost bond—Change of venue.
- 4.92.020 Service of summons and complaint.
- 4.92.030 Duties of attorney general—Procedure.
- 4.92.040 Judgment, how satisfied.
- 4.92.050 Limitations.
- 4.92.060 Actions against state officers—Request for defense.
- 4.92.070 Actions against state officers—Defense by attorney general—Expense of defense.
- 4.92.080 Bonds not required of state.
- 4.92.090 Tortious conduct of state—Liability for damages.
- 4.92.100 Tortious conduct of state—Claims—Presentment and filing—Contents.
- 4.92.110 Tortious conduct of state—Presentment and filing of claim prerequisite to suit.
- 4.92.120 Tortious conduct of state—Assignment of claims.
- 4.92.130 Tortious conduct of state—Tort claims revolving fund created—Purpose.
- 4.92.131 Tortious conduct of state—Funds transferred—Account abolished.
- 4.92.140 Tortious conduct of state—Compromise and settlement of claims by head of agency or department.
- 4.92.150 Tortious conduct of state—Compromise and settlement of claims by attorney general.
- 4.92.160 Tortious conduct of state—Payment of claims and judgments.
- 4.92.170 Tortious conduct of state—Payments charged to agencies and departments—Apportionments—Reimbursement of tort claims revolving fund—Duties of budget director.

**Actions against political subdivisions, municipal corporations and quasi municipal corporations:** Chapter 4.96 RCW.

**Claims, reports, etc., filing and receipt:** RCW 1.12.070.

**Criminal act, civil actions against state as consequence of criminal act abolished:** RCW 7.68.040.

**Hood Canal bridge, use for sport fishing purposes—Disclaimer of liability:** RCW 47.56.366.

**Victims of crimes, compensation, actions against state abolished:** RCW 7.68.040.

**4.92.010 Where brought—Cost bond—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 plaintiff in such action shall, at the time of filing his complaint, file a surety bond executed by the plaintiff and a surety company authorized to do business in the state of Washington to the effect that such plaintiff will indemnify the state against all costs that may accrue in such action, and will pay to the clerk of said court all costs in case the plaintiff shall fail to prosecute his action or to obtain a judgment against the state: *Provided*, That in actions for the enforcement or foreclosure of any lien upon, or to determine or quiet title to, any

real property in which the state of Washington is a necessary or proper party defendant no surety bond as above provided for shall be required.

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. [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.

*Claims made to legislature against the state: RCW 44.18.010.*

*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 same in his office with an assistant attorney general. [1927 c 216 § 2; 1895 c 95 § 2; RRS § 887.]

**4.92.030 Duties of attorney general—Procedure.** The attorney general or his assistant shall appear and act as counsel for the state. The action shall proceed in all respects as other actions. Appeals may be taken to the supreme court or court of appeals of the state as in other actions or proceedings, but in case an appeal shall be taken on behalf of the state, no bond shall be required of the appellant. [1971 c 81 § 24; 1895 c 95 § 3; RRS § 888.]

**4.92.040 Judgment, how satisfied.** No execution shall issue against the state on any judgment. Whenever a final judgment against the state shall have been obtained in an action on a claim arising out of tortious conduct, the clerk shall make and furnish to the budget director a duly certified copy of said judgment. Whenever a final judgment against the state shall have been obtained in any other action, the clerk shall make and furnish to the auditor of state a duly certified copy of such judgment; the auditor of state shall thereupon audit the amount of damages and costs therein awarded, and the same shall be paid out of the state treasury. [1963 c 159 § 6; 1895 c 95 § 4; RRS § 889.]

**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 Actions against state officers—Request for defense.** Whenever an action or proceeding for damages shall be instituted against any state officer or employee for the performance of any official act, such officer or employee may request the administrative board to authorize the defense of said action or proceeding at the expense of the state. [1921 c 79 § 1; RRS § 890-1.]

*Administrative board: Chapter 43.17 RCW.*

**4.92.070 Actions against state officers—Defense by attorney general—Expense of defense.** If the administrative board shall find that said officer or employee acted in good faith and without negligence, it shall grant said request, 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 or employee is attached. In such cases the attorney general shall appear and defend such officer or employee. [1921 c 79 § 2; RRS § 890-2.]

**4.92.080 Bonds 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.]

*Rules of court: ROA I-22, 23; CAROA 22, 23.*

**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 state auditor 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.

With respect to the content of such claims this section shall be liberally construed so that substantial compliance will be deemed satisfactory. [1967 c 164 § 2; 1963 c 159 § 3.]

**Purpose**—1967 c 164: See note following RCW 4.96.010 for purpose of 1967 c 164.

**Severability**—1967 c 164: See note 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 a claim has first been presented to and filed with the state auditor. The requirements of this section 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. [1963 c 159 § 4.]

**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—Tort claims revolving fund created—Purpose.** A tort claims revolving fund in the custody of the treasurer is hereby created to be used solely and exclusively for the payment of claims against the state arising out of tortious conduct. No money shall be paid from the tort claims revolving fund unless:

(1) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or

(2) The claim has been approved for payment in accordance with RCW 4.92.140. [1969 c 140 § 1; 1963 c 159 § 7.]

**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.] This applies to RCW 4.92.130, 4.92.131, 4.92.160 and 4.92.170.

*Actions against regents, trustees, etc. of institutions of higher education or educational boards, payments of obligations from fund: RCW 283.10.842.*

**4.92.131 Tortious conduct of state—Funds transferred—Account abolished.** All funds remaining in the tort claims account on March 25, 1969 are hereby transferred to the tort claims revolving fund, and the tort claims account created by section 7, chapter 159, Laws of 1963 and chapter 4.92 RCW is hereby abolished. [1969 c 140 § 4.]

**Severability**—1969 c 140: See note following RCW 4.92.130.

**4.92.140 Tortious conduct of state—Compromise and settlement of claims by head of agency or department.** The head or governing body of any agency or department of state government, with the approval of the attorney general, may consider, ascertain, adjust, determine, compromise and settle any claim arising out of tortious conduct for which the state of Washington would be liable in law for money damages of five hundred dollars or less. The acceptance by the claimant of any such award, compromise or settlement shall be final and conclusive on the claimant; and upon the state of Washington, unless procured by fraud, and shall constitute a complete release of any claim against the state of Washington. A request for administrative settlement shall not preclude a claimant from filing a court action pending administrative determination, limit the amount recoverable in such a suit or constitute an admission against interest of either the claimant or the state. [1963 c 159 § 8.]

**4.92.150 Tortious conduct of state—Compromise and settlement of claims by attorney general.** After commencement of an action in superior court upon a claim against the state arising out of tortious conduct, the attorney general, 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. [1963 c 159 § 9.]

**4.92.160 Tortious conduct of state—Payment of claims and judgments.** Payment of claims and judgments arising out of tortious conduct shall not be made by any agency or department of state government with the exception of the budget director, and he 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 certifies to him that a claim has been settled under authority of RCW 4.92.140; 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. 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. [1969 c 140 § 2; 1963 c 159 § 10.]

**Reviser's note:** "Budget director" changed to "director of the office of program planning and fiscal management", see chapter 43.41 RCW.

**Severability**—1969 c 140: See note following RCW 4.92.130.

*Duty of clerk to forward copy of judgment: RCW 4.92.040.*

**4.92.170 Tortious conduct of state—Payments charged to agencies and departments—Apportionments—Reimbursement of tort claims revolving fund—Duties of budget director.** Liability for and payment of claims arising out of tortious conduct is declared to be a proper charge as part of the normal cost of operating the various agencies and departments of state government whose operations and activities give

rise to the liability and a lawful charge against moneys appropriated or available to such agencies and departments.

Within any agency or department the charge shall be apportioned among such appropriated and other available moneys in the same proportion that the moneys finance the activity causing liability. Whenever the operations and activities of more than one agency or department combine to give rise to a single liability, the budget director shall determine the comparative responsibility of each agency or department for the liability.

State agencies over which the budget director has authority to revise allotments under chapter 43.88 RCW shall make reimbursement to the tort claims revolving fund for any payment made from it for the benefit of such agencies. The budget director is authorized and directed to transfer or order the transfer to the revolving fund, from moneys available or appropriated to such agencies, that sum of money which is a proper charge against them. Such amounts may be expended for the purposes for which the tort claims revolving fund was created by RCW 4.92.130 without further or additional appropriation: *Provided*, That in any case where reimbursement would seriously disrupt or prevent substantial performance of the operations or activities of the state agency, the budget director may relieve the agency of all or a portion of the obligation to make reimbursement.

The budget director shall report to the legislature, for any biennial period, on the status of the tort claims revolving fund, all payments made therefrom, all reimbursements made thereto, and the identity of agencies and departments of state government whose operations and activities give rise to liability, including those agencies and departments over which he does not have authority to revise allotments under chapter 43.88 RCW.

The budget director shall adopt rules and regulations governing the procedures to be followed in making payment from the tort claims revolving fund, in reimbursing the revolving fund and in relieving an agency of its obligation to reimburse. [1969 c 140 § 3; 1963 c 159 § 11.]

**Reviser's note:** "Budget director" changed to "director of the office of program planning and fiscal management", see chapter 43.41 RCW.

**Severability—1969 c 140:** See note following RCW 4.92.130.

### 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.

*Claims, reports, etc., filing and receipt: RCW 1.12.070.*

**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.] This applies to RCW 4.92.100, 4.96.010, 4.96.020, 35.31.010, 35.31.020, 35.31.040, 36.45.010, 47.60.250, 52.08.010, 68.16.110, 70.44.060, 86.05.920, 86.09.148, 87.03.440 and 89.30.121.

**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.] This applies to RCW 4.92.100, 4.96.010, 4.96.020, 35.31.010, 35.31.020, 35.31.040, 36.45.010, 47.60.250, 52.08.010, 68.16.110, 70.44.060, 86.05.920, 86.09.148, 87.03.440 and 89.30.121.

**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.]



# TITLE 5

## EVIDENCE

### Chapters

- 5.04 Adverse party—Examination.
- 5.24 Uniform judicial notice of foreign laws act.
- 5.28 Oaths and affirmations.
- 5.36 Private writings—Inspection.
- 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.

*City codes as evidence: RCW 35.21.550.*

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*Deposition, when complete: RCW 9.72.060.*

*Domestic relations, spouse as witness: RCW 26.20.071, 26.21.170.*

*Justice courts, witnesses and depositions: Chapter 12.16 RCW.*

*Microfilming of records to provide continuity of civil government: Chapter 40.10 RCW.*

*Order for examination of judgment debtor: RCW 6.32.010.*

*Photographic or photomechanical recording of instruments: RCW 65.04.030, 65.04.040.*

*Records of medical, dental or hospital review boards, immunity from process: RCW 4.24.250.*

*Superior court records, destruction, reproduction: RCW 36.23.065–36.23.070.*

### Chapter 5.04

#### ADVERSE PARTY—EXAMINATION

##### Sections

- 5.04.010 May be examined at trial or on commission.

*Justice courts, witnesses and depositions: Chapter 12.16 RCW.*

*Partnership bound by admission of partner: RCW 25.04.110.*

##### **5.04.010 May be examined at trial or on commission.**

A party to an action or proceeding may be examined as a witness, at the instance of the adverse party, or of one of several adverse parties, and for that purpose may be compelled in the same manner, and subject to the same rules of examination as any other witness to testify at the trial, or he may be examined on a commission. [Code 1881 § 403; 1877 p 88 § 405; 1869 p 106 § 398; 1854 p 189 § 305; RRS § 1225.]

*Rules of court: Cf. CR 26 through 37, 42.*

*Justice court, party as adverse witness: RCW 12.16.060.*

### 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.

*City or town ordinances, judicial notice, evidence: RCW 4.36.110, 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 immediately prior to the enactment hereof. [1941 c 82 § 4; Rem. Supp. 1941 § 1281.]

##### **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. 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, justice of the peace 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. [2 H. C. § 1693; 1869 p 378 § 1; RRS § 1264.]

**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 9.72 RCW.

### Chapter 5.36 PRIVATE WRITINGS—INSPECTION

#### Sections

5.36.020	When writing may be read in evidence.
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**5.36.020 When writing may be read in evidence.** If either party at any time before trial allow the other an inspection of any writing, material to the action, whether mentioned in the pleadings or not, and deliver to him a copy thereof, with notice that he intends to read the same in evidence on the trial of the cause, it may be so read without proof of its genuineness or execution, unless denied by affidavit before the commencement of the trial. If such denial be made, of any writing not mentioned in the pleadings, the court may give time to either party to procure evidence, when necessary for the furtherance of justice. [Code 1881 § 429; 1877 p 94 § 431; 1869 p 115 § 425; 1854 p 195 § 333; RRS § 1263.]

**Admission of facts and of genuineness of documents:** **Rules of court:** Cf. CR 36.

### 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.

**Destroying evidence, penalty:** RCW 9.69.070.

**Public documents, records and publications:** Title 40 RCW.

**Stolen property as evidence:** RCW 9.54.130.

**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 5.40.020-5.40.040.

**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.]

**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.

*Rules of court: Cf. 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, 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. [1891 c 19 § 16; Code 1881 § 432; 1854 p 195 § 336; RRS § 1257.]

*Rules of court: Cf. 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.]

*Private statutes, how pleaded: RCW 4.36.090.*

*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.]

*Existence of city or town, how pleaded: RCW 4.36.100.*  
*Ordinances, how pleaded, judicial notice: RCW 4.36.110.*

**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.*  
*State seal, improper use: RCW 9.91.050.*  
*Superior court seal: RCW 2.08.050.*  
*Supreme court seal: Rules of court: SAR 1.*  
*Telegraphic message, description of seal: RCW 5.52.060.*

## Chapter 5.45 UNIFORM BUSINESS RECORDS AS EVIDENCE ACT

Sections  
5.45.010 "Business" defined.

[Title 5—p 4]

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.

**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.]

**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 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 "Copy" or "duplicate" defined.

**Rules of court:** Statute modified or superseded by CR 5(h).

**Arrest by telegraph**—Validity of telegraphic copy: RCW 10.31.060.

**Divulging telegraph message:** RCW 9.73.010.

**False message as forgery:** RCW 9.44.040.

**Interference with communication or its facilities:** RCW 9.61.010(6), (18).

**Service of papers by telegraph:** RCW 4.28.300.

**Tampering with telegraph message:** RCW 9.61.050.

**Telegraph 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 "Copy" or "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.
5.56.020	Subpoena.
5.56.030	Subpoena duces tecum.
5.56.040	Service—Proof when made by person other than officer.
5.56.050	Person in court required to testify.
5.56.060	Result of failure to attend.
5.56.061	Failure to attend—Fine and costs.
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, penalty: RCW 9.69.080.*

**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.*

*Justice court, witness may be subpoenaed: RCW 12.16.010.*

*Justice 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.*

**5.56.020 Subpoena.** The subpoena shall be issued as follows:

(1) To require attendance before a court of record or at the trial of an issue therein, such subpoena may be issued in the name of the state of Washington and be under the seal of the court before which the attendance is required or in which the issue is pending: *Provided*, That such subpoena may be issued with like effect by the attorney of record of the party to the action in whose behalf the witness is required to appear, and the form of such subpoena in each case may be the same as when issued by the court except that it shall only be subscribed by the signature of such attorney.

(2) To require attendance out of such court before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state, it shall be issued by such judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required.

(3) To require attendance before a commissioner appointed to take testimony by a court of any other state, territory or county it may be issued by any judge or

justice of the peace in places within their respective jurisdiction. [1895 c 96 § 1; Code 1881 § 395; 1877 p 87 § 397; 1869 p 105 § 390; 1854 p 188 § 297; RRS § 1217.]

*Rules of court: Section superseded by CR 45(a) and (d). See comment by court after CR 45(a) and (d).*

**5.56.030 Subpoena duces tecum.** The subpoena may require not only the personal attendance of the person to whom it is directed, at a particular time and place, to testify as a witness, but may also require him to bring with him any books, documents or things under his control; but no public officer or person having the possession or control of public records or papers which by law are required to be kept in any particular office or place, shall be compelled to produce the same in any court. [Code 1881 § 394; 1877 p 87 § 396; 1869 p 105 § 389; 1854 p 188 § 296; RRS § 1216.]

*Rules of court: Section superseded by CR 45(b). See comment by court after CR 45(b).*

**5.56.040 Service—Proof when made by person other than officer.** Such subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit. [Code 1881 § 396; 1877 p 87 § 398; 1869 p 105 § 391; 1854 p 188 § 298; RRS § 1218.]

*Rules of court: Section superseded by CR 45(c). See comment by court after CR 45(c).*

*Interfering with officer authorized to subpoena witnesses, penalty: RCW 9.69.080.*

*Justice court, service of subpoena: RCW 12.16.020.*

**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.]

*Contempt, indemnity to injured party: RCW 7.20.100.*

*Justice court, damages for nonappearance: RCW 12.16.050.*

**5.56.061 Failure to attend—Fine and costs.** Such failure to attend as required by the subpoena, shall also be considered a contempt, and upon due proof, the witness may be punished by a fine not exceeding fifty dollars, and stand committed until said fine and costs are paid or until discharged by due course of law. [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).*

*Contempts: Chapter 7.20 RCW.*

*Criminal contempt: Chapter 9.23 RCW, RCW 9.92.040.*

*Justices of the peace—Contempts: Chapter 3.28 RCW.*

*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, justice of the peace 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 was subpoenaed. [Code 1881 § 400; 1877 p 88 § 402; 1869 p 106 § 395; 1854 p 188 § 302; RRS § 1221.]

*Rules of court: Cf. CR 45(f).*

*Justice 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 constable 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 shows reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs. [1891 c 19 § 3; RRS § 1222.]

*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:"*

*Rules of court: Cf. CR 45(f).*

**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.]

*Competency; conviction of crime, effect: RCW 5.60.040.*

**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	
5.60.010	Juror as witness.
5.60.020	Who may testify.
5.60.030	Not excluded on grounds of interest—Exception— Transaction with person since deceased.
5.60.040	Conviction of crime—Effect.



5.60.050 Who are incompetent.  
 5.60.060 Who are disqualified—Privileged communications.  
*Attorney as witness: Rules of court: CR 43(g); CPR 5 (DR 5–102).*

**5.60.010 Juror as witness.** A juror may be examined by either party as a witness, if he be otherwise competent. If he be not so examined, he shall not communicate any private knowledge or information that he may have of the matter in controversy, to his fellow jurors, nor be governed by the same in giving his verdict. [Code 1881 § 228; 1877 p 48 § 232; 1869 p 57 § 232; RRS § 348.]

**5.60.020 Who may testify.** Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action, or proceeding. [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 interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his 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 conservator of the estate of any insane 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 own behalf as to any transaction had by him with, or any statement made to him, or in his presence, by any such deceased or insane 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. [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.]

**5.60.040 Conviction of crime—Effect.** No person offered as a witness shall be excluded from giving evidence by reason of conviction of crime, but such conviction may be shown to affect his credibility: *Provided,* That any person who shall have been convicted of the crime of perjury shall not be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon. [1891 c 19 § 1; Code 1881 § 390; 1877 p 86 § 392; 1869 p 103 § 385; 1854 p 186 § 292; RRS § 1212.]

*Convict as witness: RCW 10.52.030.*  
*Testimony of prisoner, how obtained: RCW 5.56.090, 5.56.100.*

**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) Children under ten years of age, who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly. [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 for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian.

(2) An attorney or counselor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

(3) A clergyman or priest shall not, without the consent of a person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

(4) A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient, but this exception shall not apply in any judicial proceeding regarding a child's injuries, neglect or sexual abuse, or the cause thereof.

(5) A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure. [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).*

*Nonsupport or family desertion, spouse as witness: RCW 26.20.071.*

*Psychologist—Client, privileged communications: RCW 18.83.110.*

*Report of child abuse: Chapter 26.44 RCW.*

*Uniform reciprocal enforcement of support act—Spouse as witness: RCW 26.21.170.*



# TITLE 6

## ENFORCEMENT OF JUDGMENTS

### Chapters

- 6.04 Executions.
- 6.08 Stay of execution.
- 6.12 Homesteads.
- 6.16 Personal exemptions.
- 6.20 Adverse claims to property levied on.
- 6.24 Sales under execution and redemption.
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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.*

*Support of dependent children—Alternative method—1971 act: Chapter 74.20A RCW.*

### Chapter 6.04 EXECUTIONS

#### Sections

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- 6.04.020 Kinds of execution.
- 6.04.030 Execution in particular cases.
- 6.04.040 Form and contents of writ.
- 6.04.050 Sheriff's duty on receiving writ—Duty of clerk.
- 6.04.060 Property subject to execution.
- 6.04.070 Execution in name of assignee or personal representative.
- 6.04.080 Franchises subject to sale on execution or mortgage foreclosure.
- 6.04.090 Franchises subject to sale on execution or mortgage foreclosure—Manner of levy and sale.
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- 6.04.100 Execution of writ—Levy.
- 6.04.110 Levy on joint realty.
- 6.04.120 Levy on joint personalty.
- 6.04.130 Retention of property by judgment debtor—Bond.
- 6.04.140 Enforcement of judgment against public corporations.
- 6.04.150 Attachment to compel officer to satisfy judgment.

*Rules of court: ROA I-30, I-60, I-61; CAROA 30, 60, 61; Cf. CR 69(a).*

*Savings and loan associations, certain savings exempt from execution: RCW 33.20.140.*

*Sheriff's fees for service of process and other official services: RCW 36.18.040.*

**6.04.010 Execution authorized within six years—Exceptions.** The party in whose favor a judgment of a court of record of this state has been, or may hereafter be, rendered, or his assignee, may have an execution issued for the collection or enforcement of the same, at any time within six years from the rendition thereof:

*Provided,* That no execution shall issue on any judgment rendered upon a contract made prior to the ninth day of June, 1897, after the expiration of five years from the date of the rendition thereof, unless and until such judgment has been revived in the manner provided by law, except that in case of an appeal the date of the final judgment in the supreme court or the court of appeals shall be the time from which said period of five years shall commence to run. [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.]

*Execution on part of claim in receiver's action: RCW 7.60.050.*

*Judgment lien, commencement, cessation, extension prohibited: RCW 4.56.190 through 4.56.225.*

**6.04.020 Kinds of execution.** There shall be three kinds of executions; one against the property of the judgment debtor, the second for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same, and the third, commanding the enforcement of or obedience to any special order of the court, and in all cases there shall be an order to collect the costs. [1929 c 25 § 3; RRS § 511. Prior: Code 1881 § 327; 1877 p 68 § 331; 1854 p 176 § 244.]

**6.04.030 Execution in particular cases.** When any judgment of a court of record of this state requires the payment of money, or the delivery of real or personal property, the same may be enforced in those respects by execution. When it 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 thereby, or by law, to obey the same, and a writ shall be issued commanding him to obey or enforce the same. If he refuses, he may be punished by the court as for contempt. [1957 c 8 § 1; 1929 c 25 § 1; RRS § 512. Prior: Code 1881 § 326; 1877 p 68 § 330; 1854 p 176 § 244.]

**6.04.040 Form and contents of writ.** 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, and shall be directed to the sheriff of the county in which the property is situated, or to the coroner of such county, or the officer exercising the powers and performing the duties of coroner in case there be no coroner, when the sheriff is a party, or interested, and 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 shall require substantially as follows:

(1) If the execution be against the property of the judgment debtor it shall require the officer to satisfy the judgment, with interest, out of the personal property of the debtor, and if sufficient personal property cannot be found, out of his real property upon which the judgment is a lien.

(2) If the execution be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the officer to satisfy the judgment, with interest, out of such property.

(3) If the execution be for the delivery of real or personal property, it shall require the officer to deliver possession of the same, particularly describing 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, and the value of the property for which the judgment was recovered, shall be specified therein. If a delivery of the property described in the execution cannot be had, 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.

(4) When the execution is to enforce obedience to any special order, it shall particularly command what is required to be done or to be omitted.

(5) When the nature of the case shall require it, the execution may embrace one or more of the requirements above mentioned. And in all cases the execution shall require the collection of all interest, costs, and increased costs thereon. [1929 c 25 § 4; RRS § 513. Prior: Code 1881 § 324; 1877 p 68 § 332; 1869 p 81 § 324; 1854 p 176 § 246.]

**6.04.050 Sheriff's duty on receiving writ—Duty of clerk.** The sheriff or other officer shall indorse upon the writ of execution the time when he received the same, and the execution shall be returnable within sixty days after its date to the clerk who issued it. No sheriff or other officer shall retain any moneys collected on execution, more than twenty days before paying the same to the clerk of the court who issued the writ, under penalty of twenty percent on the amount collected, to be paid by the sheriff or other officer, one half to the party to whom the judgment is payable, and the other half to the county treasurer of the county wherein the action was brought, for the use of the school fund of said county. The clerk shall, immediately after the receipt of any money collected on any judgment, notify the party to whom the same is payable, and pay over the amount to the said party on demand. On failure to so notify and pay over, without any reasonable cause shown for the delay, the clerk shall forfeit and pay the same penalty to the same parties as is above prescribed for the sheriff. [1929 c 25 § 5; RRS § 515. Prior: Code 1881 § 330; 1877 p 69 § 334; 1869 p 83 § 226; 1854 p 177 § 248.]

**6.04.060 Property subject to execution.** All property, real and personal, of the judgment debtor, not exempted by law, shall be liable to execution. [1929 c 25 § 6; RRS § 518. Prior: Code 1881 § 333; 1877 p 70 § 337; 1854 p 177 § 251.]

**6.04.070 Execution in name of assignee or personal representative.** In all cases in which a judgment heretofore or hereafter recovered in any court of this state, has been or shall be assigned to any person, execution may issue in the name of the assignee, upon the assignment being recorded in the execution docket, by the clerk of the court in which the judgment is recovered, and in all cases in which a judgment has been or shall be recovered in any such court, and the person in whose name execution might have issued, has died or shall die, execution may issue in the name of the executor, administrator or legal representative of such deceased person, upon letters testamentary or of administration, or other sufficient proof being filed in said cause and minuted upon the execution docket, by the clerk of the court in which said judgment is entered, and upon an order of said court or the judge thereof, which may be made on an ex parte application. [1957 c 8 § 2; 1929 c 25 § 7; RRS § 519. Prior: Code 1881 § 334; 1877 p 70 § 338; 1869 p 84 § 330.]

**6.04.080 Franchises subject to sale on execution or mortgage foreclosure.** That all franchises of every kind and nature heretofore or hereafter granted, shall be subject to sale upon execution, and upon order of sale issued upon foreclosure of mortgage, in the same manner as any other personal property may be sold upon execution or upon order of sale under foreclosure of mortgage, except as in RCW 6.04.090 and 6.04.095 provided. [1897 c 61 § 1; RRS § 520.]

**6.04.090 Franchises subject to sale on execution or mortgage foreclosure—Manner of levy and sale.** The levy of such execution or order of sale shall be made by filing in the office of the auditor of the county in which the franchise was granted, a copy of the same, together with a notice in writing that under such execution or order of sale the officer levying the same has levied upon the franchise to be sold, specifying the time and place of sale, the name of the owner of the franchise, the amount of the claim or judgment for the satisfaction of which the franchise is to be sold, and the name of the plaintiff in the action in which the decree of foreclosure or judgment is entered; and by serving a copy of such execution or order of sale and notice, upon the judgment debtor, or his attorney of record, if any, in the action in which judgment was rendered, twenty days prior to date of sale. Notice may be served upon a defendant in the same manner that summons is served in civil actions. [1897 c 61 § 2; RRS § 521, part. FORMER PARTS OF SECTION: 1897 c 61 § 3 now codified as RCW 6.04.095.]

**6.04.095 Franchises subject to sale on execution or mortgage foreclosure—Time and place of sale.** The sale of any franchise under execution or order of sale

upon foreclosure must be made at the front door of the court house in the county in which the franchise was granted, not less than twenty days after the levy of the execution or order of sale and the giving of the notice as in RCW 6.04.080 through 6.04.095 provided. [1897 c 61 § 3; RRS § 521, part. Formerly RCW 6.04.090, part.]

**6.04.100 Execution of writ—Levy.** When the writ of execution is against the property of the judgment debtor, it shall be executed by the sheriff as follows:

(1) If property has been attached, he shall indorse on the execution, and pay to the clerk forthwith the amount of the proceeds of sales of perishable property or debts due the defendant received by him, sufficient to satisfy the judgment.

(2) If the judgment is not then satisfied, and property has been attached and remains in his custody, he shall sell the same, or sufficient thereof to satisfy the judgment.

(3) If then any portion of the judgment remains unsatisfied, or if no property has been attached or the same has been discharged, he shall levy on the property of the judgment debtor, sufficient to satisfy the judgment.

(4) Property shall be levied on in like manner and with like effect as similar property is attached.

(5) Until a levy, personal property shall not be affected by the execution. When property has been sold or debts received by the sheriff on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, as commanded in the writ.

(6) When property has been attached and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment any property, or the proceeds thereof, remain in the custody of the sheriff, he shall deliver the same to the judgment debtor. [Code 1881 § 355; 1877 p 76 § 358; 1869 p 91 § 351; RRS § 578.]

**6.04.110 Levy on joint realty.** When a defendant in execution owns real estate subject to execution, jointly or in common with any other person, the judgment shall be a lien, and the execution be levied upon the interest of the defendant only. [Code 1881 § 751; 1877 p 152 § 757; 1869 p 174 § 694; 1854 p 220 § 499; RRS § 579.]

**6.04.120 Levy on joint personalty.** When a defendant owns personal property jointly, or in copartnership with any other person, and the interest cannot be separately attached, the sheriff shall take possession of the property, unless the other person having an interest therein shall give the sheriff a sufficient bond, with surety, 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, describing such interest in his advertisement as nearly as may be, and the purchaser shall acquire all the interest of such defendant therein; but nothing herein contained shall be so construed as to deprive the copartner of any such defendant of his interest in any such property. [1957 c 8 § 3;

Code 1881 § 752; 1877 p 152 § 757; 1869 p 174 § 694; 1854 p 220 § 499; RRS § 580.]

**6.04.130 Retention of property by judgment debtor—Bond.** When the sheriff shall levy upon personal property, by virtue of an execution, he may permit the judgment debtor to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant 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 plaintiff in the execution; but the sheriff shall not thereby be discharged from his liability to the plaintiff for such property. [Code 1881 § 358; 1877 p 77 § 361; 1869 p 92 § 354; 1854 p 182 § 268; RRS § 581.]

**6.04.140 Enforcement of judgment against public corporations.** If judgment be given for the recovery of money or damages against such county or other public corporation, no execution shall issue thereon for the collection of such money or damages, but such judgment in such respect shall be satisfied as follows:

(1) The party in whose favor such judgment is given may at any time thereafter, when execution might issue on a like judgment against a private person, present a certified transcript of the docket thereof to the officer of such county or other public corporation who is authorized to draw orders on the treasury thereof.

(2) On the presentation of such transcript such officer shall draw an order on such treasurer for the amount of the judgment, in favor of the party for whom the same was given. Thereafter such order shall be presented for payment and paid with like effect and in like manner as other orders upon the treasurer of such county or other public corporation.

(3) The certified transcript herein provided for shall not be furnished by the clerk unless at the time an execution might issue on such judgment if the same were against a private person, nor until satisfaction of the same judgment in respect to such money or damages be acknowledged as in ordinary cases. The clerk shall include in the transcript the memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contain such memorandum, no order upon the treasurer shall issue thereon. [Code 1881 § 664; 1877 p 137 § 667; 1869 p 154 § 604; RRS § 953.]

**6.04.150 Attachment to compel officer to satisfy judgment.** Should the proper officer of said corporation fail or refuse to satisfy said judgment, as in RCW 6.04.140 provided, an attachment may be issued to compel his performance of said duty. [Code 1881 § 665; 1877 p 138 § 668; 1869 p 155 § 605; RRS § 954.]

## Chapter 6.08 STAY OF EXECUTION

Sections	In what cases allowed.
6.08.010	Stay bond.
6.08.020	Qualification and justification of sureties.
6.08.030	

- 6.08.040 Stay for part of period.  
 6.08.050 Bond to be filed with clerk.  
 6.08.060 Judgment against sureties.

*Rules of court: ROA 1-30, 1-60, 1-61; CAROA 30, 60, 61; Cf. CR 62(f), 69(a).*

**6.08.010 In what cases allowed.** Stay of execution shall be allowed on judgments rendered in the supreme court, the court of appeals, and superior court, as follows:

- (1) In the supreme court and in the court of appeals:
  - (a) On all sums under five hundred dollars, thirty days.
  - (b) On all sums over five and under fifteen hundred dollars, sixty days.
  - (c) On all sums over fifteen hundred dollars, ninety days.
- (2) On judgments rendered in the superior court:
  - (a) On all sums under three hundred dollars, two months.
  - (b) On all sums over three hundred and under one thousand dollars, five months.
  - (c) On all sums over one thousand dollars, six months. [1971 c 81 § 27; Code 1881 § 335; 1877 p 70 § 339; 1869 p 84 § 331; 1860 p 328 § 1; 1854 p 377 § 1; RRS § 522.]

**6.08.020 Stay bond.** Before any execution shall be stayed under the provisions of this chapter, the defendant shall give bond to the opposite party, in double the amount of the judgment and costs, with surety to the satisfaction of the clerk, conditioned to pay said judgment, interest, costs and increased costs, at the expiration of the period of said stay. [Code 1881 § 336; 1877 p 71 § 340; 1869 p 85 § 332; 1854 p 378 § 2; RRS § 523.]

**6.08.030 Qualification and justification of sureties.** The sureties upon a bond for stay of execution shall possess the same qualifications, and justify in the manner provided by law in other cases. [1957 c 8 § 4; Code 1881 § 338; 1877 p 71 § 342; 1869 p 85 § 334; 1854 p 378 § 4; RRS § 525.]

*Corporate surety—Insurance: Chapter 48.28 RCW.*

**6.08.040 Stay for part of period.** When execution has not been stayed, and execution issues before the time has elapsed for which it might have been stayed, as is herein provided, the defendant may have stay for the balance of the time, upon giving the proper bond and surety, which bond and surety shall be approved by and justified before the sheriff. [Code 1881 § 339; 1877 p 71 § 343; 1869 p 85 § 335; 1854 p 378 § 5; RRS § 526.]

**6.08.050 Bond to be filed with clerk.** Bonds required by this chapter shall, when taken, be lodged with the clerk of the court where the judgment was rendered, and placed on file in his office. [Code 1881 § 340; 1877 p 71 § 334; 1869 p 85 § 336; 1854 p 378 § 6; RRS § 527.]

**6.08.060 Judgment against sureties.** If the judgment is not satisfied, at any time after the expiration of the period for which execution has been stayed, the plaintiff, may, upon motion supported by an affidavit that such judgment or any part thereof is unpaid, and stating how much still remains due thereon, have judgment against the sureties upon said bond, for the balance remaining due, and have an execution therefor, upon which no stay shall be allowed. [1957 c 9 § 6; Code 1881 § 337; 1877 p 71 § 341; 1869 p 85 § 33; 1854 p 378 § 3; RRS § 524.]

## Chapter 6.12 HOMESTEADS

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*Homestead and exemptions: State Constitution Art. 19.*

*Probate, provisions for family support: Chapter 11.52 RCW.*

**6.12.010 Homestead, what constitutes.** The homestead consists of the dwelling house, in which the claimant resides, with appurtenant buildings, and the land on which the same are situated, and by which the same are surrounded, or land without improvements purchased with the intention of building a house and residing thereon, selected at any time before sale, as in this chapter provided. [1945 c 196 § 1; 1931 c 88 § 1; 1927 c 193 § 1; 1895 c 64 § 1; Rem. Supp. 1945 § 528.]

**6.12.020 From what it may be selected.** If the claimant be married the homestead may be selected from the community property, or, with the consent of the husband, from his separate property, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family

within the meaning of RCW 6.12.290 as now or hereafter amended, the homestead may be selected from any of his or her property. [1973 1st ex.s. c 154 § 6; 1895 c 64 § 2; RRS § 530.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

**6.12.030 Selection from separate estate of wife or husband.** The homestead cannot be selected from the separate property of the wife without her consent or from the separate property of the husband without his consent, shown by his or her making the declaration of homestead. [1973 1st ex.s. c 154 § 7; 1895 c 64 § 3; RRS § 531.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

**6.12.040 Mode of selection—Declaration of homestead.** In order to select a homestead the husband, wife, or other head of a family must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record. [1973 1st ex.s. c 154 § 8; 1895 c 64 § 30; RRS § 558.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

**6.12.050 Value of homestead limited—Must be used as home.** Homesteads may be selected and claimed in lands and tenements with the improvements thereon, as defined in RCW 6.12.010, regardless of area but not exceeding in net value, of both the lands and improvements, the sum of ten thousand dollars. The premises thus included in the homestead must be actually intended or used as a home for the claimants, and shall not be devoted exclusively to any other purpose. [1971 ex.s. c 12 § 1; 1955 c 29 § 1; 1945 c 196 § 3; 1895 c 64 § 24; Rem. Supp. 1945 § 552.]

**Severability**—1971 ex.s. c 12 § 5: "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.] This applies to RCW 6.12.050, 11.52.010, 11.52.020 and 11.52.022.

**6.12.060 Contents of declaration.** The declaration of homestead must contain—

(1) A statement showing that the person making it is the head of a family.

(2) A statement that the person making it is residing on the premises or has purchased the same for a homestead and intends to reside thereon and claims them as a homestead.

(3) A description of the premises.

(4) An estimate of their actual cash value. [1973 1st ex.s. c 154 § 9; 1895 c 64 § 31; RRS § 559.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

**6.12.070 Declaration to be recorded.** The declaration must be recorded in the office of the auditor of the county in which the land is situated. [1895 c 64 § 32; RRS § 560.]

**6.12.080 Tenure by which homestead is held.** From and after the time the declaration is filed for record the premises therein described constitute a homestead. If the selection was made by a married person from the community property, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this chapter; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this chapter. [1895 c 64 § 33; RRS § 561.]

**6.12.090 Homestead exempt from execution, when.** The homestead is exempt from attachment and from execution or forced sale, except as in this chapter provided; and the proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, shall likewise be exempt for one year, and also such new homestead acquired with such proceeds. Every homestead claimed in the manner provided by law, shall be presumed to be valid to the extent of all the lands 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. [1945 c 196 § 2; 1927 c 193 § 2; 1895 c 64 § 4; Rem. Supp. 1945 § 532.]

**6.12.100 Homestead subject to execution, when.** The homestead is subject to 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 by mortgages on the premises executed and acknowledged by the husband and wife or by any unmarried claimant. [1909 c 44 § 1; 1895 c 64 § 5; RRS § 533.]

**6.12.110 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. [1895 c 64 § 6; RRS § 534.]

*Husband and wife, property: Chapter 26.16 RCW.*

**6.12.120 Abandonment of homestead.** A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged:

(1) By the husband and wife if the claimant is married.

(2) By the claimant, if unmarried. [1895 c 64 § 7; RRS § 535.]

**6.12.130 Abandonment, when effectual.** A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded. [1895 c 64 § 8; RRS § 536.]

**6.12.140 Proceedings on execution against homestead.** When the execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.12.100 is levied upon the homestead, the judgment creditor may apply to the superior court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof. [1895 c 64 § 9; RRS § 537.]

**6.12.150 Verified petition.** The application must be made upon verified petition, showing—

- (1) The fact that an execution has been levied upon the homestead.
- (2) The name of the claimant.
- (3) That the value of the homestead exceeds the amount of the homestead exemption. [1895 c 64 § 10; RRS § 538.]

**6.12.160 Petition, where filed.** The petition must be filed with the clerk of the superior court. [1895 c 64 § 11; RRS § 539.]

**6.12.170 Notice.** A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant at least ten days before the hearing. [1895 c 64 § 12; RRS § 540.]

**6.12.180 Hearing—Appointment of appraisers.** 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 three disinterested resident freeholders of the county to appraise the value of the homestead. [1895 c 64 § 13; RRS § 541.]

*Compensation of appraisers: RCW 6.12.270.*

**6.12.190 Oath of appraisers.** The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same. [1895 c 64 § 14; RRS § 542.]

**6.12.200 View of premises by appraisers.** They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury. [1895 c 64 § 15; RRS § 543.]

**6.12.210 Report of appraisers.** Within fifteen days after their appointment they must make to the court a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed. [1895 c 64 § 16; RRS § 544.]

**6.12.220 Division of property.** If, from the report, it appears to the court that the land claimed can be divided without material injury the court must, by an order, direct the appraisers to set off to the claimant so

much of the land including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land. [1895 c 64 § 17; RRS § 545.]

**6.12.230 Sale, if not divisible.** If, from the report, it appears to the court that the land claimed exceeds in value the amount of the homestead exemption and that it cannot be divided, the court must make an order directing its sale under the execution. [1895 c 64 § 18; RRS § 546.]

**6.12.240 Bids must exceed exemption.** At such sale no bid must be received unless it exceeds the amount of the homestead exemption. [1895 c 64 § 19; RRS § 547.]

**6.12.250 Application of proceeds.** If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant and the balance applied to the satisfaction of the execution. [1895 c 64 § 20; RRS § 548.]

**6.12.260 Money from sale protected.** The money paid to the claimant 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. [1973 1st ex.s. c 154 § 10; 1895 c 64 § 21; RRS § 549.]

*Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.*

**6.12.270 Compensation of appraisers.** The compensation of the appraisers shall be two dollars per day each. [1895 c 64 § 22; RRS § 550.]

**6.12.280 Costs.** The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in RCW 6.12.220 and 6.12.230 the amount so paid must be added as costs on execution, and collected accordingly. [1895 c 64 § 23; RRS § 551.]

**6.12.290 "Head of family" defined.** The phrase "head of the family," as used in this chapter, includes within its meaning—

(1) The husband or wife, when the claimant is a married person; or a widow or widower still residing upon the premises occupied by her or him as a home while married.

(2) Every person who has residing on the premises with him or her, and under his or her care and maintenance, either—

(a) When such child or grandchild be under eighteen years of age, his or her child or grandchild or the child or grandchild of his or her deceased wife or husband.

(b) When such brother or sister or child be under eighteen years of age, a brother or sister, or the child of a deceased brother or sister.

(c) A father, mother, grandmother or grandfather.

(d) The father, mother, grandfather or grandmother of deceased husband or wife.



(e) Any other of the relatives mentioned in this section who has attained the age of eighteen years, and are unable to take care of or support themselves. [1973 1st ex.s. c 154 § 11; 1971 ex.s. c 292 § 5; 1933 c 36 § 1; 1895 c 64 § 25; RRS § 553.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

**Severability**—1971 ex.s. c 292: See note following RCW 26.28.010.

**6.12.300 Alienation in case of insanity of one spouse.** In case of a homestead, if either the husband or wife shall become hopelessly insane, upon application of the husband or wife not insane to the superior court of the county in which the homestead is situated, and upon due proof of such insanity, the court may make an order permitting the husband or wife not insane to sell and convey or mortgage such homestead. [1895 c 64 § 26; RRS § 554.]

**6.12.310 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 nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application, and in case there be no such male 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. [1895 c 64 § 27; RRS § 555.]

**6.12.320 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 insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts in addition to that of the insanity of the husband or wife 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. [1895 c 64 § 28; RRS § 556.]

**6.12.330 Order—Effect.** If the court shall make the order provided for in RCW 6.12.300, 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. [1895 c 64 § 29; RRS § 557.]

**Chapter 6.16  
PERSONAL EXEMPTIONS**

Sections	
6.16.010	"Householder" defined.
6.16.020	Exempt property specified.
6.16.030	Pension money exempt.
6.16.040	Pension money exempt to family.
6.16.050	Fire insurance money on exempt property exempt.
6.16.060	Exemption of proceeds of life, disability insurance and annuities.
6.16.070	Separate property of spouse exempt.
6.16.080	Exemption may be waived—Absconding debtors.
6.16.090	Claim of exemption and proceedings thereon.

*Homestead and exemptions: State Constitution Art. 19.*

*Veteran's bonus, exemption as to creditors: RCW 73.32.180.*

**6.16.010 "Householder" defined.** A householder, as designated in all statutes relating to exemptions, is defined to be:

- (1) The husband and wife, or either.
- (2) Every person who has residing with him or her, and under his or her care and maintenance, either:
  - (a) When such child be under eighteen years of age, his or her child, or the child of his or her deceased wife or husband.
  - (b) When such brother or sister or child be under eighteen years of age, a brother or sister, or the child of a deceased brother or sister.
  - (c) A father, mother, grandfather or grandmother.
  - (d) The father, mother, grandfather or grandmother of deceased husband or wife.

(e) Any other of the relatives mentioned in this section who has attained the age of eighteen years, and are unable to take care of or support themselves. [1973 1st ex.s. c 154 § 12; 1971 ex.s. c 292 § 6; 1897 c 57 § 2; RRS § 565.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

**Severability**—1971 ex.s. c 292: See note following RCW 26.28.010.

**6.16.020 Exempt property specified.** The following personal property shall be exempt from execution and attachment, except as hereinafter specially provided:

- (1) All wearing apparel of every person and family, but not to exceed five hundred dollars in value in furs, jewelry, and personal ornaments for any person.
- (2) All private libraries not to exceed five hundred dollars in value, and all family pictures and keepsakes.
- (3) To each householder, (a) his household goods, appliances, furniture and home and yard equipment, not to exceed one thousand dollars in value;
  - (b) provisions and fuel for the comfortable maintenance of such household and family for three months; and
  - (c) other property not to exceed four hundred dollars in value, of which not more than one hundred dollars in value may consist of cash, bank accounts, savings and loan accounts, stocks, bonds, or other securities.
- (4) To a person not a householder, other property not to exceed two hundred dollars in value, of which not more than one hundred dollars in value may consist of cash, bank accounts, savings and loan accounts, stocks, bonds, or other securities.

(5) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed one thousand five hundred dollars in value.

(6) To a physician, surgeon, attorney, clergyman, or other professional man, his library, office furniture, office equipment and supplies, not to exceed one thousand five hundred dollars in value.

(7) To any other person, the tools and instruments and materials used to carry on his trade for the support of himself or family, not to exceed one thousand five hundred dollars in value.

The property referred to in the foregoing subsection (3) shall be selected by the husband or wife if present, and in case neither husband nor wife nor other person entitled to the exemption shall be present to make the selection, then the sheriff or the director of public safety shall make a selection equal in value to the applicable exemptions above described and he shall return the same as exempt by inventory. Any selection made as above 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. Except as above provided, the exempt property shall be selected by the person claiming the exemption. No person shall be entitled to more than one exemption under the provisions of the foregoing subsections (5), (6) and (7).

For purposes of this section "value" shall mean the reasonable market value of the article or item at the time of its selection, and shall be of the debtor's interest therein, exclusive of all liens and encumbrances thereon.

Wages, salary, or other compensation regularly paid for personal services rendered by the person claiming the exemption may not be claimed as exempt under the foregoing provisions, 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.

No property shall be exempt under this section from an execution issued upon a judgment for all or any part of the purchase price thereof, or for any tax levied upon such property. [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.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

*Earnings as defined in RCW 7.33.010(3) not exempt from garnishment under RCW 6.16.020.*

**6.16.030 Pension money exempt.** 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 by him, shall be exempt from execution, attachment or seizure by or under any legal process whatever. [1890 p 88 § 1; RRS § 566.]

**6.16.040 Pension money exempt to family.** When a debtor dies, or absconds, and leaves his family any money exempted by RCW 6.16.030, the same shall be exempt to his family as provided in such section. [1890 p 89 § 2; RRS § 567.]

**6.16.050 Fire insurance money on exempt property exempt.** That whenever property, which by the laws of this state is exempt from execution or attachment, is insured and the same is destroyed by fire, 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 and attachment. [1895 c 76 § 1; RRS § 568.]

**6.16.060 Exemption of proceeds of life, disability insurance and annuities.** See RCW 48.18.400, 48.18.410, 48.18.420 and 48.18.430.

**6.16.070 Separate property of spouse exempt.** All real and personal estate 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 estate, shall be exempt from attachment and execution 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. [1973 1st ex.s. c 154 § 14; Code 1881 § 341; 1877 p 71 § 345; 1869 p 85 § 337; 1854 p 178 § 252; RRS § 570.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

**6.16.080 Exemption may be waived—Absconding debtors.** Nothing in this chapter shall be so construed as to prevent the mortgaging of personal property which might be claimed as exempt, or the enforcement of such mortgage, nor to prevent the waiver of the right of exemption by failure to claim the same prior to sale under execution, and nothing in this chapter shall be construed to exempt from attachment or execution the personal property of a nonresident of this state, or a person who has left or is about to leave the state with the intention to defraud his creditors. [1927 c 136 § 1; Code 1881 § 348; 1877 p 74 § 352; 1869 p 88 § 344; RRS § 571.]

**6.16.090 Claim of exemption and proceedings thereon.** As used in this section the masculine shall apply also to the feminine.

When a debtor claims personal property as exempt he shall deliver to the officer making the levy an itemized list of all the personal property owned or claimed by him, 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. He shall also deliver to such officer a list by separate items of the property he claims as exempt. If the creditor, his agent or attorney demand an appraisal thereof, two disinterested householders of the neighborhood shall be chosen, one by the debtor and the other by the creditor, his agent or attorney, and these two, if they cannot agree, shall select a third; but if either party fail to choose an appraiser, or the two fail to select a third, or if one or more of the appraisers fail to act, the officer shall appoint one. 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 other process and be by him annexed to and made part of his return and the property therein specified shall be exempt from levy and sale, and the other personal estate of the debtor shall remain subject thereto. In case no appraisal be required the officer shall return with the process the list of the property claimed as exempt by the debtor. The appraisers shall each be entitled to one dollar, to be paid by the creditor, if all the property claimed by the debtor shall be exempt; otherwise to be paid by the debtor. [1973 1st ex.s. c 154 § 15; Code 1881 § 349; 1877 p 74 § 353; 1869 p 88 § 346; RRS § 572.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

### Chapter 6.20

#### ADVERSE CLAIMS TO PROPERTY LEVIED ON

##### Sections

6.20.010	Claim of third party—Bond.
6.20.020	Justification of sureties.
6.20.030	Return of officer—Trial.
6.20.040	Designation of parties.
6.20.050	Judgment—Costs.

**6.20.010 Claim of third party—Bond.** When any other person than the judgment debtor shall claim property levied upon or attached, he may have the right to demand and receive the same from the sheriff or other officer making the attachment or levy, upon his making an affidavit that the property is his, or that he has a right to the immediate possession thereof, stating on oath the value thereof, and giving to the sheriff or officer a bond, with sureties in double the value of such property, conditioned that he will appear in the superior court of the county in which the property was seized, within ten days after the bond is accepted by the sheriff or other officer, and make good his title to the same, or that he will return the property or pay its value to the said sheriff or other officer. [1891 c 40 § 1; Code 1881 § 350; 1877 p 75 § 354; 1869 p 89 § 347; 1854 p 179 § 256; RRS § 573.]

**6.20.020 Justification of sureties.** If the sheriff or other officer require it, the sureties shall justify as in other cases, and in case they do not so justify when required, the sheriff or officer shall retain the property; if the sheriff or officer does not require the sureties to justify, he shall stand good for their sufficiency. He shall date and indorse his acceptance upon the bond. [1957 c 8 § 5; Code 1881 § 351; 1877 p 75 § 354; 1869 p 89 § 347; 1854 p 179 § 256; RRS § 574.]

**6.20.030 Return of officer—Trial.** The officer shall return the affidavit, bond and justification, if any, to the office of the clerk of the superior court, and this case shall stand for trial in said court. [1891 c 40 § 2; Code 1881 § 352; 1877 p 75 § 355; 1869 p 90 § 348; 1854 p 179 § 257; RRS § 575.]

**6.20.040 Designation of parties.** The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution, defendants. [Code 1881 § 353; 1877 p 75 § 356; 1869 p 90 § 349; 1854 p 179 § 258; RRS § 576.]

**6.20.050 Judgment—Costs.** If the claimant makes good his title to the property, the bond shall be canceled; if to a portion thereof, a like proportion of the bond shall be canceled; but if he shall not maintain his title, judgment shall be rendered against him and his sureties for the value of the property, or for such less 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 plaintiff prevails, the costs may be taxed against the defendant who was plaintiff in the execution or attachment, or the court may, if it shall be of opinion that the sheriff attached or levied upon said property without the exercise of due caution, adjudge him to pay the costs or any portion thereof. [Code 1881 § 354; 1877 p 76 § 357; 1869 p 90 § 350; 1854 p 179 § 259; RRS § 577.]

### Chapter 6.24

#### SALES UNDER EXECUTION AND REDEMPTION

##### Sections

6.24.010	Notice of sale.
6.24.020	Sale, how conducted.
6.24.030	Sale of short term leasehold absolute.
6.24.040	Postponement of sale.
6.24.050	Bill of sale.
6.24.060	Manner of selling real estate.
6.24.070	Sales of less than whole tract to be measured in square form.
6.24.080	Sale of whole tract not to be measured.
6.24.090	Struck off to highest bidder—Return.
6.24.100	Confirmation.
6.24.110	Effect on execution of reversal of judgment.
6.24.120	Contribution and subrogation.
6.24.130	Redemption from sale—Who may redeem.
6.24.131	Voluntary relinquishment of ownership rights by mortgagor may result in loss of redemption rights.
6.24.140	Time for redemption—Amount to be paid.

6.24.150	Successive redemptions.
6.24.160	Certificate of redemption.
6.24.170	Payment on successive redemptions.
6.24.180	Mode of redemption.
6.24.190	Rents and profits during period of redemption.
6.24.200	Restraining waste during redemption period.
6.24.210	Possession during period of redemption.
6.24.220	Sheriff's deed.

*Rules of court: ROA 1-30, 1-60, 1-61; CAROA 30, 60, 61; Cf. CR 69(a).*

**6.24.010 Notice of sale.** Before the sale of property under execution, order of sale or decree, notice thereof shall be given as follows:

(1) In case of personal property, by posting written or printed notice of the time and place of sale in three public places in the county where the sale is to take place, for a period of not less than ten days prior to the day of sale.

(2) In case of real property, by posting a similar notice, particularly describing the property for a period of not less than four weeks prior to the day of sale in three public places in the county, one of which shall be at the court house 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 publishing a copy thereof 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: *Provided, however,* That if there be more than one legal newspaper published in the county, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspapers such notice shall be published: *Provided, further,* That if there is no legal newspaper published in the county, then such notice shall be published in the legal newspaper published in this state nearest to the place of sale. [1935 c 35 § 1; RRS § 582. Prior: 1927 c 69 § 1; 1903 c 179 § 1; 1899 c 53 § 3; 1897 c 91 § 1.]

*Legal publications: Chapter 65.16 RCW.*

**6.24.020 Sale, how conducted.** 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. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution, nor his deputy, shall become a purchaser, or be interested in any purchase at such sale. When 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 be sold in such parcels as are likely to bring the highest price; and [when] the sale is of real property, consisting of several known lots or parcels, they shall be sold separately or otherwise as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately. Sales of real property shall be made at the courthouse door on Friday: *Provided, however,* That if Friday is a legal holiday the sale shall be held

on the next following regular business day. [1953 c 126 § 1; 1899 c 53 § 4; 1897 c 50 § 2; RRS § 583.]

**6.24.030 Sale of short term leasehold absolute.** Upon a sale of real property under execution, decree or order of sale, when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as hereinafter provided. At the time of the sale the sheriff shall give to the purchaser a certificate of the sale, containing a particular description of the property sold, the price bid for each distinct lot, or parcel, 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 his proceedings upon the writ. [1899 c 53 § 5; RRS § 584.]

**6.24.040 Postponement of sale.** If at the time appointed for the sale, the sheriff should be 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, he 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 by him. 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. [Code 1881 § 361; 1877 p 78 § 364; 1869 p 93 § 357; 1854 p 182 § 269; RRS § 585.]

**6.24.050 Bill of sale.** When the purchaser of any personal property, capable of manual delivery, and not in the possession of a third person, association or corporation, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property the sheriff shall give the purchaser a bill of sale with the like acknowledgment. [Code 1881 § 362; 1877 p 78 § 365; 1869 p 94 § 358; 1854 p 183 § 270; RRS § 586.]

**6.24.060 Manner of selling real estate.** The form and manner of sale of 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). He shall also state the amount which he is required to make upon the execution, which shall include damages, interests and costs up to the day of sale, and increased costs. He shall then offer the land for sale, the lots and parcels separately or together, as he shall deem most advantageous. All land except town lots shall be sold by the acre. [Code 1881 § 363; 1877 p 79 § 366; 1869 p 94 § 359; 1854 p 181 § 262; RRS § 587.]

**6.24.070 Sales of less than whole tract to be measured in square form.** When the land is sold by the acre and any less 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 having an interest in the land shall, at the sale, or prior thereto and before the bidding is made, request that the land sold shall be taken from some other part, or in some other form; in such case, if such request is reasonable, the officer making the sale shall sell accordingly. [Code 1881 § 364; 1877 p 79 § 367; 1869 p 94 § 360; 1854 p 181 § 263; RRS § 588.]

**6.24.080 Sale of whole tract not to be measured.** When 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 when the number of acres is not contained in the description, the officer shall declare according to his judgment how many acres are contained therein, which shall be deemed and taken to be the true number of acres. [Code 1881 § 365; 1877 p 79 § 368; 1869 p 95 § 361; 1854 p 182 § 264; RRS § 589.]

**6.24.090 Struck off to highest bidder—Return.** 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 his execution and his doings thereon, to the clerk of the court from which the execution issued, according to the order thereof: *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 proceedings on execution and return shall be docketed for confirmation in the superior court in which the action was originally commenced, and like proceedings shall be had as though said execution had issued from the said superior court. [1971 c 81 § 28; Code 1881 § 366; 1877 p 79 § 369; 1869 p 95 § 362; 1854 p 182 § 265; RRS § 590.]

**6.24.100 Confirmation.** Upon the return of any sale of real estate as aforesaid, the clerk 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," and the following proceedings shall be had:

(1) The plaintiff at any time after ten days from the filing of such return shall be entitled, on motion therefor, to have an order confirming the sale, unless the judgment debtor, or in case of his death, his representative, shall file with the clerk within ten days after the filing of such return, his objections thereto.

(2) If such objections be filed the court shall, notwithstanding, 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 of that date.

(3) Upon the return of the execution, the sheriff shall pay the proceeds of sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale.

(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. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever.

(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 his representative, as the case may be, at any time before the order is made upon the motion to confirm the sale: *Provided,* Such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to said party of course; otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of. [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.]

**6.24.110 Effect on execution of reversal of judgment.** If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid with interest and the costs and disbursements of the suit by which he was evicted, from the plaintiff in the writ of execution. [Code 1881 § 368; 1877 p 80 § 371; 1869 p 96 § 364; RRS § 592.]

**6.24.120 Contribution and subrogation.** When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case the person so paying or contributing, shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered. [Code 1881 § 369; 1877 p 81 § 372; 1869 p 96 § 365; 1854 p 183 § 272; RRS § 593.]

**6.24.130 Redemption from sale—Who may redeem.** Property sold subject to redemption, as above provided, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(1) The judgment debtor or his successor in interest, in the whole or any part of the property separately sold.

(2) A creditor having a lien by judgment, decree 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 subdivision (2) of this section are termed redemptioners. [1899 c 53 § 7; RRS § 594. Prior: 1897 c 50 § 15.]

**6.24.131 Voluntary relinquishment of ownership rights by mortgagor may result in loss of redemption rights.** See RCW 61.12.093–61.12.095.

**6.24.140 Time for redemption—Amount to be paid.** Unless redemption rights have been precluded pursuant to RCW 61.12.093 et seq., the judgment debtor or his successor in interest, or any redemptioner, may redeem the property at any time within one year after the sale, on paying the amount of the bid, with interest thereon at the rate of eight percent per annum to the time of redemption, together with the amount of any assessment or taxes which the purchaser or his successor in interest may have paid thereon after purchase, and like interest on such amount; and if the purchaser be also a creditor having a lien, by judgment, decree or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest: *Provided, however,* That whenever there is an execution sale of property 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, the period of redemption shall be eight months after the said sale. [1965 c 80 § 4; 1961 c 196 § 1; 1899 c 53 § 8; RRS § 595.]

**6.24.150 Successive redemptions.** If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner by paying the sum paid on such last redemption with interest at the rate of eight percent per annum, and the amount of any taxes or assessment which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and in addition thereto by paying the amount of any liens, by judgment, decree or mortgage, held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. 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, on paying the sum paid on the last previous redemption

with interest thereon at the rate of eight percent per annum, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens by judgment, decree or mortgage, other than the judgment under which the property was sold, held by the last redemptioner, previous to his own, with interest. If the purchaser or redemptioner shall pay any taxes or assessments, or have or acquire any such lien as herein mentioned, he must file a statement thereof with the auditor of the county where said property is situate before the property shall have been redeemed from him, otherwise the property may be redeemed without paying such tax, assessment or lien. Such statement shall be recorded by such auditor. [1899 c 53 § 9; RRS § 596.]

**6.24.160 Certificate of redemption.** If no redemption be made within the redemption period prescribed by RCW 6.24.140, the purchaser or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, or notice given operating to extend the period of redemption, and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire redemption period prescribed by RCW 6.24.140 from the date of the sale to redeem the property. If the judgment debtor redeem he must make the same payments as are required to effect a redemption by the redemptioner. If the judgment debtor redeem, the effect of the sale is terminated and he is restored to his estate. A certificate of redemption must be filed and recorded in the office of the auditor of the county in which the property is situated, and the auditor must note the record thereof in the margin of the record of the certificate of sale. [1961 c 196 § 2; 1899 c 53 § 10; RRS § 597. Prior: 1897 c 50 § 16.]

**6.24.170 Payment on successive redemptions.** When two or more persons apply to the sheriff to redeem at the same time he 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 he attend at the redemption; or if not, at any time thereafter when demanded. When a sheriff shall wrongfully refuse to allow any person to redeem, his right to redeem shall not be prejudiced thereby, and the sheriff may be required, by order of the court, to allow such redemption. [1899 c 53 § 11; RRS § 598.]

**6.24.180 Mode of redemption.** The mode of redeeming shall be as provided in this section. The person seeking to redeem shall give the sheriff at least five days written notice of his 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 his attorney, of the receipt of such notice, if such person be within such county. At the time and place 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 therein the sum paid on redemption, from whom redeemed, the date thereof and a description of the property redeemed. A person seeking to redeem shall submit to the sheriff the evidence of his right thereto, as follows:

(1) If he be a lien creditor, a copy of the docket of the judgment or decree under which he claims the right to redeem, certified by the clerk of the court where such judgment or decree is docketed; or if he seeks to redeem upon mortgage, the certificate of the record thereof; also an affidavit, verified by himself or agent, showing the amount then actually due thereon.

(2) A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent, showing the amount then actually due on the judgment, decree 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 evidence thereof, and the amount due thereon, or the same may be disregarded. [1899 c 53 § 12; RRS § 599.]

**6.24.190 Rents and profits during period of redemption.** The purchaser, from the time of the sale until the redemption, and the redemptioner from the time of his redemption until another redemption, except as hereinafter provided, 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 by such person or persons thus entitled thereto, from the property thus sold, preceding the redemption thereof from him, 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; and if the redemptioner or other person entitled to make such redemption, 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 such rents and profits thus received, and expenses paid and incurred, the period for redemption is extended five days after such sworn statement is given by such person thus receiving such rents and profits, or by his agent, to the person making such 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 agent or his attorney, if such 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, such redemptioner or other person entitled to redeem from such sale, making such 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 making such demand who shall be entitled

to redeem. If a sworn statement is given by the purchaser or other person receiving such rents and profits, and such redemptioner or other person entitled to redeem, who makes such demand, desires to contest the correctness of the same, he must first redeem in accordance with such sworn statement, and if he desires to bring an action for an accounting thereafter he may do so within thirty days after such redemption, but not later: *Provided*, That if such property be farming or agricultural property and be in possession of any purchaser or any redemptioner and is redeemed after the first day of April and before the first day of December, and the purchaser or his tenant has performed any work in preparing such property for crops, or planted crops, he shall be entitled to reimbursement for such work and labor or the right to retain possession of such property until the first day of December following, and the 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 and accounted for to the redemptioner. [1899 c 53 § 13; RRS § 600.]

**6.24.200 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 family while he occupies the property. [1899 c 53 § 14; RRS § 601.]

**6.24.210 Possession during period of redemption.** The purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of his 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: *Provided*, That when 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: *Provided, further*, That 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: *And, provided further*, That in case of any homestead selected in the manner provided by law 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 for value of occupation. [1961 c 196 § 3; 1957 c 8 § 6; 1939 c 94 § 1; 1927 c 93 § 1; 1899 c 53 § 15; RRS § 602.]

**6.24.220 Sheriff's deed.** In all cases where real estate has been, or may hereafter be sold in pursuance of law by virtue of an execution or other process, issued upon an ordinary money judgment, or by virtue of execution, or other process issued upon a decree for the foreclosure of a mortgage or other lien 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 immediately after the time for redemption from such sale has expired: *Provided*, Such sale has been duly confirmed by order of the court: *And, provided further*, That such 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. 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. [1965 c 80 § 5; 1899 c 53 § 16; RRS § 603. Prior: 1897 c 50 § 16.]

*Sheriff, successor to complete process: RCW 36.28.130.*

### 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; ROA I-61; CAROA 61.*

**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

6.32.010	Order for examination of judgment debtor.
6.32.015	Order to require judgment debtor to answer interrogatories.
6.32.020	Warrant, how vacated.
6.32.030	Third parties may be brought in for examination.
6.32.040	Before whom examined.
6.32.050	Procedure on examination.
6.32.060	Referee's oath.
6.32.070	Order authorizing payment by debtor of judgment debtor.



- 6.32.080 Order requiring delivery of money or property to sheriff.
- 6.32.090 Powers of sheriff.
- 6.32.100 How money or property applied by sheriff.
- 6.32.110 Disposition of balance after judgment satisfied.
- 6.32.120 Transfer of property may be enjoined.
- 6.32.130 Service of orders.
- 6.32.140 Service of warrant.
- 6.32.150 Discontinuance or dismissal of proceedings.
- 6.32.160 Costs to judgment creditor.
- 6.32.170 Costs to judgment debtor, when.
- 6.32.180 Disobedience of order punishable as contempt.
- 6.32.190 Attendance of judgment debtor.
- 6.32.200 Not excused from answering.
- 6.32.210 Proceedings in case of joint debtors.
- 6.32.220 Continuances.
- 6.32.230 Application to judgments in justice courts.
- 6.32.240 Proceedings, before whom instituted.
- 6.32.250 Property exempt from seizure.
- 6.32.260 Proceedings to be heard without jury.
- 6.32.270 Adjudication of title to property—Jury trial.
- 6.32.280 Fee of referee.
- 6.32.290 Appointment of receiver—Notice.
- 6.32.300 Effect on pending supplemental proceedings.
- 6.32.310 Only one receiver may be appointed—Extending receivership.
- 6.32.320 Order, where to be filed.
- 6.32.330 Property vested in receiver.
- 6.32.340 Receiver's title extends back by relation.
- 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.**

At any time within six 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. [1971 ex.s. c 211 § 1; 1957 c 8 § 7; 1899 c 93 § 1; 1893 c 133 § 1; RRS § 613.]

**6.32.015 Order to require judgment debtor to answer interrogatories.** At any time within six 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. [1971 ex.s. c 211 § 2.]

**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.]

**6.32.090 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 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.]

**6.32.230 Application to judgments in justice courts.** This chapter shall apply to judgments recovered in justice court upon which a transcript has been issued and filed with the clerk of the superior court. [1893 c 133 § 23; RRS § 635.]

**6.32.240 Proceedings, before whom instituted.** Special proceedings under this chapter may be instituted and prosecuted before the superior court of the county in which the judgment was entered or any judge thereof, or before the superior 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. [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, any property which is expressly exempt by law from levy and sale by virtue of an execution, or 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 the earnings of the judgment debtor for his personal services rendered within sixty days next before the institution of the special proceeding, where it is made to appear by his oath or otherwise that those earnings are necessary for

the use of a family wholly or partly supported by his labor. [1893 c 133 § 25; RRS § 637.]

*Trust income is subject to execution in certain cases notwithstanding RCW 6.32.250: RCW 30.30.120.*

**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.
6.36.020	Registration of judgment.
6.36.030	Application for registration.

6.36.040	Personal jurisdiction.
6.36.050	Notice in absence of personal jurisdiction.
6.36.060	Levy.
6.36.070	New personal judgment.
6.36.080	Defenses.
6.36.090	Pendency of appeal.
6.36.100	Effect of setting aside registration.
6.36.110	Appeal.
6.36.120	New judgment quasi in rem.
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.

*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.]

**6.36.020 Registration of judgment.** On application made within the time allowed for bringing an action on a foreign judgment in this state, any person entitled to bring such action may have a foreign judgment registered in any court of this state having jurisdiction of such an action. [1953 c 191 § 2.]

**6.36.030 Application for registration.** A verified petition for registration shall set forth a copy of the judgment to be registered, the date of its entry and the record of any subsequent entries affecting it (such as levies of execution, payments in partial satisfaction and the like) all authenticated in the manner authorized by the laws of the United States or of this state, and a prayer that the judgment be registered. The clerk of the registering court shall notify the clerk of the court which rendered the original judgment that application for registration has been made, and shall request him to file this information with the judgment. [1953 c 191 § 3.]

**6.36.040 Personal jurisdiction.** At any time after registration the petitioner shall be entitled to have summons served upon the judgment debtor as in an action brought upon the foreign judgment, in any manner authorized by the law of this state for obtaining jurisdiction of the person. [1953 c 191 § 4.]

**6.36.050 Notice in absence of personal jurisdiction.** If jurisdiction of the person of the judgment debtor cannot be obtained, a notice clearly designating the foreign judgment and reciting the fact of registration, the court in which it is registered, and the time allowed for pleading, shall be sent by the clerk of the registering

court by registered mail to the last known address of the judgment debtor. Proof of such mailing shall be made by certificate of the clerk. [1953 c 191 § 5.]

**6.36.060 Levy.** At any time after registration and regardless of whether jurisdiction of the person of the judgment debtor has been secured or final judgment has been obtained, a levy may be made under the registered judgment upon any property of the judgment debtor which is subject to execution or other judicial process for satisfaction of judgment. [1953 c 191 § 6.]

**6.36.070 New personal judgment.** If the judgment debtor fails to plead within sixty days after jurisdiction over his person has been obtained, or if the court after hearing has refused to set the registration aside, the registered judgment shall become a final personal judgment of the court in which it is registered. [1953 c 191 § 7.]

**6.36.080 Defenses.** Any defense, setoff, counterclaim, or cross-complaint which under the law of this state may be asserted by the defendant in an action on the foreign judgment may be presented by appropriate pleadings and the issues raised thereby shall be tried and determined as in other civil actions. Such pleadings must be filed within sixty days after personal jurisdiction is acquired over him or within sixty days after the mailing of the notice prescribed in RCW 6.36.050. [1953 c 191 § 8.]

**6.36.090 Pendency of appeal.** If the judgment debtor shows that an appeal from the original judgment is pending or that he is entitled and intends to appeal therefrom, the court shall, on such terms as it thinks just, postpone the trial for such time as appears sufficient for the appeal to be concluded, and may set aside the levy upon proof that the defendant has furnished adequate security for satisfaction of the judgment. [1953 c 191 § 9.]

**6.36.100 Effect of setting aside registration.** An order setting aside a registration constitutes a final judgment in favor of the judgment debtor. [1953 c 191 § 10.]

**6.36.110 Appeal.** An appeal may be taken by either party from any judgment sustaining or setting aside a registration on the same terms as an appeal from a judgment of the same court. [1953 c 191 § 11.]

**6.36.120 New judgment quasi in rem.** If personal jurisdiction of the judgment debtor is not secured within sixty days after the levy and he has not, within sixty days after the mailing of the notice prescribed by RCW 6.36.050, acted to set aside the registration, or to assert a setoff, counterclaim, or cross-complaint, the registered judgment shall be a final judgment *quasi in rem* of the court in which it is registered, binding upon the judgment debtor's interest in property levied upon, and the court shall enter an order to that effect. [1953 c 191 § 12.]

**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.]

# TITLE 7

## SPECIAL PROCEEDINGS

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### Chapter 7.04 ARBITRATION

#### Sections

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*Arbitration of labor disputes: Chapter 49.08 RCW.*

**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 to 7.04.220, incl.

**7.04.020 "Court" defined—Applications in writing—How heard.** 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. [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.** 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, and any award made after the lapse of such thirty days shall have no legal effect, unless the parties extend the time in which said award may be made or ratify any award made after the expiration of the thirty day period. Any extension of time or ratification of the award shall be in writing and signed by all parties to the arbitration. [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 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. [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.** 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.]

**7.04.180 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.]

*Rules of court: Cf. CAROA 14.*

### Chapter 7.08

## ASSIGNMENT FOR BENEFIT OF CREDITORS

#### Sections

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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 7.12 ATTACHMENT

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**Rules of court:** Cf. CAROA 14(4); CR 64.

**Sheriff's fees for service of process and other official services:** RCW 36.18.040.

**7.12.010 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 hereinafter prescribed, as security for the satisfaction of such judgment as he may recover. [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.]

*Rules of court: Cf. CR 64.*

**7.12.020 Affidavit for writ—Issuance of writ—Grounds.** The writ of attachment shall be issued by the clerk of the court in which the action is pending; but before any such writ of attachment shall issue, the plaintiff, or someone in his behalf, shall make and file with such clerk an affidavit showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all just credits and offsets), and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant, and either:

- (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; or
- (10) That the object for which the action is brought is to recover on a contract, express or implied. [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.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

*Rules of court: CR 64.*

*Alternative causes: RCW 7.12.310.*

**7.12.030 Attachment on 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 affidavit, in addition to that fact, states:

- (1) That the defendant is about to dispose of his property 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 which contemplated removal was not known to the plaintiff at the time the debt was contracted; or
- (3) That the defendant has disposed of his property in whole or in part with intent to defraud his creditors; or
- (4) That the debt was incurred for property obtained under false pretenses. [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.]

*Rules of court: Cf. CR 64.*

**7.12.040 Answer 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 he may, in his discretion, do so, and go to trial as early as the cause is reached. [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.]

**7.12.050 Judgment suspended.** No final judgment shall be rendered in such action, unless the party consents, as in RCW 7.12.040, until the debt or demand upon which it is based becomes due. But property of a perishable nature may be sold as in other cases of attachment. [1886 p 40 § 5; RRS § 651. 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.]

**7.12.060 Attachment bond.** Before the writ of attachment shall issue the plaintiff, or someone in his behalf, shall execute and file with the clerk a surety bond or undertaking in the sum in no case less than three hundred dollars, in the superior court, nor less than fifty dollars in the justice court, and double the amount for which plaintiff demands judgment, conditional that the plaintiff will prosecute his action without delay and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively or maliciously sued out. With said bond or undertaking there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified and that they are, taken together, worth the sum specified in the bond or undertaking, over and above all debts and liabilities, and property exempt from execution. No person not qualified to become surety as provided by law, shall be qualified to become surety upon a bond or undertaking for an attachment: *Provided*, That when 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 so that the ordinary process of law cannot be served upon him, or has absconded or absented himself from his usual place of abode, so that the ordinary process of law cannot be served upon him, the writ of attachment shall issue without bond or undertaking by or on behalf of the plaintiff: *And provided further*, That when the claim, debt or obligation whether in contract or tort, upon which plaintiff's cause of action is based, shall have been assigned to him, and his immediate or any other assignor thereof retains or has any interest therein, then the plaintiff and every assignor of said claim, debt or obligation who retains or has any interest therein, shall be jointly and severally liable to the defendant for all costs that may be adjudged to him and for all damages which he may sustain by reason of the attachment, should the same be wrongfully, oppressively or maliciously sued out. [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.]

*Corporate surety—Insurance: Chapter 48.28 RCW.*

*Court may fix amount of bond in civil actions: RCW 4.44.470.*

**7.12.070 Additional security.** The defendant may, at any time before judgment, move the court or judge for additional security on the part of the plaintiff, and if, on such motion, the court or judge is satisfied 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 7.12.060. [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.]

**7.12.080 Action on bond—Damages—Attorney's fee.** In an action on such bond the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained and reasonable attorney's fees to be fixed by the court; and if it be shown that such attachment was sued out maliciously, he may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond. [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.]

**7.12.090 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 him to attach and safely keep the property of such defendant within his 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 not exempt from execution be found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable, and he shall as nearly as the circumstances of the case will permit, levy upon property fifty percent greater in valuation than the amount plaintiff in his affidavit claims to be due. When property is seized on attachment, the court may allow to the officer having charge thereof such compensation for his trouble and expenses in keeping the same as shall be reasonable and just. [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.]

*Rules of court: Cf. SPR 90.04W.*

**7.12.100 Writs to different counties—Successive writs.** Writs of attachment may be issued from the superior courts 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 shall have issued, it shall not be necessary for the plaintiff to file any further affidavit or bond, but he shall be entitled to as many writs as may be necessary to secure the amount claimed. [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.]

**7.12.110 Order of execution.** Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff. [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.]

*Rules of court: Cf. SPR 90.04W.*

**7.12.120 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 same in an adjoining county, within twenty-four hours after removal. [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.]

**7.12.130 Manner of executing writ.** The sheriff to whom the writ is directed and delivered must execute the same without delay as follows:

(1) Real property shall be attached by filing a copy of the writ, together with a description of the property attached, with the county auditor of the county in which the attached real estate is situated.

(2) Personal property, capable of manual delivery, shall be attached by taking into custody.

(3) Stock or shares, or interest in stock or shares, of any corporation, association or company, shall be attached by leaving with the president or other head of the same, or the secretary, cashier or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ. [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.]

*Sheriff's fees for service of process and other official services: RCW 36.18.040.*

**7.12.140 Examination of defendant as to his property.** Whenever it appears by the affidavit of the plaintiff 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 exempt, 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 same. [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.]

**7.12.150 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 same and pay over the proceeds according to the nature of the property and the exigency of the case. [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.]

**7.12.160 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 his attorney in case such party shall have been personally served with a summons in the action. [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.]

**7.12.170 Custody of property or proceeds.** All moneys received by the sheriff under the provisions of this chapter and all other attached property shall be retained by him to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. [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.]

**7.12.180 Money in hands of officer may be garnished, also judgment debtor, or personal representative.** A sheriff, constable or any peace officer may be garnished for money of the defendant in his hands but nothing herein shall be construed as permitting the garnishment of a sheriff, constable or other peace officer for money or property taken from a person arrested by such officer, at the time of the arrest. A judgment debtor or of the defendant may be garnished when the judgment has not been previously assigned on the record or by writing filed in the office of the clerk, and by him minuted as an assignment on the margin of the execution docket, and also an executor or administrator may be garnished for money due from the decedent to the defendant. [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.]

**7.12.190 Attachment of moneys in court.** When the property to be attached is a fund in court, the execution of a writ of attachment shall be by leaving with the clerk of the court a copy thereof, with notice in writing specifying the fund. [1957 c 51 § 3; 1886 p 43 § 20; RRS § 665. 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.]

**7.12.200 Sheriff's inventory.** The sheriff shall make a full inventory of the property attached and return the same with the writ. [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.]

**7.12.210 Subjection of attached property to judgment.** If judgment be recovered by the plaintiff the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant as in this chapter provided or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

(1) By applying on the execution issued on said judgment the proceeds of all sales of perishable or other property sold by him, or so much as shall be necessary to satisfy the judgment.

(2) If any balance remain due he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands.



Notice of the sale shall be given and the sale conducted as in other cases of sales on execution. [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.]

**7.12.220 Procedure when attached property insufficient—Surplus to defendant.** If after selling all the property attached by him remaining in his hands, and applying the proceeds, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands and any proceeds of the property attached unapplied on the judgment. [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.]

**7.12.230 Procedure where execution unsatisfied.** If the execution be returned unsatisfied, in whole or in part, the plaintiff may proceed as in other cases upon the return of an execution. [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.]

**7.12.240 Effect of judgment for defendant.** If the defendant recover judgment against the plaintiff, all the proceeds of sales and money collected by the sheriff and all the property attached remaining in the sheriff's hands shall be delivered to the defendant or his agent. The order of attachment shall be discharged and the property released therefrom. [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.]

**7.12.250 Discharge of attachment—Restitution—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 to the effect that he will perform 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. [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.]

**7.12.260 Judgment on bond.** Such bond shall be part of the record, and, if judgment go against the defendant, the same shall be entered against him and sureties. [1886 p 45 § 30; RRS § 672. 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.]

**7.12.270 Motion to discharge attachment.** The defendant may at any time after he has appeared in the action and before he has given bond to the effect that he will perform the judgment of the court, as provided in RCW 7.12.250, 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 the same was improperly or irregularly issued. [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.]

*Rules of court: CR 7(b), 64.*

**7.12.280 Hearing on motion—Affidavits.** If the motion be made upon affidavits upon the part of the defendant but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was issued. [1886 p 45 § 32; RRS § 674. 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.]

**7.12.290 Discharge of writ for irregularity.** If upon application it satisfactorily appears that the writ of attachment was improperly or irregularly issued it must be discharged. [1886 p 45 § 33; RRS § 675. 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.]

**7.12.300 Return of sheriff.** The sheriff must return the writ of attachment with the summons, if issued at the same time, otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto, and whenever an order has been made discharging or releasing an attachment upon real property a certified copy of such order may be filed in the offices of the county auditors in which the notices of attachment have been filed and be indexed in like manner. [1886 p 45 § 34; RRS § 676. 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.]

*Rules of court: SPR 90.04W; Cf. CR 4(g).*

**7.12.310 Chapter to be liberally construed—Amendments—Alternative causes not to be stated.** 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. The causes for attachment shall not be stated in the alternative.

[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.]

**7.12.330 "Sheriff" defined—Justice court's jurisdiction limited.** The word "sheriff" as used in this chapter is meant to apply to constables, when the proceedings are in a justice's court, and when the proceedings are in a justice's court, the justice is to be regarded as the clerk of the court for all purposes herein contemplated: *Provided*, That nothing contained in this chapter shall be construed to confer upon a justice of the peace power to issue a writ of attachment to be served out of the county in which such justice shall have his office, or to confer upon a sheriff, constable, or other officer, power or authority to serve a writ of attachment issued out of justice's court beyond the limits of the county in which such justice shall have his office, except in cases provided for in RCW 7.12.120: *And provided further*, That nothing contained in this chapter shall be construed or held to authorize the attachment of real estate, or of any interest therein, under a writ of attachment issued out of any justice's court. [1886 p 46 § 37; RRS § 679. 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.]

### Chapter 7.16

#### CERTIORARI, MANDAMUS AND PROHIBITION

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*Rules of court: ROA I-57, I-58; CAROA 57.*

**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.]

*Rules of court: ROA I-2; CAROA 2.*

*Judgment defined, civil actions: RCW 4.56.010.*

*Order, motion defined, civil actions: RCW 4.56.020.*

##### CERTIORARI

*Rules of court: ROA I-57; CAROA 57.*

**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 police or justice 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. [1895 c 65 § 4; RRS § 1002.]

**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.]

*Rules of court: ROA I-57; CAROA 57.*

**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.]

**7.16.090 Bill of exceptions.** Questions of fact not apparent of record may be presented by bill of exception, and the court shall review the same, and, in case there is error, shall render such judgment in the case as of right ought to be entered, or reverse and remand the cause for further proceedings. [1895 c 65 § 9; RRS § 1007.]

*Statement of facts: Rules of court: ROA I-34, I-35.*

**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.]

*Rules of court: ROA I-57; CAROA 57.*

**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) If there was such proof, whether there was, upon all the evidence, such a preponderance of proof, against the existence thereof, rendered in an action in a court, triable by a jury, as would be set aside by the court, as against the weight of evidence. [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

*Rules of court: ROA I-57, I-58; CAROA 57.*

**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 justice's or a police 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 he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person. [1895 c 65 § 16; RRS § 1014.]

**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.]

*Rules of court: ROA I-58.*

**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.]

*Rules of court: ROA I-58.*

**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.]

*Rules of court: ROA I-58.*

**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 counter-vail 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.]

*Rules of court: ROA I-57; CAROA 57.*

**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

*Rules of court: ROA I-57, I-58; CAROA 57.*

**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 police or justices' 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. [1895 c 65 § 30; RRS § 1028.]

**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.]

*Rules of court: ROA I-57, I-58; CAROA 57.*

**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.]

*Rules of court: ROA I-57, I-58; CAROA 57.*

**7.16.350 Appeals.** From a final judgment in the superior court, in any such proceeding, an appeal shall lie to the supreme court or the court of appeals. [1971 c 81 § 30; 1895 c 65 § 35; RRS § 1033.]

*Rules of court: ROA I-14, I-17; CAROA 14, 17.*

Chapter 7.20  
CONTEMPTS

Sections	
7.20.010	Contempt of court defined.
7.20.020	Punishment—General.
7.20.030	Contempt in presence of court—Summary punishment.
7.20.040	Procedure in other cases.
7.20.050	Production of defendant if in custody.
7.20.060	How prosecuted.
7.20.070	Execution of warrant—Bond.
7.20.080	Return of warrant—Examination of defendant.
7.20.090	Judgment and sentence.
7.20.100	Indemnity to injured party.
7.20.110	Imprisonment until act performed.
7.20.120	Offender may be indicted.
7.20.130	Alias warrant—Prosecution of bond.
7.20.140	Appeal—Punishment for contempts of justice courts.

- Criminal contempt: Chapter 9.23 RCW.*
- Depositions, refusal to comply: Rules of court: CR 37.*
- Disclosure of indictment by grand juror or court officer, contempt: RCW 10.28.210.*
- Justice courts, contempts: Chapter 3.28 RCW.*
- Punishment for contempt by court, judicial officer: RCW 2.28.020, 2.28.070.*
- Punishment for contempt mitigates punishment for crime: RCW 9.92.040.*
- Supreme court, divulging results of appeal: Rules of court: SAR 12.*
- Testimony of adverse party, contempt: Rules of court: CR 43(f)(3).*
- Witnesses, compelling attendance: RCW 5.56.060-5.56.080.*

**7.20.010 Contempt of court defined.** The following acts or omissions, in respect to a court of justice or proceedings therein, are deemed to be contempts of court:

- (1) 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.
- (2) A breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding.
- (3) Misbehavior in office or other wilful neglect or violation of duty by an attorney, clerk, sheriff or other person appointed or selected to perform a judicial or ministerial service.
- (4) Deceit, abuse of the process or proceedings of the court by a party to an action, suit or special proceeding.
- (5) Disobedience of any lawful judgment, decree, order or process of the court.
- (6) Assuming to be an attorney or other officer of the court, and acting as such without authority in a particular instance.
- (7) Rescuing any person or property in the lawful custody of an officer, held by such officer under an order or process of such court.
- (8) Unlawfully detaining a witness or party to an action, suit or proceeding, while going to, remaining at or returning from the court where the same is for trial.
- (9) Any other unlawful interference with the process or proceedings of a court.
- (10) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.
- (11) When summoned as a juror in a court, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any other person in relation to the merits of such action, suit or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.
- (12) Disobedience by an inferior tribunal, magistrate or officer, of the lawful judgment, decree, order or process of a superior court, or proceeding in an action, suit or proceeding, contrary to law, after such action, suit or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate or officer. [Code 1881 § 725; 1877 p 147 § 730; 1869 p 167 § 667; RRS § 1049.]

**7.20.020 Punishment—General.** Every court of justice, and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six months; and when the contempt is not of those mentioned in RCW 7.20.010 (1) and (2), it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby, before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars. [Code 1881 § 726; 1877 p 148 § 731; 1869 p 168 § 668; RRS § 1050.]

*Punishment*

*court, judicial officer: RCW 2.28.020, 2.28.070.*

*failure of witness to attend: RCW 5.56.061.*

*justice court: RCW 3.28.060.*

**7.20.030 Contempt in presence of court—Summary punishment.** When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed. [Code 1881 § 727; 1877 p 148 § 732; 1869 p 168 § 669; RRS § 1051.]

**7.20.040 Procedure in other cases.** In cases other than those mentioned in RCW 7.20.030, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance. [Code 1881 § 728; 1877 p 148 § 733; 1869 p 169 § 670; RRS § 1052.]

**7.20.050 Production of defendant if in custody.** If the party charged be in custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody that he may answer, and he shall thereupon be produced and held until an order be made for his disposal. [Code 1881 § 729; 1877 p 149 § 734; 1869 p 169 § 671; RRS § 1053.]

**7.20.060 How prosecuted.** In the proceeding for a contempt, the state is the plaintiff. In all cases of public interest, the proceeding may be prosecuted by the district attorney on behalf of the state, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a co-plaintiff with the state. [Code 1881 § 730; 1877 p 149 § 735; 1869 p 169 § 672; RRS § 1054.]

**7.20.070 Execution of warrant—Bond.** Whenever a warrant of arrest is issued pursuant to this chapter, the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail, and if he may be bailed, the amount in which he may

be let to bail. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer and detain him until an order be made in the premises, unless the person arrested execute and deliver to the sheriff, at any time before the return day of the warrant, a bond with two sufficient sureties, to the effect that he will appear on such return day and abide the order or judgment of the court or officer thereupon. [Code 1881 § 731; 1877 p 149 § 736; 1869 p 169 § 673; RRS § 1055.]

**7.20.080 Return of warrant—Examination of defendant.** The sheriff shall return the warrant of arrest and the bond, if any, given him by the defendant, by the return day therein specified. When the defendant has been brought up or appeared, the court or judicial officer shall proceed to investigate the charge by examining such defendant and witnesses for or against him, for which an adjournment may be had from time to time, if necessary. [Code 1881 § 732; 1877 p 149 § 737; 1869 p 169 § 674; RRS § 1056.]

**7.20.090 Judgment and sentence.** Upon the evidence so taken, the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged; and, if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter. [Code 1881 § 733; 1877 p 149 § 738; 1869 p 170 § 675; RRS § 1057.]

**7.20.100 Indemnity to injured party.** If any loss or injury to a party in an action, suit or proceeding prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover of the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit or proceeding by the aggrieved party for such loss or injury. [Code 1881 § 734; 1877 p 149 § 739; 1869 p 170 § 676; RRS § 1058.]

*Witnesses, failure to attend, indemnity: RCW 5.56.060, 12.16.050.*

**7.20.110 Imprisonment until act performed.** When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it, and in such case the act must be specified in the warrant of commitment. [Code 1881 § 735; 1877 p 149 § 740; 1869 p 170 § 677; RRS § 1059.]

**7.20.120 Offender may be indicted.** Persons proceeded against according to the provisions of this chapter, are also liable to indictment or information for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on the indictment or information, in passing sentence shall take into consideration the punishment before inflicted. [1957 c 51 § 8; Code 1881 § 736; 1877 p 150 § 741; 1869 p 170 § 678; RRS § 1060.]

*Punishment for contempt mitigates punishment for crime: RCW 9.92.040.*

#### 7.20.130 **Alias warrant—Prosecution of bond.**

When the warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the bond to be prosecuted, or both. If the bond be prosecuted and the aggrieved party join in the action, and the sum specified therein be recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued, shall be deemed to be recovered for such party exclusively. [Code 1881 § 737; 1877 p 150 § 742; 1869 p 170 § 679; RRS § 1061.]

**7.20.140 Appeal—Punishment for contempts of justice courts.** Either party to a judgment in a proceeding for a contempt, may appeal therefrom in like manner and with like effect as from judgment in an action, but such appeal shall not have the effect to stay the proceedings in any other action, suit or proceeding, or upon any judgment, decree or order therein, concerning which, or wherein such contempt was committed. Contempts of justices' courts are punishable in the manner specially provided for in chapter 3.28. [Code 1881 § 738; 1877 p 150 § 743; 1869 p 171 § 680; RRS § 1062.]

### 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.
7.24.040	Rights of persons interested in estates, trusts, etc.
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.]

**7.24.040 Rights of persons interested in estates, trusts, etc.** A person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings. [1935 c 113 § 4; RRS § 784-4.]

**7.24.050 General powers not restricted by express enumeration.** The enumeration in RCW 7.24.020, 7.24.030 and 7.24.040 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. [1935 c 113 § 5; RRS § 784-5.]

**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. [1937 c 14 § 2; RRS § 784-17.]

**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 or other municipal corporation or taxing district, shall desire to issue bonds 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. [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 or other municipal corporation or taxing district, 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. [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.
7.28.160	Defendant's counterclaim for permanent improvements and taxes paid.
7.28.170	Defendant's counterclaim for permanent improvements and taxes paid—Pleadings, issues and trial on counterclaim.
7.28.180	Defendant's counterclaim for permanent improvements and taxes paid—Judgment on counterclaim—Payment.
7.28.190	Verdict where plaintiff's right to possession expires before trial.
7.28.200	Order for survey of property.
7.28.210	Order for survey of property—Contents of order—Service.
7.28.220	Alienation by defendant, effect of.
7.28.230	Mortgagee cannot maintain action for possession—Possession to collect mortgaged, pledged or assigned rents and profits.
7.28.240	Action between cotenants.
7.28.250	Action against tenant on failure to pay rent.
7.28.260	Effect of judgment—Lis pendens—Vacation.
7.28.270	Effect of vacation of judgment.
7.28.280	Conflicting claims, donation law, generally—Joinder of parties.
7.28.300	Quieting title against outlawed mortgage.
7.28.310	Quieting title to personal property.
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 insane: *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. [1971 ex.s. c 292 § 7; 1893 c 11 § 5; RRS § 790.]

**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 4.44.410-4.44.440.*

**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 7.28.160-7.28.180.

**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 withholding 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.** (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 a 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 mortgage trust deeds or assignments whether or not said rents and profits have accrued. The provisions of RCW 6A.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. [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 denies 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 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); ROA I-60; CAROA 60.

*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 7.33 GARNISHMENT**

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**Rules of court:** Cf. CR 64; SPR 91.04W.

**7.33.010 Grounds for issuance of writ—"Earnings" defined.** (1) Except as is provided in subsection (2) of this section, the clerks of the superior courts in the various counties in the state may issue writs of garnishment returnable to their respective courts in the following cases:

(a) Where an original attachment has been issued in accordance with the statutes in relation to attachments.

(b) Where the plaintiff sues for a debt and the plaintiff or someone in his behalf makes affidavit that such debt is just, due and unpaid, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

(c) Where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have a writ of garnishment issued.

(2) A writ of garnishment which is not sought in order to satisfy an existing judgment shall not be issued by the clerk of the superior court against any employer for the purpose of garnisheeing any earnings he owes his employee, unless the plaintiff sues for a debt and the plaintiff believes that the employee:

(a) is not a resident of this state, or is about to move from this state; or

(b) has concealed himself, absconded, or absented himself so that ordinary process of law cannot be served on him; or

(c) has removed or is about to remove any of his property from this state, with intent to delay or defraud his creditors; and the plaintiff or someone on his behalf files an affidavit stating the specific facts upon which his

belief is founded and the court pursuant to an ex parte hearing finds that there is sufficient reason to find the belief true.

(3) As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. [1969 ex.s. c 264 § 1.]

**Rules of court:** Cf. CR 64.

**7.33.020 Application of chapter.** All of the provisions of this chapter, except the provisions of RCW 7.33.030, shall apply to actions and proceedings before courts of limited jurisdiction. Where proceedings are in courts of limited jurisdiction, references to the superior court and/or the clerk thereof shall be translated to apply to the appropriate court of limited jurisdiction and/or clerk thereof. [1969 ex.s. c 264 § 2.]

**Rules of court:** Cf. SPR 91.04W.

**7.33.030 Garnishment bond.** In all cases of garnishment before judgment the plaintiff shall execute a bond with two or more good and sufficient sureties, to be approved by the clerk issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment: *Provided*, That nothing in this section shall prohibit a credit agency, or other party contemplating multiple garnishments before judgment, from posting one large bond covering more than one garnishment proceeding. [1969 ex.s. c 264 § 3.]

**7.33.040 Application for writ—Affidavit.** Before the issuance of the writ of garnishment the plaintiff or someone in his behalf shall make application therefor by affidavit, stating the facts authorizing the issuance of the writ, including the amount alleged to be due, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his possession, or under his control, personal property or effects belonging to the defendant, and shall pay to the clerk of the court a fee as provided by law. The party applying for this writ shall state in such affidavit whether or not the party who is to be the garnishee is the employer of the defendant. [1969 ex.s. c 264 § 4.]

**7.33.050 Issuance of writ—Form.** When the foregoing requisites have been complied with the clerk shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant, and shall immediately issue a writ of garnishment, in such form as provided in RCW 7.33.110, directed to the garnishee, commanding him to answer said writ on forms served with and complying with RCW 7.33.150 within twenty days after the service of the writ upon him. [1970 ex.s. c 61 § 1. Prior: 1969 ex.s. c 264 § 5.]

7.33.060 State and public corporations subject to garnishment. The state of Washington, all counties, cities, towns, school districts and other municipal corporations shall be subject to garnishment in the superior and justice courts as provided in the case of other garnishees. [1969 ex.s. c 264 § 6.]

7.33.070 State and public corporations subject to garnishment—Venue—Contents of writ. The venue of any garnishment proceeding under RCW 7.33.060 through 7.33.080 shall be the same as the original action. The writ shall be issued by the court having jurisdiction of such original action and shall require such garnishee defendant to answer such writ in like manner and with the same effect as other writs of garnishment issued by such court after judgment. [1969 ex.s. c 264 § 7.]

7.33.080 State and public corporations subject to garnishment—Service of writ upon state or public corporation. The writ of garnishment provided for in RCW 7.33.060 through 7.33.080 shall be served in the same manner and upon the same officer as is required and provided by law 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; and forms and envelopes shall be served with the writ as provided in RCW 7.33.130. [1970 ex.s. c 61 § 2; 1969 ex.s. c 264 § 8.]

7.33.090 Amount garnishee required to hold. The writ of garnishment shall set forth the amount which garnishee is required to hold which shall be an amount determined as follows: (1) The amount of (a) the judgment remaining unsatisfied or (b) if before judgment, the amount prayed for in the complaint; (2) Plus interest to the date of garnishment at the rate specified in the contractual document or the statutory rate, if there be no contractual document; (3) Plus whichever shall be greater of (a) fifty dollars or (b) ten percent of (i) the amount of the judgment remaining unsatisfied or (ii) the amount prayed for in the complaint. The court may, by order, upon a showing of good cause by plaintiff, set a higher amount. [1969 ex.s. c 264 § 9.]

7.33.100 Writ directed to bank or savings and loan association—Additional information required. In cases where the writ of garnishment issued under the provisions of this chapter is directed to a bank, banking association, mutual savings bank or savings and loan association in the state of Washington, the plaintiff, in addition to serving the writ of garnishment and accompanying answer forms and addressed envelopes upon said garnishee, shall at the same time and as a part of said service deliver to said garnishee a statement in writing signed by the plaintiff or his attorney, stating the place of residence of the defendant and his business, occupation, trade, profession or account number; and unless such statement is so delivered with said writ of garnishment, the service of said writ shall not be deemed complete and the garnishee shall not be held

liable for funds which it fails to discover thereon owing to defendant. [1969 ex.s. c 264 § 10.]

7.33.110 Form of writ. Said writ shall be substantially in the following form:

"IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF \_\_\_\_\_

-----, No. -----  
 Plaintiff, vs. WRIT OF  
 -----, GARNISHMENT  
 Defendant  
 -----,  
 Garnishee

THE STATE OF WASHINGTON TO: -----  
 Garnishee

AND TO: -----  
 Defendant

The above-named plaintiff claims that the above-named defendant is indebted to plaintiff and that the amount of \_\_\_\_\_ dollars should be held to satisfy that indebtedness and has applied for a writ of garnishment against you.

You are hereby commanded to answer this writ by filling in the attached form according to the instructions thereon, and you must mail or deliver the original of such answer to the court, one copy to the plaintiff or his attorney, and one copy to the defendant within twenty days after the service of the writ upon you.

If you owe the defendant any wages, salary or other compensation for personal services, then you shall do as follows:

(1) For each week of such wages, salary or other compensation for personal services you owe the defendant, deduct twenty-five percent of the disposable earnings of defendant, or the amount by which his disposable earnings exceed \_\_\_\_\_ dollars for each week, whichever shall be less.

(2) The total amount deducted above is subject to garnishment, and all other sums shall be paid to the defendant on the day you would customarily pay him such wages, salary or other compensation.

Unless directed by the court, do not pay any debt, whether wages subject to this garnishment or any other debt, owed the defendant when this writ was served, or deliver, sell or transfer, or recognize any sale or transfer of, any personal property or effects of the defendant in your possession or control when this writ was served; any such payment, delivery, sale or transfer is void as to so much of the debt, property or shares as are necessary to satisfy plaintiff's claim and costs for this writ with interest.

In the event that you owe to defendant a debt payable in money and subject to this garnishment in excess of the amount set forth in the first paragraph of this garnishment, hold only the amount set forth in said first paragraph of this garnishment and release all additional funds or property to defendant.

WHETHER OR NOT YOU OWE ANYTHING TO THE DEFENDANT, YOUR FAILURE TO ANSWER AS REQUIRED MAY MAKE YOU LIABLE FOR DEFENDANT'S CLAIMED DEBT TO PLAINTIFF.

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
-----
Address By
[1969 ex.s. c 264 § 11.]

7.33.120 Dating—Attestation. The writ of garnishment shall be dated and attested as in the form prescribed in RCW 7.33.110 and the name and office address of the plaintiff's attorney shall be indorsed thereon or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be indorsed thereon and delivered by the clerk who issues it to the plaintiff or his attorney. [1969 ex.s. c 264 § 12.]

7.33.130 Service of writ generally—Forms—Return. Service of the writ of garnishment is invalid unless there is served therewith (1) Four answer forms as provided in RCW 7.33.150 together with stamped envelopes addressed respectively to the clerk of the court issuing the writ, the attorney for the plaintiff (or to the plaintiff if he has no attorney), and the defendant; and (2) Cash, or a check made payable to the garnishee in the amount of ten dollars. The writ of garnishment may be served by the sheriff of the county in which the garnishee lives or it may be served by any citizen of the state of Washington eighteen years of age or over and not a party to the action in which it is issued in the same manner as a summons in an action is served: Provided, however, That where the writ is directed to a bank, banking association, mutual savings bank or savings and loan association maintaining branch offices, as garnishee, the writ must be directed to and service thereof must be made by leaving a copy of the writ with the manager or any other officer or cashier or assistant cashier of such bank or association at the office or branch thereof at which the account evidencing such indebtedness of the defendant is carried or at the office or branch which has in its possession or under its control credits or other personal property belonging to the defendant. In every case where a writ of garnishment is served by an officer, such officer shall make his return thereon showing the time, place and manner of service and that the writ was accompanied by answer forms and addressed envelopes and cash or a check as required by this section, and noting thereon his fees for making such service and shall sign his name to such return. In case such service is made by any person other

than an officer, such person shall attach to the original writ his affidavit showing his qualifications to make such service, and that the writ was accompanied by answer forms and addressed envelopes and cash deposit or a check as required by this section, and the time, place and manner of making service, and shall endorse thereon the legal fees therefor. [1971 ex.s. c 292 § 8; 1970 ex.s. c 61 § 11; 1969 ex.s. c 264 § 13.]

Rules of court: Cf. SPR 91.04W(a), (b), and (e).
Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

7.33.140 Effect of service of writ. From and after the service of such writ of garnishment, it shall not be lawful, except 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 his 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, shares, or interest as may be necessary to satisfy the plaintiff's demand: Provided, however, That in case the garnishee is a bank, banking association, mutual savings bank or savings and loan association maintaining branch offices, service must be made as provided for in RCW 7.33.130, and shall only be effective to attach the accounts, credits, or other personal property of the defendant in that particular branch upon which service is made and to which the writ is directed: Provided, further, That this section shall have no effect as to any portion of a debt which is exempt from garnishment: And provided, further, That garnishee shall incur no liability for releasing funds or property in excess of the amount stated in the writ of garnishment where garnishee shall continue to hold an amount equal to the amount stated in the writ of garnishment. [1969 ex.s. c 264 § 14.]

7.33.150 Answer of garnishee—Contents—Forms. The answer of the garnishee shall be signed by him or his 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 superior court, one copy to the plaintiff or his attorney, and one copy to the defendant. The answer shall be made on forms, served on the garnishee with the writ, substantially as follows:

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



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 \$..... Garnishee has deducted from this amount \$..... which is the exemption to which the defendant is entitled.

On the reverse side of this answer form, or on a schedule attached hereto, give the following information: (1) An explanation of the dollar amount stated, or reasons why there is uncertainty about your answer, if deemed necessary; (2) List all of the personal property or effects of defendant in the garnishee's possession or control when the writ was served. 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	----- Date
----- Signature of person answering for garnishee	----- Connection with garnishee

[1969 ex.s. c 264 § 15.]

**Rules of court:** Cf. *SPR 91.04W(c)*.

**7.33.160 Garnisheed 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 wage 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. [1969 ex.s. c 264 § 16.]

**7.33.165 Employee separated from employment due to wage garnishment not disqualified for unemployment compensation.** See RCW 50.20.045.

**7.33.170 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 after the return of said writ, by the clerk of the court out of which said writ was issued, to the effect that he 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 had thereunder shall be vacated: *Provided,* That the garnishee shall not be thereby deprived from recovering any costs in said proceeding, to which he would otherwise be entitled under RCW 7.33.010 through 7.33.050 and 7.33.090 through 7.33.340. [1969 ex.s. c 264 § 17.]

**7.33.180 Discharge of garnishee.** Should it appear from the answer of the garnishee that he was not indebted to the defendant when the writ of garnishment

was served on him, and that he had not in his possession or under his control any personal property or effects of the defendant, and should the answer of the garnishee not be controverted within twenty days, as hereinafter provided, the garnishee shall stand discharged without further action by court or garnishee and shall have no further liability. [1969 ex.s. c 264 § 18.]

**7.33.190 Default judgment—Reduction upon motion of garnishee—Attorney's fee.** Should the garnishee fail to make answer to the writ within the time prescribed therein, it shall be lawful for the court, on or after the time to answer such writ has expired, to render judgment by default against such garnishee for the full amount claimed by plaintiff against the defendant, or in case plaintiff has a judgment against defendant, for the full amount of such judgment with all accruing interest and costs: *Provided,* That upon motion by the garnishee at any time prior to execution, such judgment against garnishee shall be reduced to the amount of any non-exempt funds or property which was actually in the possession of garnishee at the time the writ was served, plus the cumulative amount of the nonexempt earnings subject to the lien provided for in RCW 7.33.370, or the sum of one hundred dollars, whichever is more, but in no event to exceed the amount of the judgment against defendant plus all accruing costs, and in addition plaintiff shall be entitled to a reasonable attorney's fee for plaintiff's response to garnishee's motion to reduce said judgment under this proviso. [1970 ex.s. c 61 § 10; 1969 ex.s. c 264 § 19.]

**7.33.200 Judgment against garnishee.** Should it appear from the answer of the garnishee or should it be otherwise made to appear, as hereinafter provided, that the garnishee was indebted to the defendant in any amount when the writ of garnishment was served, 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 shall exceed the amount of plaintiff's claim or demand against the defendant with interest and costs, in which case it shall be for the amount of such claim or demand, with interest and costs: *Provided, however,* If it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the trial hereinafter provided for, 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, 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 said 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 shall pay said sum at the time specified in said order, said payment shall operate as a discharge, otherwise judgment shall be entered against him for the amount of such indebtedness, which judgment shall have the same force and effect, and be enforced in like manner as other judgments

provided for in RCW 7.33.010 through 7.33.050, and 7.33.090 through 7.33.340: *Provided further*, That if judgment shall be rendered in favor of the principal defendant, or if any judgment rendered against him be satisfied prior to the date of payment specified in said order, the garnishee shall not be required to make the payment hereinbefore provided for, nor shall any judgment in such case be entered against him. [1969 ex.s. c 264 § 20.]

**Rules of court:** Cf. *SPR 91.04W(d)*.

**7.33.210 Execution.** Execution may be issued on the judgment against the garnishee herein provided for in like manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing the same to the clerk of the superior court from which such 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 said execution shall be paid to the clerk of the court from which such execution issued who shall retain the same until judgment be rendered in the action between the plaintiff and defendant. In case judgment be rendered therein 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 there be, shall be paid to the defendant. In case judgment be rendered in such action in favor of the defendant, the amount made on said execution against the garnishee shall be paid to the defendant. [1969 ex.s. c 264 § 21.]

**7.33.220 Decree to deliver up effects—Disposition.** Should it appear from the garnishee's answer or otherwise that the garnishee had in his possession or under his control when the writ was served any personal property or effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff on demand such personal property or effects or so much of them as may be necessary to satisfy the plaintiff's claim. In cases where a judgment has been rendered in favor of the plaintiff against the defendant, such personal property or effects may be sold in like manner as any other property is sold upon an execution issued on said judgment. In cases where judgment has not been rendered in the principal action, the sheriff shall retain said personal property or effects in his possession until the rendition of judgment therein, and in case judgment is rendered in said principal action in favor of the plaintiff, said goods or effects, or sufficient of them to satisfy such judgment, may be sold in like manner as other property is sold on execution, by virtue of an execution issuing on said judgment. In case judgment shall be rendered in said action against the plaintiff and in favor of the defendant, such effects and personal property shall be by the sheriff returned to the defendant: *Provided, however*, That in cases where 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 like manner as sales upon execution are made, and the proceeds of such sale shall be paid to the clerk of the superior court, and like disposition shall be made of such proceeds at the termination of the action as would have been made of such personal property or effects under the provisions of this section in case such sale had not been made. [1969 ex.s. c 264 § 22.]

**7.33.230 Procedure upon failure of garnishee to deliver.** Should the garnishee adjudged to have effects of personal property of the defendant in his possession or under his control as provided in RCW 7.33.220, fail or refuse 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 should not be attached for 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 shall be fined for such contempt and imprisoned until he shall deliver such personal property or effects. [1969 ex.s. c 264 § 23.]

**7.33.240 Answer of garnishee may be controverted by plaintiff.** If the plaintiff should not be satisfied with the answer of the garnishee he may controvert within twenty days by affidavit in writing signed by him, stating that he has good reason to believe and does believe that the answer of the garnishee is incorrect, stating in what particulars he believes the same is incorrect. [1969 ex.s. c 264 § 24.]

**7.33.250 Defendant may also controvert answer.** The defendant may also in like manner controvert the answer of the garnishee. [1969 ex.s. c 264 § 25.]

**7.33.260 Issue and trial.** If the answer of the garnishee is controverted, as provided in RCW 7.33.240 and 7.33.250, an issue shall be formed, under the direction of the court, and tried as other cases: *Provided, however*, 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. [1969 ex.s. c 264 § 26.]

**7.33.270 Dismissal of writ after one year—Notice—Exception.** In all cases where it shall appear from the answer of the garnishee that he was indebted to the defendant when the writ of garnishment was served and there has been no discharge or judgment and one year shall have passed since 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 when the cause of action between plaintiff and defendant shall be pending on the trial calendar, or upon the filing of an

affidavit by any party that the action is still pending. [1969 ex.s. c 264 § 27.]

**7.33.280 Exemption of earnings—Amount.** If the garnishee is an employer owing the defendant wages, salary, or other compensation for personal services, then for each week of such wages, salary or other compensation, the following amounts shall be exempt from garnishment: The greater of (1) forty times the state hourly minimum wage or (2) seventy-five percent of the disposable earnings of the defendant. Such exemption shall apply whether such earnings are paid, or to be paid, weekly, monthly, or at other intervals, and whether there be due the defendant earnings for one week, a portion thereof, or for a longer period. 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: *Provided*, That amount deducted from an employee's compensation as contributions toward a participating pension or retirement program established pursuant to a collective bargaining agreement shall not be considered a part of disposable earnings. Unless directed otherwise by the court, the garnishee shall determine and deduct the amount exempt under this section and shall pay this amount to the defendant: *Provided further*, That the foregoing exemptions shall not apply in the case of a garnishment for child support if (a) the garnishment is based on a judgment or other court order; (b) the amount stated on the writ does not exceed the amount of two months support payments; and (c) the following language is conspicuously added to the writ of garnishment: "This garnishment is based on a judgment or court order for child support. Hold all funds you owe the defendant up to the amount stated above without regard to any statutory exemption".

No money due or earned as earnings as defined in RCW 7.33.010 (3) shall be exempt from garnishment under the provisions of RCW 6.16.020, as now or hereafter amended. [1971 c 6 § 1; 1970 ex.s. c 61 § 3; 1969 ex.s. c 264 § 28.]

**7.33.290 Costs and attorney's fees when answer controverted.** Where the answer is controverted the costs of the proceeding, including a reasonable compensation for attorney's fees, shall abide the issue of such contest: *Provided*, That no costs or attorney's fees in such contest shall be taxable to defendant in the event of a controversion on the part of plaintiff. [1969 ex.s. c 264 § 29.]

**7.33.300 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 such garnishee or on the possession by him of any personal property or effects, for the garnishee to show that such indebtedness was paid or such effects delivered, or such shares of stock or other interest in such corporation were sold under the judgment of the court in accordance with the provisions of RCW 7.33.010 through 7.33.050, and 7.33.090 through 7.33.340. [1969 ex.s. c 264 § 30.]

**7.33.310 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.]

**7.33.320 Service of writ, judgment or complaint upon defendant or judgment debtor.** In any case where a writ of garnishment has issued, the party at whose instance the writ was issued shall, on or before the date of service of the writ on the garnishee, mail or may cause to be mailed, by certified mail, a copy of the writ and a copy of the judgment, if any, or the complaint, if brought before judgment, to the defendant or judgment debtor in said cause at his last known post office address; or, in the alternative, a copy of the writ shall be served upon the defendant or judgment debtor in the same manner as is required for personal service of summons upon a party to an action on or before the date of the service of said writ on the garnishee defendant or within two days thereafter. This requirement shall not be jurisdictional, but, if the copy is not mailed or served as herein provided, or any irregularity shall appear with respect to the mailing or service, the court, in its discretion on motion of the defendant or judgment debtor promptly made and supported by affidavit showing that he has suffered substantial injury in the failure to mail such copy, may set aside the said garnishment and award to said defendant or judgment debtor an amount equal to the damages suffered by plaintiff's failure. [1969 ex.s. c 264 § 32.]

**7.33.330 Similarity of names—Procedure.** Where the garnishee in his answer states that he was indebted or had personal property or effects in his possession or under his control at the time of the service of the writ of garnishment upon him to a person of the same or similar name to the defendant, and stating the place of business or residence of said person, and that he 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 to whom he was indebted or whose personal property or effects he had in his possession is the same person as the defendant, the court, before rendering judgment against the garnishee defendant as hereinbefore provided, shall take proof as to the identity of said persons, and if he should find

therefrom that they are not one and the same individual, the garnishee shall be discharged and shall have and recover his costs against the plaintiff; and if he should find that said persons are one and the same individuals, he shall make a similar judgment as to the payment of the money or the delivery of personal property and effects and as to costs of the garnishee as is hereinbefore provided, where the garnishee is held upon his answer. Before any such hearing on the question of identity is had, the plaintiff shall cause the court to issue a citation directed to the person to whom the garnishee answers he was indebted or whose personal property or effects the garnishee has answered he had in his possession or under his control, commanding him to appear before the court from which it is issued within ten days after the service of the same upon him, and to answer on oath whether or not he is the same person as the defendant in said action. Said citation shall be dated and attested in like manner as a writ of garnishment and be delivered to the plaintiff or his attorney and shall be served in the same manner as a summons in an action is served. If upon the hearing in this section provided for, the court shall find that the defendant or judgment debtor is the same person as the person to whom the garnishee defendant was indebted, or whose personal property or effects said garnishee defendant had in his possession or under his control, it shall be sufficient answer to any claim of said person against the garnishee founded on any indebtedness of such garnishee or on the possession by him of any personal property or effects for the garnishee to show that such indebtedness was paid or such personal property or effects delivered under the judgment of the court in accordance with the provisions in this chapter. [1969 ex.s. c 264 § 33.]

**7.33.340 Defendant's action for damages upon failure of plaintiff's judgment or claim—Attorney's fees.** In all actions in which a 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 him reasonable attorney's fees. [1970 ex.s. c 61 § 4; 1969 ex.s. c 264 § 34.]

**7.33.350 Continuing lien on wages—Authorized.** A plaintiff or a judgment creditor may obtain a continuing lien on wages by a garnishment pursuant to RCW 7.33.360 through 7.33.390. [1970 ex.s. c 61 § 5.]

**7.33.360 Continuing lien on wages—Service—Caption—Forms.** Service of the writ shall comply fully with RCW 7.33.130 and, in addition (1) plaintiff shall mark the caption of the writ "continuing lien"; and (2) all answer forms served on employer shall be substantially as follows:

- (1) Where garnishee is an employer:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

----- Plaintiff, vs. ----- Defendant, ----- Garnishee.		NO. -----  ANSWER TO WRIT OF GARNISHMENT (EMPLOYER FORM)
--	--	--

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 \$\_\_\_\_\_ for the last pay period. Garnishee has deducted from this amount \$\_\_\_\_\_ which is the exemption to which the defendant is entitled.

On the reverse side of this answer form, or on a schedule attached hereto, give the following information: (1) An explanation of the dollar amount stated, or reasons why there is uncertainty about your answer, if deemed necessary; (2) List all of the personal property or effects or funds, other than wages, of defendant in the garnishee's possession or control when the writ was served. **GARNISHEE WILL CONTINUE TO HOLD THE NONEXEMPT PORTION OF THE DEFENDANT'S EARNINGS AS THEY ACCRUE THROUGH THE LAST PAYROLL PERIOD ENDING ON OR BEFORE THIRTY DAYS FROM THE EFFECTIVE DATE OF THE WRIT (DATE OF SERVICE OR DATE PREVIOUSLY SERVED WRIT OR WRITS TERMINATES), OR UNTIL THE SUM HELD EQUALS THE AMOUNT STATED IN THE WRIT OF GARNISHMENT OR UNTIL THE EMPLOYMENT RELATIONSHIP TERMINATES WHICHEVER SHALL COME FIRST.**

Garnishee (is) (is not) presently holding the nonexempt portion of defendant's wages, salary or other compensations under a previous writ which will terminate not later than \_\_\_\_\_, 19... An attorney may answer for the garnishee.

Under penalty or [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	----- Date
------------------------------------	---------------

----- Signature of person answering for garnishee	----- Connection with garnishee
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In the event plaintiff fails to comply with this section, employer may elect to treat the garnishment as one not creating a continuing lien. [1970 ex.s. c 61 § 6.]

**7.33.370 Continuing lien on wages—When lien becomes effective—Termination.** (1) In the case of a garnishment of earnings, where the garnishee's answer reflects that the defendant is employed by him, the

judgment or balance due thereon as reflected on the writ of garnishment, shall become a lien on earnings due at the time of service of the writ 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 immediately prior to thirty days after the effective date of the writ as hereafter defined, 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.

(2) At the time of the expected termination of the lien, plaintiff shall mail to garnishee four additional copies of the answer form and three additional stamped envelopes addressed as provided in RCW 7.33.130.

(3) Within twenty days of receipt of the second answer form the garnishee shall file a second answer, in the form as provided in RCW 7.33.360, stating the total amount held subject to the garnishment. [1970 ex.s. c 61 § 7.]

**7.33.380 Continuing lien on wages—Priorities.** A lien obtained under RCW 7.33.370 shall have priority over any subsequent garnishment lien or wage assignment. Any writ of garnishment served upon an employer pursuant to RCW 7.33.360 while a lien imposed by a previous writ is still in effect, shall be answered by employer with a statement that he is holding no funds and with a further statement stating when all previous liens are expected to terminate. Such subsequent writ shall have full effect for thirty days from the termination of all prior liens, or until this is otherwise terminated under RCW 7.33.370: *Provided*, That a subsequent writ shall not be effective if a writ in the same cause of action is pending at the time of service of garnishment. [1970 ex.s. c 61 § 8.]

**7.33.390 Continuing lien on wages—Effective date.** The effective date of a writ of garnishment served under RCW 7.33.360 shall be the date of service thereof upon the garnishee, provided that if there are, on that date, liens by virtue of a previous writ or writs, the effective date shall be the date all previous writs terminate. [1970 ex.s. c 61 § 9.]

## Chapter 7.36 HABEAS CORPUS

Sections	
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*Rules of court: ROA I-56; CAROA 56.*

**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, spouses, and next of kin, and to enforce the rights, and for the protection of infants and insane persons; and the proceedings shall in all cases conform to the provisions of this chapter. [1973 1st ex.s. c 154 § 17; Code 1881 § 688; 1877 p 141 § 692; 1869 p 159 § 628; 1854 p 214 § 456; RRS § 1064.]

*Rules of court: ROA I-56; CAROA 56.*

**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.]

**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.]

*Rules of court: ROA I-56; CAROA 56.*

**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.]

**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 him 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.

(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. [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 prosecuting witnesses, investigate the criminal charge, and discharge, admit to bail or recommend 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: ROA I-56; CAROA 56.*

## Chapter 7.40 INJUNCTIONS

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7.40.180	Motion to dissolve or modify.
7.40.190	Damages on dissolution of injunction to stay judgment.
7.40.200	Damages for rents and waste.
7.40.210	Motion to reinstate.

*Rules of court: Cf. CR 65, 52(a)(2)(A).*

*Injunctions in labor disputes: Chapter 49.32 RCW.*

**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).*

[Title 7—p 34]

**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 1st 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.]

## 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 7.44 NE EXEAT

Sections	
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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	Justices of the peace 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 Justices of the peace have jurisdiction.** The proceedings provided for in this chapter may be had before justices of the peace in all cases within their jurisdiction. [1891 c 42 § 4; Code 1881 § 642; 1877 p 134 § 644; 1869 p 150 § 582; 1854 p 210 § 424; RRS § 783.]

**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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*Nuisances, criminal: Chapter 9.66 RCW.*

*Nuisances, jurisdiction of superior court: State Constitution Art. 4 § 6 (Amendment 28).*

**7.48.010 Actionable nuisances 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.*

*Crimes, 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 Houses of lewdness, assignation or prostitution may be abated.** Whoever shall erect, establish, maintain, continue, use, own or lease any building or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building or place, or the ground itself, in or upon which lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. [1913 c 127 § 1; RRS § 946-1.]

**7.48.060 Houses of lewdness, assignation or prostitution may be abated—Nuisance may be enjoined.** Whenever a nuisance exists, as defined in RCW 7.48.050, the prosecuting attorney or any citizen of the county may maintain an action in equity in the name of the state of Washington upon the relation of such prosecuting attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or the agent of the building or ground upon which said nuisance exists. In such action, the court or judge may upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary injunction if it shall be made to appear to the satisfaction of the court or judge that such nuisance exists. At least three days' notice in writing shall be given the defendant of the hearing of the application. Any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided. [1913 c 127 § 2; RRS § 946-2.]

**7.48.070 Houses of lewdness, assignation or prostitution may be abated—Evidence of general reputation admissible.** In such action evidence of the general reputation of the place shall be admissible for the purpose

of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the prosecuting attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute such action to judgment, and if the action is continued more than once, upon the application of either party, any citizen of the county or the prosecuting attorney may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen who originally brought such action. [1913 c 127 § 3; RRS § 946-3.]

**7.48.080 Houses of lewdness, assignation or prostitution may be abated—Contempt for violation of injunction.** In case of the violation of any injunction granted under the provisions of RCW 7.48.050 through 7.48.110, the court or judge may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause an attachment to issue, under which the defendant shall be arrested. The trial may be had upon affidavit, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment. [1913 c 127 § 4; RRS § 946-4.]

**7.48.090 Houses of lewdness, assignation or prostitution may be abated—Order of abatement.** If the existence of a nuisance be established in an action as provided in RCW 7.48.050 through 7.48.110, 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 building or place where such nuisance is maintained, of all furniture, musical instruments and movable property, used in conducting the nuisance, and may direct the sale thereof in the manner provided for the sale of chattels under execution, and there shall be entered as a part of the judgment in the case, an order effectually closing the building or place against its use for any purpose, and so keeping it closed for a period of not exceeding six months, and such judgment shall contain a decree perpetually enjoining the person or persons found to have maintained such nuisance, from maintaining such nuisance, and 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 the owner, or agent, of the building is 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 prohibited by RCW 7.48.050 through 7.48.110, which penalty shall be collected by execution as in civil actions, and when collected, shall be paid into the current expense fund of the county in which the judgment is had. If any person shall break and enter or use a building or place so directed to be closed, he shall be punished as for contempt as provided in RCW 7.48.080. For removing and selling all movable property, and collecting the penalty, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property, or collecting money, on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court. [1927 c 94 § 1; 1913 c 127 § 5; RRS § 946-5.]

**7.48.100 Houses of lewdness, assignation or prostitution may be abated—Disposition of proceeds of sale.** The proceeds of the sale of the personal property, as provided in RCW 7.48.090, shall be applied in payment of the costs of the action and abatement, and the penalty imposed upon the owners of such personal property, and the balance, if any, shall be paid to the person owning such property prior to said sale. [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.*  
*Crimes, 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*

*lottery declared public nuisance: RCW 9.59.010.  
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.]

**7.48.160 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 justices of the peace. [1957 c 45 § 1; Code 1881 § 1248; 1875 p 81 § 14; RRS § 9925.]

**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 justice court, the justice of the peace 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. [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.]

**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.]

## Chapter 7.52 PARTITION

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*Real property and conveyances: Title 64 RCW.*

**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 of insane may receive proceeds—Bond.** The guardian who may be entitled to the custody and management of the estate of an insane person, or other 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. [Code 1881 § 597; 1877 p 124 § 602; 1869 p 142 § 551; RRS § 883.]

**7.52.470 Guardian may consent to partition.** The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other 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. [Code 1881 § 598; 1877 p 124 § 603; 1869 p 142 § 552; RRS § 884.]

**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**

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**Rules of court:** ROA 1-14, 1-57, 1-58.

**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 disposition of unclaimed property act: Chapter 63.28 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); CJE 12; CAROA 14(5).

**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 immediate delivery.
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7.64.030	Bond—Taking of property—Service of bond and affidavit.
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7.64.050	Redelivery bond.
7.64.060	Justification of defendant's sureties.
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7.64.080	Building may be broken open.
7.64.090	Sheriff's duty as to property.
7.64.100	Claim by third party—Indemnity bond.
7.64.110	Return of sheriff.

**7.64.010 Plaintiff may claim immediate delivery.** The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons,

or at any time before answer, claim the immediate delivery of such property as herein provided. [Code 1881 § 142; 1877 p 30 § 142; 1869 p 35 § 140; 1854 p 150 § 100; RRS § 707.]

**7.64.020 Affidavit for delivery.** When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

(1) That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.

(2) That the property is wrongfully detained by defendant.

(3) That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or 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,

(4) The actual value of the property. [Code 1881 § 143; 1877 p 30 § 143; 1869 p 35 § 141; 1854 p 150 § 101; RRS § 708.]

**7.64.030 Bond—Taking of property—Service of bond and affidavit.** Upon the receipt of the affidavit, and a bond to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit and bond, by delivering the same to him personally, if he can be found, or his agent, from whose possession the property is taken; or if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the post office, directed to the defendant, at the post office nearest his place of residence. [Code 1881 § 144; 1877 p 30 § 144; 1869 p 35 § 142; 1854 p 150 § 102; RRS § 709.]

*Sheriff's fees for service of process and other official services: RCW 36.18.040.*

**7.64.040 Objections to bond—Justification of sureties.** The defendant may, within three days after the service of a copy of the affidavit and bond, give notice to the sheriff that he excepts to the sufficiency of the sureties; if he fail to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice as provided by law, and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they shall justify, or new sureties shall be substituted and justify.

If the defendant except to the sureties, he cannot reclaim the property, as provided in RCW 7.64.050. [1957 c 51 § 15; Code 1881 § 145; 1877 p 30 § 145; 1869 p 36 § 143; 1854 p 150 § 103; RRS § 710.]

*Corporate surety—Insurance: Chapter 48.28 RCW.*

**7.64.050 Redelivery bond.** At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a bond executed by one or more sufficient sureties to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in RCW 7.64.100. [Code 1881 § 146; 1877 p 31 § 146; 1869 p 36 § 144; 1854 p 151 § 104; RRS § 711.]

**7.64.060 Justification of defendant's sureties.** The defendant's sureties, upon a notice to the plaintiff or his attorney, of not less than two, nor more than six days, shall justify as provided by law; upon such justification, the sheriff shall deliver 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, he shall deliver the property to the plaintiff. [1957 c 51 § 16; Code 1881 § 147; 1877 p 31 § 147; 1869 p 36 § 145; 1854 p 151 § 105; RRS § 712.]

*Corporate surety—Insurance: Chapter 48.28 RCW.*

**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.*

**7.64.080 Building may be broken open.** If the property or any part thereof be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession, and if necessary, he may call to his aid the power of his county. [Code 1881 § 149; 1877 p 31 § 149; 1869 p 37 § 147; 1854 p 151 § 107; RRS § 714.]

**7.64.090 Sheriff's duty as to property.** When the sheriff shall have taken the property as herein provided, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same. [Code 1881 § 150; 1877 p 32 § 150; 1869 p 37 § 148; 1854 p 151 § 108; RRS § 715.]

**7.64.100 Claim by third party—Indemnity bond.** If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand indemnify the sheriff against such claim by a bond, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity. [Code 1881 § 151; 1877 p 32 § 151; 1869 p 37 § 149; 1854 p 151 § 109; RRS § 716.]

**7.64.110 Return of sheriff.** The sheriff shall file the affidavit, with the proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein. [1891 c 34 § 1; Code 1881 § 152; 1877 p 32 § 152; 1869 p 38 § 150; 1854 p 152 § 110; RRS § 717.]

### Chapter 7.68

## VICTIMS OF CRIMES—COMPENSATION

Sections	
7.68.010	Intent.
7.68.020	Definitions.
7.68.030	Duties of department—General provisions.
7.68.040	Civil actions against state and jurisdiction of courts abolished.
7.68.050	Right of action against perpetrator.
7.68.060	Applications for benefits.
7.68.070	Benefits—Right to and amount.
7.68.080	Medical aid.
7.68.090	Establishment of funds.
7.68.100	Physicians' reporting.
7.68.110	Appeals.
7.68.120	Reimbursement.
7.68.130	Collateral resources.
7.68.140	Confidentiality.
7.68.150	Benefits, payments and costs to be funded and accounted for separately.
7.68.160	Claims of persons injured prior to effective date.
7.68.900	Effective date—1973 1st ex.s. c 122.
7.68.910	Section captions.

**7.68.010 Intent.** It is the intent of the legislature of the state of Washington to provide a method of compensating and assisting those residents of the state who are innocent victims of criminal acts and who suffer bodily injury or death as a consequence thereof. To that end, it is the intention of the legislature to make certain of the benefits and services which are now or hereafter available to injured workmen under Title 51 RCW also available to innocent victims of crime as defined and provided for in this chapter. [1973 1st ex.s. c 122 § 1.]

**7.68.020 Definitions.** The following words and phrases as used in this chapter shall have the following meanings 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: *Provided*, That the operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law does not constitute a "criminal act" unless the injury or death was intentionally inflicted or the operation thereof was part of the commission of another criminal act as defined in this section: *Provided further*: (a) That neither an acquittal in a criminal prosecution nor the absence of any such prosecution shall be admissible in any claim or proceeding under this chapter as evidence of the non-criminal character of the acts giving rise to such claim or proceeding; (b) that evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter shall be admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; (c) that acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct shall be deemed to be criminal conduct within the meaning of this chapter.

(3) "Victim" means a resident of the state 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" shall be interchangeable with "employee" or "workman" as defined in chapter 51.08 RCW.

(4) "Child", "accredited school", "dependent", "beneficiary", "average monthly wage", "director", "injury", "invalid", "permanent partial disability", and "permanent total disability" shall have the meanings assigned to them in chapter 51.08 RCW. [1973 1st ex.s. c 122 § 2.]

**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 victims of criminal acts within the terms and limitations of this chapter. In so doing, the director shall, in accordance with chapter 34.04 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. [1973 1st ex.s. c 122 § 3.]

**7.68.040 Civil actions against state and jurisdiction of courts abolished.** In keeping with the intent of the legislature as set forth in RCW 7.68.010, all civil actions and civil causes of action against the state for injury or death as a consequence of a criminal act, and all jurisdiction of the courts of the state over such causes, are

hereby abolished except as in this chapter provided. [1973 1st ex.s. c 122 § 4.]

**7.68.050 Right of action against perpetrator.** No right of action at law against a person who has committed a criminal act, for damages as a consequence of such act, shall be lost as a consequence of receiving benefits under the provisions of this chapter. In the event any person receiving benefits under this chapter additionally seeks a remedy for damages from the person or persons who have committed the criminal act resulting in damages, then and in that event the department shall be subrogated to and have a lien upon any recovery so made to the extent of the payments made by the department to or on behalf of such person under this chapter. [1973 1st ex.s. c 122 § 5.]

**7.68.060 Applications for benefits.** 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 an application for benefits is not received by the department within one hundred eighty days after the date of injury or one hundred twenty days after the date of death of the victim, or the rights of dependents or beneficiaries accrued, if such is the case. [1973 1st ex.s. c 122 § 6.]

**7.68.070 Benefits—Right to and amount.** 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 except as provided in this section:

(1) The provisions contained in RCW 51.32.005, 51.32.015, 51.32.030, 51.32.070, 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, or his family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, and the rights, duties, responsibilities, limitations and procedures applicable to a workman 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 shall be entitled to benefits under this chapter when the injury for which benefits are sought was the result of consent, provocation or incitement by the victim, was the result of an act or acts committed by a person residing with the victim or who is a spouse, child, parent, or sibling of the victim by the half or whole blood, adoption or marriage, when the person injured sustained his injury as a result of his assisting, attempting, or committing a criminal act, or occurred while the victim was resident in any county or city jail or any state institution maintained and operated by the department of social and health services.

(4) The benefits established upon the death of a workman 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 in the event of the death of a victim who was not gainfully employed at the time of death, and who was not so employed for at least three of the twelve months immediately preceding injury, benefits payable to an eligible surviving spouse shall be limited to burial expenses as provided in RCW 51.32.050 as now or hereafter amended and a lump sum payment of seven thousand five hundred dollars without reference to children; if no spouse survives, then such burial expenses shall be paid, and each eligible child shall receive a lump sum payment of two thousand five hundred dollars. No other benefits shall 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 shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section shall apply under this chapter: *Provided*, That in the event a victim who is permanently totally disabled was not gainfully employed at the time of his injury, "wages", for the purpose of calculation of benefits, where required, shall be deemed to be the average monthly wage determined pursuant to RCW 51.08.018 as now or hereafter amended.

(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 shall equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section shall apply under this chapter: *Provided*, That no person shall be eligible for temporary total disability benefits under this chapter unless such person was gainfully employed at the time of his injury.

(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 shall apply under this chapter.

(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 shall apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workmen 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 shall be applicable to payment of benefits to, for or on behalf of victims under this chapter. [1973 1st ex.s. c 122 § 7.]

**7.68.080 Medical aid.** The provisions of chapter 51.36 RCW shall govern the provision of medical aid under this chapter except that:



(1) The provisions contained in RCW 51.36.030 and 51.36.040 as now or hereafter amended shall not apply to this chapter;

(2) The specific provisions of RCW 51.36.020 as now or hereafter amended relating to supplying emergency transportation shall not apply: *Provided*, That when the injury to any victim is so serious as to require his 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. [1973 1st ex.s. c 122 § 8.]

**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 34.04.130 and 34.04.140 as now or hereafter amended. [1973 1st ex.s. c 122 § 11.]

**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.]

**7.68.130 Collateral resources.** Benefits paid pursuant to this chapter shall be reduced by the amount of any other public or private insurance, industrial insurance, or medical health or disability benefits available. Payment by the department under this chapter shall be secondary to such other insurance or benefits, notwithstanding the provision of any contract or coverage to the contrary. [1973 1st ex.s. c 122 § 13.]

**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 (other than to public employees in the performance of their official duties), but 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. [1973 1st ex.s. c 122 § 14.]

**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 1973 act, 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 legislative budget committee and 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. [1973 1st ex.s. c 122 § 16.]

**Effective date—1973 1st ex.s. c 122:** See RCW 7.68.900 and note following.

**7.68.900 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.]

**7.68.910 Section captions.** Section captions as used in this act do not constitute any part of the law. [1973 1st ex.s. c 122 § 20.]

# 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.

*Access to state timber and other valuable material: Chapter 76.16 RCW.*

*Cemetery districts—Eminent domain: RCW 68.16.120.*

*Counties, eminent domain by for park and playground systems: RCW 36.68.010.*

*Diking and drainage districts, appropriation of lands for: RCW 85.05.070, 85.05.230, 85.05.240, 85.06.070.*

*Diking and drainage districts in two or more counties—Eminent domain: RCW 85.24.260.*

*Diking, drainage and sewerage improvement districts, acquisition by: RCW 85.08.190.*

*East capitol site, eminent domain authorized for acquisition of: RCW 79.24.520.*

*Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).*

*Eminent domain affecting corporations other than municipal: State Constitution Art. 12 § 10.*

*Eminent domain, telegraph and telephone companies, right of: State Constitution Art. 12 § 19.*

*Existing and additional toll bridges—Eminent domain: RCW 47.58.080.*

*Fire protection districts, acquisition by: Chapter 52.08 RCW.*

*Flood control districts—Right of eminent domain: RCW 86.09-202-86.09.223.*

*Gas companies, eminent domain: RCW 80.28.220, 80.28.230.*

*Generation of electricity by steam, eminent domain: RCW 43.21.280.*

*Highways, acquisition in advance of programmed construction, eminent domain authorized for: RCW 47.12.190.*

*Housing authorities—Right of eminent domain: RCW 35.82.110.*

*Limited access facilities, acquisition of property for: RCW 47.52.050.*

*Metropolitan municipal corporations—Eminent domain: RCW 35.58.320.*

*Ocean shore, beach, and tide lands, eminent domain acquisition by state: RCW 79.16.173.*

*Port districts, acquisition by: RCW 53.08.010, 53.08.020, 53.25.190.*

*Public hospital districts—Powers: RCW 70.44.060.*

*Public utility districts—Eminent domain: Chapter 54.16, 54.20 RCW.*

*Public waterways—Right of eminent domain: RCW 91.08.100.*

*Reclamation districts—Powers, eminent domain: RCW 89.30.130, 89.30.184-89.30.208.*

*Right of county-wide utility district to acquire distribution properties: RCW 54.32.040.*

*Road improvement districts—Eminent domain: RCW 36.88.310.*

*Sewer districts—Eminent domain: RCW 56.08.010.*

*State board for community college education: RCW 28B.50.070.*

*Tax lien, amount withheld from condemnation award: RCW 84.60.050.*

*Toll bridge, acquisition of right of way for: RCW 47.56.090.*

*Toll roads—Eminent domain: RCW 47.56.090, 47.56.400.*

*Towns, off-street parking, eminent domain for: RCW 35.27.570.*

*Underground storage of natural gas, eminent domain for: RCW 80.40.030.*

*Urban renewal law, eminent domain: RCW 35.81.080.*

*Water districts—Eminent domain: RCW 57.08.010.*

### Chapter 8.04

#### EMINENT DOMAIN BY STATE

#### Sections

- 8.04.010 Petition for appropriation—Contents.
- 8.04.020 Notice—Contents—Service—Publication.
- 8.04.060 Adjournment of proceedings—Further notice.
- 8.04.070 Hearing—Order adjudicating public use.
- 8.04.080 Order to direct determination of damages and offsetting benefits.
- 8.04.090 Order for immediate possession—Payment of tender into court.
- 8.04.092 Determination of adequacy of payment—Jury trial—Costs.
- 8.04.094 Demand for trial—Time of trial—Decree of appropriation.
- 8.04.097 Acquisition when several ownerships.
- 8.04.098 Acquisition when several ownerships—Public use.
- 8.04.099 Acquisition when several ownerships—Selection of single jury.
- 8.04.100 Cases may be consolidated for trial.
- 8.04.110 Trial—Damages to be found.
- 8.04.112 Damages to buildings.
- 8.04.114 Damages to buildings—Where based on readjustment or moving.
- 8.04.120 Judgment—Decree of appropriation—Recording.
- 8.04.130 Payment of damages—Effect—Costs—Appeal.
- 8.04.140 Claimants, payment of—Conflicting claims.
- 8.04.150 Appeal.
- 8.04.160 Award, how paid into court.
- 8.04.170 Condemnation for military purposes.
- 8.04.180 Condemnation for military purposes—Construction.

*Additional provisions applicable to eminent domain proceedings: Chapter 8.25 RCW.*

*Aeronautics commission—Acquisition of airports, facilities: RCW 14.04.100.*

*Aeronautics commission—Condemnation, how exercised: RCW 14.04.120.*

*City streets as state highways—Condemnation proceedings for rights-of-way: RCW 47.24.030.*

*Columbia River sanctuary—Condemnation actions: RCW 75.20.020.*

*Department of game, acquisition of property for: RCW 77.12.200, 77.12.340.*

*Fisheries department—Acquisition of lands, water rights, rights-of-way: RCW 75.08.040.*

*Parks and recreation commission—Powers: RCW 43.51.040(7).*

*Puget Sound ferry and toll bridge system—Eminent domain, condemnation proceedings: RCW 47.60.020.*

*Relocation assistance: Chapter 8.26 RCW.*

*State highways, acquisition of property for—Condemnation: Chapter 47.12 RCW.*

#### **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.]

*Jury trial, waiver of: RCW 4.44.100.*

**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 review thereof to the supreme court or the court of appeals of the state is taken 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. [1971 c 81 § 33; 1955 c 213 § 2. Prior: 1925 ex.s. c 98 § 1, part; 1891 c 74 § 4, part; RRS § 894, part.]

**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 the sheriff to summon, 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 third class county or lesser classification, the costs of such special jury for the trial of such condemnation cases only shall be borne by the state. [1955 c 213 § 3. Prior: 1925 ex.s. c 98 § 1, part; 1891 c 74 § 4, part; RRS § 894, part.]

**Rules of court: Superior court—CR 47, 48.**

**Petit jury defined: 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 program planning and fiscal management, who 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. [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. In the event that, pursuant to such hearing, the verdict of the jury, unless a jury be waived by all parties, or decision of the court, shall award respondents an amount in excess of the tender, the court shall order such 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. In the event that, pursuant to such trial, the verdict of the jury or decision of the court shall award respondents an amount equal to the tender, the costs of the action shall be charged to the state, and if such verdict or decision shall award 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. [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 and 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.]

*\*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.*

*Rules of court: Superior court—CR 26 through 37.*

*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—Appeal.** 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 of an appeal to the supreme court or the court of appeals of the state 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. [1971 c 81 § 35; 1951 c 177 § 4; 1925 ex.s. c 98 § 3; 1891 c 74 § 7; RRS § 897.]

**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 Appeal.** Either party may appeal from the judgment for damages entered in the superior court, to the supreme court or the court of appeals of the state, within thirty days after the entry of judgment as aforesaid, and such appeal 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 appeal: *Provided however,* That upon such appeal 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 an appeal to the supreme court or the court of appeals, and final judgment by default may be rendered in the superior court as in other cases: *Provided further,* That no appeal shall operate so as to prevent the said state of Washington from taking possession of such property pending such appeal after the amount of said award shall have been paid into court. [1971 c 81 § 36; 1891 c 74 § 9; RRS § 899.]

**8.04.160 Award, how paid into court.** Whenever the attorney general shall file with the director of the office of program planning and fiscal 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 program planning and fiscal 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. [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.]

### Chapter 8.08 EMINENT DOMAIN BY COUNTIES

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*Additional provisions applicable to eminent domain proceedings: Chapter 8.25 RCW.*

*Fairs, property may be acquired for: RCW 36.37.020.*

*Flood control by counties—Eminent domain: RCW 86.12.020.*

*Irrigation purposes, appropriation for: RCW 87.03.140–87.03.150.*

*Limited access facilities, acquisition of property for: RCW 47.52.050.*

*Relocation assistance: Chapter 8.26 RCW.*

*River improvements, appropriation for: RCW 86.12.020.*

*Roads, bridges—Powers of county commissioners: RCW 36.75.040.*

*Roads, bridges—Rights-of-way, acquisition, condemnation: RCW 36.85.010–36.85.020.*

*Wharves and landings—Easement by condemnation: 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.]

*Jury trial, waiver of in civil actions: RCW 4.44.100.*

**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: Superior court—CR 47, 48.*

*Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36 and 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 Appeal.** Either party may appeal from the judgment for compensation of the damages awarded in the superior court to the supreme court or the court of appeals within thirty days after the entry of judgment as aforesaid, and such appeal 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 appeal: *Provided*, That upon such appeal 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 an appeal to the supreme court or the court of appeals, and final judgment by default may be rendered in the superior court as in other cases. [1971 c 81 § 38; 1949 c 79 § 8; Rem. Supp. 1949 § 3991-13.]

**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.

## Chapter 8.12 EMINENT DOMAIN BY CITIES

### Sections

#### CONDEMNATION

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*Cemetery districts—Right of eminent domain: RCW 68.16.120.*

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*Third class cities, eminent domain as power of: RCW 35.24.310.*

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*Water districts—Right of eminent domain: RCW 57.08.010.*

*Watershed property, city in adjoining state may condemn: RCW 8.28.050.*

*Waterworks, authority to acquire and operate: RCW 35.92.010.*

## 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. [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, tidelands 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.]

*Jury trial, waiver of in civil actions: RCW 4.44.100.*

**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.*

*Publication of 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.*

*Jury trial, waiver of in civil actions: RCW 4.44.100.*

**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: Superior court—CR 17-25.*

**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 Damage to buildings—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: Superior 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: Superior court—CR 17-25, 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.]

**8.12.180 Infants or insane persons—Guardian ad litem.** When it shall appear from said petition or otherwise, at any time during the proceedings upon such petition, that any infant or insane or distracted 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 insane or distracted person to appear and defend for him, her or them, and the court shall make such order or decree as it shall deem proper to protect and secure the interest of such infant or insane or distracted person in such property or the compensation which shall be awarded therefor. [1907 c 153 § 14; RRS § 9228. Prior: 1905 c 55 § 14; 1893 c 84 § 14.]

*Guardian ad litem for infant or insane person: RCW 4.08.050, 4.08.060.*

**8.12.190 Findings.** 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—Appeal—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 appealed from, and no appeal from 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 so appealing in 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 an appeal to 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 an appeal to the supreme court or the court of appeals and final judgment may be rendered in the superior court as in other cases. [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.]

**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: Superior 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 such roll. It shall be the duty of such commissioners to give notice of such 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 said 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 said assessment roll, to file your objections to the same before the date herein fixed for the hearing upon said 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.)

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Commissioners."

(2) They shall cause at least twenty days' notice to be given by posting notice of the hearing on such assessment roll in at least three public places in such city, one of which shall be in the neighborhood of such proposed improvement, and when a daily newspaper is published in such city, by publishing the same in at least five successive issues of said paper, or if no daily newspaper is published in such city and a weekly newspaper is published therein, then in at least each issue of such weekly newspaper for two successive weeks or if no daily or weekly newspaper is published in such city, then in a newspaper published in the county in which such city is situated. Such 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 said roll has been set down for hearing on the ----- day of ----- at ----- The boundaries of said assessment district are substantially as follows: (here insert an approximate description of the assessment district). All persons desiring to object to said assessment roll are required to file their objections before said date fixed for the hearing upon said roll, and appear on the day fixed for hearing before said court.

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Commissioners."



[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.** 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, and each bond shall have attached thereto interest coupons for each interest payment: *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 coupon shall be signed by the mayor and attested by the clerk or comptroller of such city: *Provided, however*, That said 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. [1970 ex.s. c 56 § 2; 1969 ex.s. c 232 § 64; 1925 ex.s. c 115 § 1; 1915 c 154 § 11; RRS § 9263.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.44.030.

**8.12.410 Sale—Application of proceeds.** 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. [1915 c 154 § 12; RRS § 9264.]

**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 such assessment or any portion thereof, without interest, within thirty days after such 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, that the said 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 said 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 such 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.

Such notice shall further state that the first installment of such assessment shall become due and payable during the thirty day period succeeding a date one year after the date of first publication of such 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 said 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 such 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 such 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 said assessments, and all sums so paid shall be applied solely to the payment of the awards, interest and costs of such improvements or the redemption of the bonds issued therefor.

In case any city has no official newspaper, any publication required under the provisions of this chapter may be made in any newspaper of general circulation published therein, or in case there be no such newspaper, then in a newspaper published in the county in which such city is located and of general circulation in such city. [1925 ex.s. c 115 § 3; 1915 c 154 § 14; RRS § 9266.]

**8.12.440 Bondholder 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 holders 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. [1915 c 154 § 15; RRS § 9267.]

*Rules of court: Superior court—CR 17-25.*

**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.

Such bonds shall be called in and paid in their numerical order, commencing with number one. Such 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 coupons on said bonds shall become due, and interest on said bonds shall cease upon such date: *Provided*, That in any city or town not having an official newspaper, such publication may be made in any newspaper of general circulation published therein, or in case there be no such newspaper, then in a newspaper published in the county in which such city or town is located and of general circulation in such city or town. [1915 c 154 § 18; RRS § 9270.]

#### 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 any appeal be taken, then within two months after the final determination of the appeal 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. [1971 c 81 § 40; 1915 c 154 § 21; 1907 c 153 § 49; RRS § 9274. Prior: 1905 c 55 § 48; 1893 c 84 § 48.]

**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, eminent domain: RCW 35.23.450.*

*Second class cities, specific powers enumerated, power of eminent domain: RCW 35.23.440(48).*

**8.12.570 Condemnation for military purposes.** See RCW 8.04.170.

## Chapter 8.16

### EMINENT DOMAIN BY SCHOOL DISTRICTS

#### Sections

8.16.010	Condemnation authorized for schoolhouse sites.
8.16.020	Petition—Contents.
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8.16.040	Adjournment of proceedings—Further notice.
8.16.050	Hearing—Finding of necessity—Setting for trial.
8.16.060	Impaneling 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	Appeal.
8.16.140	Appeal does not delay possession if award paid.
8.16.150	Designation of parties—Fees.

*Acreage limitation with respect to district's power of eminent domain: RCW 28A.58.070.*

*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.]

*Jury trial, waiver of in civil actions: RCW 4.44.100.*

**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 Impaneling 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 and 4.44 RCW.*

*Petit jury defined: 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.]

*Trial, civil actions, waiver of jury: RCW 4.44.100.*

**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 Appeal.** Either party may appeal from 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 appeal 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 their right of appeal to the supreme court or the court of appeals. [1971 c 81 § 41; 1909 p 375 § 13; RRS § 918. Prior: 1903 c 111 § 13.]

**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.]

**Chapter 8.20**

**EMINENT DOMAIN BY CORPORATIONS**

Sections

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*Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.*

*Boom companies, appropriation for: RCW 76.28.010.*

*Certain corporations, appropriation of public lands by: RCW 81.36.010.*

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*Electric light and power companies, appropriation by: RCW 80.32.060–80.32.080.*

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*Grade crossing eliminations, appropriation for: RCW 81.53.180.*

*Log driving companies, appropriation by: RCW 76.32.020.*

*Railroad companies, appropriation by: RCW 81.36.010.*

*Railroads, rights-of-way: RCW 81.52.040, 81.53.180.*

*Right of eminent domain extended to mining companies: RCW 78.04.010.*

*State university—Rights-of-way to railroads: RCW 28B.20.330.*

*Street and electric railroads, appropriation by: RCW 81.64.040.*

*Telegraph and telephone companies, appropriation by: RCW 80.36.010, State Constitution Art. 12 § 19.*

*Toll logging roads, appropriation for: RCW 76.24.040.*

*Water power companies, appropriation by: 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.]

*Jury trial, waiver of in civil actions: RCW 4.44.100.*

**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.*

*Publication of 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, compelling attendance in civil actions: Chapter 5.56 RCW.*  
*Witnesses in civil actions, 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: Superior court—CR 54, 58.*  
*Recording of deeds of real estate: Title 65 RCW.*

**8.20.100 Payment of damages—Effect—Appeal.** 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 appeal 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 appeal: *Provided*, That in case of an appeal to 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. [1971 c 81 § 42; 1890 p 299 § 7; RRS § 929.]

**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 Appeal.** Either party may appeal from the judgment for damages entered in the superior court, to the supreme court or the court of appeals of the state, within thirty days after the entry of judgment as aforesaid and such appeal 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 appeal: *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 an appeal to the supreme court or the court of appeals, and final

judgment by default may be rendered in the superior court as in other cases. [1971 c 81 § 43; 1890 p 300 § 9; RRS § 931. Prior: 1888 p 61 § 9.]

**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, conditioned 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 8.20.150-8.20.170.

**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.]

#### Chapter 8.24

#### PRIVATE WAYS OF NECESSITY

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8.24.010	Condemnation authorized—Private way of necessity defined.
8.24.030	Procedure for condemnation.
8.24.040	Logging road must carry products of condemnees.

*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.]

**8.24.030 Procedure for condemnation.** 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. [1913 c 133 § 2; RRS § 936-2. Prior: 1895 c 92 § 2.]

*Condemnation by corporations: Chapter 8.20 RCW.*

*Right of eminent domain, 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.]

**Chapter 8.25**

**ADDITIONAL PROVISIONS APPLICABLE TO EMINENT DOMAIN PROCEEDINGS**

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8.25.010	Pre-trial statement of compensation to be paid in event of settlement.
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8.25.250	Special benefits to remaining property—Attorney fees—Witness fees.

8.25.260 Special benefits to remaining property—Lien foreclosure proceedings—Stay.

**8.25.010 Pre-trial 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 at least thirty days prior to commencement of said 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 for actual trial time and the general hourly rate for preparation as provided in the minimum bar fee schedule of the county or judicial district in which the proceeding was instituted, or if no minimum bar fee schedule has been adopted in the county, then the trial and hourly rates as provided in the minimum bar fee schedule customarily used in such county. Not later than July 1, 1971 the administrator for the courts shall adopt a rule establishing standards for verifying fees authorized by this section. 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. [1971 ex.s. c 39 § 3; 1967 ex.s. c 137 § 3.]

**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) A superior court rendering a judgment for the plaintiff awarding compensation for the taking of real property for public use without just compensation having first been made to the owner, or the attorney general or other attorney representing the acquiring agency in effecting a settlement of any such proceeding shall award or allow to such plaintiff costs including reasonable attorney fees and reasonable expert witness fees.

(3) 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. [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.]

**8.25.170 Payments not considered income or resources—Exemption from taxes—Not deductible from public assistance grants—Consideration of supplemental rent payments.** No payment received by a displaced person under RCW 8.25.040 through 8.25.060 and 8.25.080 through 8.25.930 shall be considered as income for the purposes of any personal income tax or any tax imposed under Title 82 RCW as now or hereafter amended. Such payments shall not be considered as income or resources, and such payments shall not be deducted from any amount which any recipient would otherwise be entitled, under Title 74 RCW, as now or hereafter amended: *Provided*, That supplemental rent payments paid under this chapter may be considered in determining the amount of public assistance to which a recipient may be entitled to the extent that there is or would be a duplication of a shelter allowance as established by the public assistance standards. [1971 ex.s. c 9 § 1; 1969 ex.s. c 236 § 13.]

**Reviser's note:** (1) RCW 8.25.170 was amended by 1971 ex.s. c 9 § 1 and was repealed by 1971 ex.s. c 240 § 22.

For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

(2) RCW 8.25.040–8.25.060, 8.25.080–8.25.930 referred to in this section were repealed by 1971 ex.s. c 240 § 22.

(3) For later enactment concerning subject matter of this section, see RCW 8.26.140.

**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 1st 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 1st 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 1st 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 1st 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 1st 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 1st ex.s. c 79 § 6.]

## Chapter 8.26 RELOCATION ASSISTANCE—REAL PROPERTY ACQUISITION POLICY

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- 8.26.900 Severability—1971 ex.s. c 240.
- 8.26.910 Effective date—1971 ex.s. c 240.

**8.26.010 Purposes.** The purposes of this chapter are:

(1) To establish a uniform policy for the fair and equitable treatment of persons displaced as a 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

(2) 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. [1971 ex.s. c 240 § 1.]

**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 body" as used in this chapter applies to any county, city or town, or other municipal corporation or political subdivision of the state or any instrumentality of any of the foregoing but only with respect to any program or project the cost of which is financed in whole or in part by a federal agency. Notwithstanding the limitations of this subsection, the governing body of any county, city or town, or other municipal corporation or political subdivision of the state or any instrumentality of any of the foregoing may elect to comply with all the provisions of this chapter in connection with programs and projects not receiving federal assistance.

(3) The term "person" means any individual, partnership, corporation, or association.

(4) The term "displaced person" means any person who, on or after July 1, 1971, moves from real property lawfully occupied by him, or moves his personal property from real property on which it was lawfully located, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by the state, or a local public body. Solely for the purposes of subsections (1)

and (2) of RCW 8.26.040 and RCW 8.26.070, the term "displaced person" includes any person who, on or after July 1, 1971, moves from real property or moves his personal property from real property, as a result of the acquisition of, or the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for a program or project undertaken by the state or a local public body.

(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 subsection (1) of RCW 8.26.040, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by means of an outdoor advertising display or displays, otherwise lawfully erected and maintained, 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 operations" 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 "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. The term "mortgage" shall include real estate contracts. [1972 ex.s. c 34 § 1; 1971 ex.s. c 240 § 2.]

**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." [1972 ex.s. c 34 § 2.]

**Reviser's note:** The "amendatory language" referred to in 1972 ex.s. c 34 § 2 consists of the deletion of the word "not" in the last sentence of the above section. 1972 ex.s. c 34 became effective February 20, 1972.

**8.26.030 Review of determinations—Construction of chapter.** (1) Any determination by the head of a state agency or local public body administering a program or project as to payments under this chapter shall be subject to review pursuant to chapter 34.04 RCW; otherwise, no provision of this chapter shall be construed to give any person a cause of action in any court.

(2) The provisions of RCW 8.26.180 create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(3) Nothing in this chapter shall 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 on July 1, 1971. [1971 ex.s. c 240 § 3.]

**8.26.040 Displacement and relocation expenses—**

**Payments.** (1) Whenever the acquisition of real property for a program or project undertaken by the state or a local public body will result in the displacement of any person on or after July 1, 1971, the acquiring agency shall make a payment to any displaced person, upon proper application as approved by the agency, for—

(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 such property, as determined by the acquiring agency; and

(c) actual reasonable expenses in searching for a replacement business or farm.

(2) Any 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 a moving expense allowance, determined according to a schedule established by the state highway commission, not to exceed three hundred dollars; and a dislocation allowance of two hundred dollars.

(3) Any displaced person eligible for payments under subsection (1) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (1) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business no payment shall be made under this subsection unless the acquiring agency is satisfied that the business:

(a) cannot be relocated without a substantial loss of its existing patronage, and

(b) is not a part of a commercial enterprise having at least one other establishment not being acquired, which is engaged in the same or similar business. For the purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before federal or local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the acquiring agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. [1971 ex.s. c 240 § 4.]

**8.26.050 Displacement and relocation expenses—**

**Additional payments to displaced home owner.** (1) In addition to payments otherwise authorized by this chapter, the state or local public body shall make an

additional payment not in excess of fifteen thousand dollars to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(a) The amount, if any, which when added to the acquisition costs of the dwelling acquired, equals the reasonable cost of a dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subsection shall be made in accordance with standards established by the state highway commission.

(b) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be determined by regulations issued pursuant to RCW 8.26.110.

(c) Reasonable expenses incurred by such 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 such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the acquiring agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date. [1971 ex.s. c 240 § 5.]

**8.26.060 Displacement and relocation expenses—****Additional payments for person not eligible under RCW**

**8.26.050.** In addition to amounts otherwise authorized by this chapter, the state or local public body shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under RCW 8.26.050 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and

public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed four thousand dollars, or

(2) the amount necessary to enable such person to make a down payment (including incidental expenses described in RCW 8.26.050(1)(c)) on the purchase of decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed four thousand dollars, except that if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment. [1971 ex.s. c 240 § 6.]

**8.26.070 Relocation assistance advisory services.** (1) Whenever the acquisition of real property for a program or project undertaken by the state or a local public body will result in the displacement of any person on or after July 1, 1971, the acquiring agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (2) of this section. If the acquiring agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the agency may offer such person relocation advisory services under this program.

(2) Each relocation assistance advisory program required by subsection (1) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(a) determine the need, if any, of displaced persons, for relocation assistance;

(b) provide current and continuing information on the availability, prices, and rentals, of comparable, decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(c) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(d) supply information concerning federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons;

(e) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation; and

(f) secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned proposed governmental actions in the community or near-by area which may affect the carrying out of the relocation program. [1971 ex.s. c 240 § 7.]

**8.26.080 Agreements for federal assistance authorized—Providing surplus housing or rehabilitation of housing.** (1) If a project of the state or a local public body cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the state or local public body determines

that such housing cannot otherwise be made available, such agency may enter into an agreement with any federal agency to obtain financial or other assistance as may be authorized by section 206 (a) of Public Law 91-646 and take such further action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(2) Any state agency or local public body is authorized to move housing onto any lands surplus to the agency's needs which are otherwise suitable for residential housing or to rehabilitate existing housing owned by the agency for the purpose of providing replacement housing. [1971 ex.s. c 240 § 8.]

**8.26.090 Assurance of availability of dwellings required prior to displacement.** Whenever the acquisition of real property for a program or project undertaken by the state or a local public body will result in the displacement of any person on or after July 1, 1971, such agency shall assure that, within a reasonable period of time, prior to displacement there will be available, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment; except that regulations issued pursuant to RCW 8.26.110 may prescribe situations when these assurances may be waived. [1971 ex.s. c 240 § 9.]

**8.26.100 No person required to move unless replacement housing assured.** No person shall be required to move from his dwelling on or after July 1, 1971, on account of any project of the state or local public body, unless the agency is satisfied that replacement housing, in accordance with RCW 8.26.090 is available to such person. [1971 ex.s. c 240 § 10.]

**8.26.110 Rules and regulations.** (1) The director of the planning and community affairs agency after full consultation with the department of highways and the department of general administration shall adopt such rules and regulations consistent with this chapter and Public Law 91-646, as may be necessary to assure:

(a) That the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and is uniform as practicable;

(b) That a displaced person who makes proper application for a payment authorized for such person by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(c) That any person aggrieved by a determination as to eligibility for payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the executive head of the state agency or local public body.

(2) The director of the planning and community affairs agency after full consultation with the department of highways and department of general administration may prescribe such other regulations and procedures,



consistent with the provisions of this chapter, as he deems necessary or appropriate to carry out this chapter. [1971 ex.s. c 240 § 11.]

**8.26.120 Contracts for services—Use of services of other agencies.** In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, a state agency or any local public body may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this chapter through any federal, state or local governmental agency or instrumentality having an established organization for conducting relocation assistance programs. A state agency or local public body shall, in carrying out the relocation assistance activities described in RCW 8.26.110, whenever practicable, utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities. [1971 ex.s. c 240 § 12.]

**8.26.130 Review.** Any person aggrieved by a determination as to eligibility for payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the executive head of the state agency or local public body having authority over the applicable program or project. [1971 ex.s. c 240 § 13.]

**8.26.140 Payments not considered income or resource.** No payment received under RCW 8.26.010 through 8.26.130 shall be considered as income for the purposes of any income tax or any tax imposed under Title 82 RCW as now or hereafter amended; or for the purpose of determining the eligibility or extent of eligibility of any person for assistance under the social security act or any other federal law. Such payments shall not be considered as income or resources, and such payments shall not be deducted from any amount to which any recipient would otherwise be entitled, under Title 74 RCW, as now or hereafter amended: *Provided*, That supplemental rent payments may be considered in determining the amount of public assistance to which a recipient may be entitled to the extent that there is or would be a duplication of a shelter allowance as established by the public assistance standards. [1971 ex.s. c 240 § 14.]

**8.26.150 Acquisition funds available to carry out chapter.** Funds appropriated or otherwise available to any state agency or local public body for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this chapter as applied to that program or project. [1971 ex.s. c 240 § 15.]

**8.26.160 Person displaced due to federal housing or city demonstration acts included.** A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after July 1,

1971, as a direct result of any project or program which receives federal financial assistance under title I of the Housing Act of 1949 (P.L. 81-171), as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 (P.L. 89-754) shall, for the purposes of this chapter, be deemed to have been displaced as the result of the acquisition of real property. [1971 ex.s. c 240 § 16.]

**8.26.170 Agreements among agencies and with federal government authorized.** Any state agency and any city or town or county or the instrumentalities of any of the foregoing are authorized to enter into such agreements with each other or with the United States as may be necessary to comply with the provisions of section 218 of Public Law 91-646 in order to obtain real property from the United States for the purpose of providing replacement housing. [1971 ex.s. c 240 § 17.]

**8.26.180 Policy guides for agencies acquiring real property.** Every state agency and local public body acquiring real property in connection with any program or project 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.

(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 part of a property would leave its owner with an uneconomic remnant, the acquiring agency shall offer to acquire the entire property. [1971 ex.s. c 240 § 18.]

**8.26.190 Acquisition of adversely affected improvements.** (1) Where any interest in real property is acquired, 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 shall be acquired.

(2) For the purpose of determining the just compensation to be paid for any building, structure or other improvement required to be acquired as above set forth, 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, 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 tenant therefor.

(3) Payment for such buildings, structures or improvements as set forth above 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. [1971 ex.s. c 240 § 19.]

**8.26.200 Owner to be reimbursed for certain fees, taxes and costs.** A state agency or a local public body acquiring real property, as soon as practicable after the date of payment of the purchase price or the date or deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, 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. [1971 ex.s. c 240 § 20.]

**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.]

**8.26.910 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

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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.

*Easements over public lands: Chapter 79.01 RCW.*

*Mine to market roads: Chapter 78.48 RCW.*

*Opening of roads, railroads through cemetery—Consent required: RCW 68.24.180.*

*Petroleum leases—Rights-of-way over public lands: RCW 79.14.140.*

*Tidelands, shorelands, harbor areas—Right of way grants: RCW 79.16.480.*

*Water rights—Artesian wells, rights-of-way to: RCW 90.36.010.*

*Water rights—Right of eminent domain: RCW 90.04.030.*

*Water rights of the United States—Right of eminent domain: 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 and 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 rate of six percent per annum 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. [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.



# TITLE 9

## CRIMES AND PUNISHMENTS

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### Chapter 9.01 GENERAL PROVISIONS

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*Removal or transfer of insane convict or hospital patient: RCW 72.68.030.*

*Self-incrimination: RCW 10.52.090.*

**9.01.010 Definition of terms.** In construing the provisions of this act, save when otherwise plainly declared or clearly apparent from the context, the following rules shall be observed:

(1) Each of the words "neglect," "negligence," "negligent," and "negligently" shall import a want of such attention to the nature or probable consequences of an act or omission as an ordinarily prudent man usually exercises in his own business.

(2) Each of the words "corrupt" and "corruptly" shall import a wrongful desire to acquire or cause some pecuniary or other advantage to himself or another, by the person to whom applicable.

(3) "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.

(4) The word "knowingly" imports a knowledge that the facts exist which constitute the act or omission of a crime, and does not require knowledge of its unlawfulness; knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent man upon inquiry.

(5) Whenever an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person.

(6) The word "boat" shall include ships, steamers and other structures adapted to navigation or movement from place to place by water.

(7) The word "signature" shall include any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.

(8) The word "writing" shall include printing.

(9) The word "property" shall include both real and personal property.

(10) The term "real property" shall include every estate, interest and right in lands, tenements and hereditaments, corporeal or incorporeal.

(11) The term "personal property" shall include dogs and all domestic animals and birds, water, gas and electricity, all kinds or descriptions of money, chattels

and effects, all instruments or writings completed and ready to be delivered or issued by the maker, whether actually delivered or issued or not, by which any claim, privilege, right, obligation or authority, or any right or title to property real or personal, is, or purports to be, or upon the happening of some future event may be evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, and every right and interest therein.

(12) The word "bond" shall include an undertaking.

(13) 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.

(14) The word "person" shall include a corporation or joint stock association; and whenever it is used to designate a party whose property may be the subject of an offense it shall also include the state, or any other state, government or country which may lawfully own property within this state.

(15) The term "judge" shall include every judicial officer authorized, alone or with others, to hold or preside over a court of record.

(16) Any person shall be deemed an "owner" of any property who has a general or special property in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

(17) The words "dwelling house" shall include every building or structure which shall have been usually occupied by a person lodging therein at night, and whenever it shall be so constructed as to consist of two or more parts or rooms occupied or intended to be occupied, whether permanently or temporarily, by different tenants separately by usually lodging therein at night, or for any other separate purpose, each part shall be deemed a separate dwelling house of the tenant occupying the same.

(18) The word "building" shall include every house, shed, boat, watercraft, railway car, tent or booth, whether completed or not, suitable for affording shelter for any human being, or as a place where any property is or shall be kept for use, sale or deposit.

(19) The word "nighttime" shall include the period between sunset and sunrise; the word "daytime" the period between sunrise and sunset.

(20) The word "break," when used in connection with the crime of burglary, shall include:

(a) Breaking or violently detaching any part, internal or external, of a building;

(b) Opening, for the purpose of entering therein, any outer door of a building or of any room, apartment or set of apartments therein separately used and occupied, or any window, shutter, scuttle or other thing used for covering or closing any opening thereto or therein, or which gives passage from one part thereof to another;

(c) Obtaining entrance into such building or apartment by any threat or artifice, used for that purpose, or by collusion with any person therein;

(d) Entering such building, room or apartment by or through any pipe, chimney or other opening, or by excavating or digging through or under a building or the walls or foundation thereof.

(21) The word "enter," when constituting an element or part of a crime, shall include the entrance of the offender, or the insertion of any part of his body, or of 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.

(22) The term "railway" or "railroad" shall include all railways, railroads and street railways, whether operated by steam, electricity or any other motive power.

(23) The words "indicted" and "indictment" shall include "informed against" and "information"; and the words "informed against" and "information" shall include the words "indicted" and "indictment."

(24) The words "officer" and "public officer" shall include all assistants, deputies, clerks and employees of any public officer and all persons exercising or assuming to exercise any of the powers or functions of a public officer.

(25) The word "juror" shall include a talesman, and extend to jurors in all courts, whether of record or not.

(26) The word "prisoner" shall include any person held in custody under process of law, or under lawful arrest.

(27) The word "prison" shall mean any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest. [1909 c 249 § 51; RRS § 2303.]

**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, 10.43.030–10.43.050, 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.

**Computation of time:** RCW 1.12.040, **Rules of court:** CAROA 9, CR 6(a), ROA I-9.

**9.01.020 Classification of crimes.** A crime is an act or omission forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline. Every crime which may be punished by death or by imprisonment in the state penitentiary is a felony. Every crime punishable by a fine of not more than two hundred and fifty dollars, or by imprisonment in a county jail for not more than ninety days, is a misdemeanor. Every other crime is a gross misdemeanor. [1909 c 249 § 1; Code 1881 § 781; 1873 p 200 § 11; 1869 p 200 § 11; 1859 p 106 § 11; 1854 p 78 § 11; RRS § 2253.]

**Punishment:** Chapter 9.92 RCW.

**9.01.030 Principal defined.** Every person concerned in the commission of a felony, gross misdemeanor or misdemeanor, whether he directly commits the act constituting the offense, or aids or abets in its commission, and whether present or absent; and every person who directly or indirectly counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony, gross misdemeanor or misdemeanor, is a principal, and shall be proceeded against and punished as such. The fact that the person aided, abetted, counseled, encouraged, hired, commanded, induced or procured, could not or did not entertain a criminal intent, shall not be a defense to any person aiding, abetting, counseling, encouraging, hiring, commanding, inducing or procuring him. [1909 c 249 § 8; Code 1881 § 957; 1873 p 213 § 140; 1869 p 229 § 134; 1859 p 129 § 124; 1854 p 98 § 125; RRS § 2260.]

**9.01.040 Accessory defined.** Every person not standing in the relation of husband or wife, brother or sister, parent or grandparent, child or grandchild, to the offender, who after the commission of a felony shall harbor, conceal or aid such offender with intent that he may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is liable to arrest, is an accessory to the felony. [1909 c 249 § 9; Code 1881 § 957; 1873 p 213 § 141; 1869 p 229 § 135; 1859 p 129 § 126; 1854 p 98 § 126; RRS § 2261.]

**9.01.050 Persons punishable.** 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 larceny, 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, or the public health, morals or decency of the state, which,

if committed within the state, would be a crime. [1909 c 249 § 2; RRS § 2254.]

**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.]

*Refusal to make arrest or aid officer: RCW 9.69.030.*

**9.01.060 Trial and punishment of accessories.** Every accessory to a felony may be indicted, tried and convicted either in the county where he became an accessory, or where the principal felony was committed; and whether the principal offender has or has not been convicted, or is or is not amenable to justice, or has been pardoned or otherwise discharged after conviction; and, except where a different punishment is specially provided by law, such accessory shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. [1909 c 249 § 10; Code 1881 § 956; 1873 p 213 § 142; 1869 p 229 § 136; 1854 p 98 § 127; RRS § 2262.]

**9.01.070 Attempts, how punished.** An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime; and every person who attempts to commit a crime, unless otherwise prescribed by statute, shall be punished as follows:

(1) If the crime attempted is punishable by death or life imprisonment, the person convicted of the attempt shall be punished by imprisonment in the state penitentiary for not more than twenty years.

(2) In every other case he shall be punished by imprisonment in such manner as may be prescribed for the commission of the completed offense, for not more than half the longest term, or by a fine of not more than half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both such fine and imprisonment; but nothing herein shall protect a person who, in an unsuccessful attempt to commit one crime, does commit another and different one, from the punishment prescribed for the crime actually committed; and a person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court in its discretion shall discharge the jury and direct the defendant to be tried for the crime itself. [1909 c 249 § 12; Code 1881 § 1161; 1873 p 185 § 30; RRS § 2264.]

*Verdicts, included or lesser offenses: Chapter 10.61 RCW.*

**9.01.080 Attempt while armed with deadly weapon—Punishment.** Any person who shall attempt to commit a crime punishable as a felony while armed

with a pistol, revolver, or deadly weapon, shall, upon conviction be punished as if the crime attempted had been a completed act. [1927 c 233 § 1; RRS § 2264–1.]

**9.01.090 Prohibited acts are misdemeanors.** 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. [1909 c 249 § 17; Code 1881 § 784; RRS § 2269.]

**9.01.100 Acts punishable under foreign law.** An act or omission punishable as a crime in this state is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in the law relating thereto. [1909 c 249 § 18; RRS § 2270.]

**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.]

**9.01.111 Responsibility 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. [1909 c 249 § 5; RRS § 2257. Formerly RCW 10.46.140.]

**9.01.112 Duress as a defense.** Whenever any crime, except murder, is committed or participated in by two or more persons, any one of whom participates only under compulsion by another engaged therein, who by threats creates a reasonable apprehension in the mind of such participator that in case of refusal he is liable to instant death or grievous bodily harm, such threats and apprehension constitute duress, which will excuse such participator from criminal prosecution. [1909 c 249 § 4; RRS § 2256. Formerly RCW 10.46.150, part.]

**9.01.113 Duress of married woman no defense.** It is no defense for a married woman charged with the commission of a crime, that the alleged act committed by her was committed in the presence of her husband. [1909 c 249 § 3; RRS § 2255. Formerly RCW 10.46.150, part.]

**9.01.114 Intoxication no defense.** 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 purpose, motive or intent 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 purpose, motive or intent. [1909 c 249 § 6; RRS § 2258.]

**9.01.116 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 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 § 2.]

*Civil action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense: RCW 4.24.220.*

*Shoplifting: Chapter 9.78 RCW.*

**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.]

**Reviser's note:** "this act", see note following RCW 9.01.010.

**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.]

**9.01.150 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 institutions 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 superior courts of this state. [1909 c 249 § 47; Code 1881 § 1; RRS § 2299.]

*Extent to which common law prevails: RCW 4.04.010.*

**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:** "this act", see note following RCW 9.01.010.

**9.01.170 Rule of construction.** Every provision of this act shall be construed according to the fair import of its terms. [1909 c 249 § 46; RRS § 2298.]

**Reviser's note:** "this act", see note following RCW 9.01.010.

**9.01.180 To be construed as continuation of former acts.** The provisions of this act, in so far as they are substantially the same as existing statutes, shall be construed as continuations thereof and not as new enactments. [1909 c 249 § 48; RRS § 2300.]

**Reviser's note:** "this act", see note following RCW 9.01.010.

**9.01.190 Act as measure of law.** No statute, law or rule is continued in force because it is consistent with the provisions of this act on the same subject; but in all cases provided for by this act, all statutes, laws and rules heretofore in force in this state, whether consistent or not with the provisions of this act, unless expressly continued in force by it, are repealed and abrogated. [1909 c 249 § 49; RRS § 2301.]

**Reviser's note:** "this act", see note following RCW 9.01.010.

## Chapter 9.02 ABORTION

Sections	
9.02.010	Defined.
9.02.020	Pregnant women attempting abortion.
9.02.030	Selling drugs, etc.
9.02.040	Evidence.
9.02.050	Concealing birth.
9.02.060	Lawful termination of pregnancy.
9.02.070	Lawful termination of pregnancy—Requirements—Consent—Ninety day residency—Accredited or approved hospital facility—Penalty.
9.02.080	Lawful termination of pregnancy—Objecting to participation.
9.02.090	Lawful termination of pregnancy—Referral of act to electorate.

*Advertising or selling means of abortion: RCW 9.68.030.*

*Criminal abortion, grounds for revoking midwifery license: RCW 18.50.100.*

*Physicians and surgeons, unprofessional conduct: RCW 18.72.030(2).*

**9.02.010 Defined.** Every person who, with intent thereby to produce the miscarriage of a woman, unless the same is necessary to preserve her life or that of the child whereof she is pregnant, shall—

(1) Prescribe, supply, or administer to a woman, whether pregnant or not, or advise or cause her to take any medicine, drug or substance; or,

(2) Use, or cause to be used, any instrument or other means;

Shall be guilty of abortion, and punished by imprisonment in the state penitentiary for not more than five years, or in the county jail for not more than one year.

[1909 c 249 § 196; Code 1881 § 821; 1873 p 188 § 42; 1869 p 209 § 40; 1854 p 81 § 38; RRS § 2448.]

*Killing unborn quick child: RCW 9.48.070 through 9.48.090.*

**9.02.020 Pregnant women attempting abortion.** Every pregnant woman who shall take any medicine, drug or substance, or use or submit to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life or that of the child whereof she is pregnant, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than one thousand dollars. [1909 c 249 § 197; RRS § 2449.]

*Woman taking drugs: RCW 9.48.090.*

**9.02.030 Selling drugs, etc.** Every person who shall manufacture, sell or give away any instrument, drug, medicine, or other substance, knowing or intending that the same may be unlawfully used in procuring the miscarriage of a woman, shall be guilty of a gross misdemeanor. [1909 c 249 § 198; RRS § 2450.]

*Advertising or selling means of abortion: RCW 9.68.030.*

*Killing unborn quick child by administering drugs: RCW 9.48.080.*

**9.02.040 Evidence.** In any prosecution for abortion, attempting abortion, or selling drugs unlawfully, no person shall be excused from testifying as a witness on the ground that said testimony would tend to incriminate himself. [1909 c 249 § 199; RRS § 2451.]

*Incriminating testimony of witness not to be used: RCW 10.52.090.*

*Rights of accused persons: State Constitution Art. 1 §§ 9, 22.*

**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.]

**9.02.060 Lawful termination of pregnancy.** Neither the termination by a physician licensed under chapters 18.71 or 18.57 RCW of the pregnancy of a woman not quick with child nor the prescribing, supplying or administering of any medicine, drug or substance to or the use of any instrument or other means on, such woman by a physician so licensed, nor the taking of any medicine, drug or substance or the use or submittal to the use of any instrument or other means by such a woman when following the directions of a physician so licensed, with the intent to terminate such pregnancy, shall be deemed unlawful acts within the meaning of this act. [1970 ex.s. c 3 § 1.]

**Severability—1970 ex.s. 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." [1970 ex.s. c 3 § 4.] This applies to RCW 9.02.060 through 9.02.090.

**9.02.070 Lawful termination of pregnancy—Requirements—Consent—Ninety day residency—Accredited or approved hospital facility—Penalty.** A pregnancy of a woman not quick with child and not more than four lunar months after conception may be

lawfully terminated under RCW 9.02.060 through 9.02.090 only: (a) with her prior consent and, if married and residing with her husband or unmarried and under the age of eighteen years, with the prior consent of her husband or legal guardian, respectively, (b) if the woman has resided in this state for at least ninety days prior to the date of termination, and (c) in a hospital accredited by the Joint Commission on Accreditation of Hospitals or at a medical facility approved for that purpose by the state board of health, which facility meets standards prescribed by regulations to be issued by the state board of health for the safe and adequate care and treatment of patients: *Provided*, That if a physician determines that termination is immediately necessary to meet the medical emergency the pregnancy may be terminated elsewhere. Any physician who violates this section or any regulation of the state board of health issued under authority of this section shall be guilty of a gross misdemeanor. [1970 ex.s. c 3 § 2.]

**9.02.080 Lawful termination of pregnancy—Objecting to participation.** No hospital, physician, nurse, hospital employee nor any other person shall be under any duty, by law or contract, nor shall such hospital or person in any circumstances be required, to participate in a termination of pregnancy if such hospital or person objects to such termination. No such person shall be discriminated against in employment or professional privileges because he so objects. [1970 ex.s. c 3 § 3.]

**9.02.090 Lawful termination of pregnancy—Referral of act to electorate.** This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November 1970, in accordance with the provisions of section 1, Article II of the Constitution of the state of Washington, as amended, and the laws adopted to facilitate the operation thereof. [1970 ex.s. c 3 § 5.]

**Reviser's note:** (1) "This act" [1970 ex.s. c 3.] is codified as RCW 9.02.060–9.02.090.

(2) RCW 9.02.060 through 9.02.090 was adopted and ratified by the people at the November 3, 1970 general election (Referendum Bill No. 20).

### 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, ice-box, 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.
- 9.04.020 Advertising divorce business.
- 9.04.030 Advertising cures of venereal diseases, lost sexual potency.
- 9.04.040 Advertising cures of venereal diseases, 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.

*Antifreeze, unlawful advertising: RCW 19.04.080, 19.04.110.*

*Apple advertising regulations: Chapter 15.24 RCW.*

*Attaching advertisements to utility poles: RCW 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: RCW 9.61.040.*

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

*Contraceptives or means of abortion, advertising: RCW 9.68.030.*

*Counterfeit money, advertising: RCW 9.26.020.*

*Dentistry, advertising restrictions: RCW 18.32.290, 18.32.360.*

*Drugless healing, advertising restrictions: RCW 18.36.120.*

*Egg law, advertising violations: Chapter 69.24 RCW.*

*Elections, advertising violations:*

*initiative or referendum petition signers: RCW 29.79.490,*

*political advertising: RCW 29.85.270, 29.85.280,*

*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.*

*Lotteries, advertising: RCW 9.59.020, 9.59.050.*

*Oleomargarine advertising: RCW 15.40.030, 15.40.050.*

*Optometry advertising: RCW 18.53.140, 18.53.150.*

*Physical therapists, false advertising: RCW 18.74.090.*

*Physicians and surgeons, advertising restrictions: RCW 18.72.030.*

*Second-hand watches, advertising: RCW 19.60.090.*

*Small loan companies, false advertising: RCW 31.08.150, 31.08.210.*

*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.]

**9.04.020 Advertising divorce business.** Every person who shall cause to be published in any newspaper, magazine or other publication, or who shall cause or allow to be posted or distributed, in any place frequented by the public, any card or notice offering to procure or obtain, or to directly or indirectly aid in procuring or obtaining any divorce or the dissolution or nullification of any marriage, or offering to appear or act as attorney or counsel in any suit for divorce, alimony, or the dissolution or nullification of any marriage, either in this state or elsewhere, shall be guilty of a misdemeanor. Any advertisement stating or intimating that any person is a specialist in "the laws of husband and wife" or "domestic relations," or is engaged in the business of procuring divorces, shall be considered a violation of this section. [1917 c 100 § 1; 1909 c 249 § 211; RRS § 2463.]

*Rules of court: Code of Professional Responsibility (CPR)—Canon 2.*

**9.04.030 Advertising cures of venereal diseases, lost sexual potency.** Every person who shall advertise, either in his own name, or in the name of another person, co-partnership or pretended copartnership, association,

corporation or pretended corporation, in any newspaper, pamphlet, circular, periodical or in any other written or printed paper, and every owner, publisher, editor or manager of any newspaper, pamphlet, circular, periodical or other written or printed paper, who shall publish, or permit to be published or inserted, an advertisement in any newspaper, pamphlet, circular, periodical, or other written or printed paper, owned or controlled by him, or of which he is the editor or manager, and every person who shall distribute, circulate, display or cause to be distributed, circulated or displayed, any newspaper, pamphlet, circular, periodical, or other written or printed paper containing any advertisement for the restoration of lost sexual potency, or for the sale of any medicine, drug, compound, mixture, appliance, or any means whatever, whereby venereal diseases of men or women may be cured or relieved, shall be guilty of a gross misdemeanor. [1971 ex.s. c 185 § 1; 1921 c 168 § 1; RRS § 2462. Prior: 1909 c 249 § 210; 1905 c 78 § 1.]

**9.04.040 Advertising cures of venereal diseases, 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.]

**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: 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.]

**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.]

## 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, wilfully 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 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 the state penitentiary 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 conviction. [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 presence, aid or instigation, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or both. [1909 c 249 § 314; 1903 c 45 § 4; RRS § 2566.]

*Disturbances, riot and unlawful assembly: Chapter 9.27 RCW.*

**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 9.61 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	
9.08.010	Allowing vicious animal at large.
9.08.020	Diseased animals.
9.08.030	False certificate of registration of animals—False representation as to breed.
9.08.040	Obtaining animal or vehicle by fraud, etc.—Fraud by bailee.
9.08.050	Shooting or poisoning livestock.
9.08.060	Dogs—Taking, concealing, injuring, killing, etc.—Penalty.

*Bang's disease control: RCW 16.40.130.*

*Brands and fences: Title 16 RCW.*

*Brands and marks, generally: Chapter 9.16 RCW.*

*Bulls running at large: RCW 16.20.040.*

*County dog license tax: Chapter 36.49 RCW, RCW 36.49.070.*

*Cruelty to animals, generally: Chapter 16.52 RCW.*

*Cruelty to stock in transit: RCW 81.56.120.*

*Destroying animals in state parks: RCW 43.51.180.*

*Disposal of dead animals: Chapter 16.68 RCW.*

*Estrays, cattle, horses and mules: RCW 16.28.160.*

*Game code: Title 77 RCW.*

*Goats running at large: RCW 16.12.100.*

*Horses, mules and asses running at large: RCW 16.13.090.*

*Injury to animals: RCW 9.61.040.*

*Livestock, removal from common range: RCW 16.28.170.*

*Poisoning, malicious mischief: RCW 9.61.040(9).*

*Quarantine of diseased domestic animals: Chapter 16.36 RCW.*

*Sheep disease control: Chapter 16.44 RCW, RCW 16.44.180.*

*Sheep running at large: RCW 16.12.100.*

*Sufficiency of indictment or information in crimes involving animals: RCW 10.37.070.*

*Swine running at large: RCW 16.12.010.*

**9.08.010 Allowing vicious animal at large.** Every person having the care or custody of any animal known to possess any vicious or dangerous tendencies, who shall allow the same to escape or run at large in any place or manner liable to endanger the safety of any person, shall be guilty of a misdemeanor; and any person may lawfully kill such animal when reasonably necessary to protect his own or the public safety. [1909 c 249 § 286; RRS § 2538.]

*Bulls running at large: RCW 16.20.040.*

*Manslaughter, owner of vicious animal: RCW 9.48.100.*

**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 misdemeanor. [1909 c 249 § 288; Code 1881 § 923; RRS § 2540.]

*Bang's disease control: RCW 16.40.130.*

*Exposure to contagious diseases, penalty: RCW 70.54.050.*

*Nuisance: Chapters 7.48, 966 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.]

**9.08.040 Obtaining animal or vehicle by fraud, etc.—Fraud by bailee.** Every person who shall obtain from another the possession or use of any horse or other draft animal or any vehicle or automobile, without paying therefor, with intent to defraud the owner thereof, or who shall obtain the possession or use thereof by color or aid of any false or fraudulent representation, pretense, token or writing, or shall obtain credit for such use by color or aid of any false or fraudulent representation, pretense, token or writing; or who having hired property, shall recklessly, wilfully, wantonly or by gross negligence injure or destroy or cause, suffer, allow or permit the same, or any part thereof, to be injured or destroyed; or who, having hired any horse or other draft animal upon an understanding or agreement that the same shall be ridden or driven a specified distance or to a specified place, shall wilfully and fraudulently ride or drive or cause, permit or allow the same to be ridden or driven a longer distance, or to a different place, shall be guilty of a misdemeanor. [1909 c 249 § 376; RRS § 2628.]

**Reviser's note:** Caption for 1909 c 249 § 376 reads: "Sec. 376. Fraud by Bailee of Animal."

**9.08.050 Shooting or poisoning livestock.** Any person who injures or kills by shooting or poisoning any horse, mule, cattle, sheep, swine, or goat without the permission of the owner thereof and who does not commit grand larceny as defined by RCW 9.54.090 shall be guilty of a gross misdemeanor. [1970 ex.s. c 90 § 1.]

*Larcenous taking of livestock: RCW 9.54.090(4), 9.54.115.*

**9.08.060 Dogs—Taking, concealing, injuring, killing, etc.—Penalty.** Any person who, with intent to deprive or defraud the owner thereof:

(1) Takes, leads away, confines, secrets or converts any dog; or

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

(3) Wilfully kills or injures any dog, unless excused by law, shall be guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars, or both such fine and imprisonment. [1972 ex.s. c 114 § 1.]

## Chapter 9.09 ARSON

### Sections

9.09.010	First degree.
9.09.020	Second degree.
9.09.030	Contiguous fires.
9.09.040	"Set on fire" defined.
9.09.050	Ownership of building.
9.09.060	Preparation is attempt.

*Fire, crimes relating to: Chapter 9.40 RCW.*

*Fraudulent destruction of insured property: RCW 9.91.090, 48.30.220.*

**9.09.010 First degree.** Every person who shall wilfully and maliciously—

(1) Burn or set on fire in the nighttime the dwelling house of another, or any building in which there shall be at the time a human being; or

(2) Set any fire manifestly dangerous to any human life, shall be guilty of arson in the first degree and be punished by imprisonment in the state penitentiary for not less than five years. [1963 c 11 § 1; 1909 c 249 § 320; 1895 c 87 § 1; 1886 p 77 § 40; Code 1881 § 823; 1873 p 189 § 44; 1854 p 82 § 40; RRS § 2572.]

**9.09.020 Second degree.** Every person who, under circumstances not amounting to arson in the first degree, shall wilfully and maliciously burn or set on fire any building, or any structure or erection appurtenant to or joining any building, or any wharf, dock, threshing machine, threshing engine, automobile or other motor vehicle, motorboat, steamboat, sailboat, aircraft, bridge or trestle, or any 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 other property, shall be guilty of arson in the second degree, and shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1965 ex.s. c 17 § 1; 1963 c 11 § 2; 1927

c 265 § 1; 1909 c 249 § 321; 1895 c 87 § 1; 1886 p 77 § 40; Code 1881 § 823; 1873 p 189 § 44; 1854 p 82 § 40; RRS § 2573.]

**9.09.030 Contiguous fires.** Whenever any building or structure which may be the subject of arson in either the first or second degree shall be so situated as to be manifestly endangered by any fire and shall subsequently be set on fire thereby, any person participating in setting such fire shall be deemed to have participated in setting such building or structure on fire. [1909 c 249 § 322; RRS § 2574.]

**9.09.040 "Set on fire" defined.** A building, structure or any property mentioned in RCW 9.09.020 hereof shall be deemed "set on fire," whenever any part thereof or anything therein shall be scorched, charred or burned. [1909 c 249 § 323; RRS § 2575.]

**9.09.050 Ownership of building.** To constitute arson it shall not be necessary that another person than the defendant should have had ownership in the building or structure set on fire. [1909 c 249 § 324; RRS § 2576.]

**9.09.060 Preparation is attempt.** Any wilful preparation made by any person with a view to setting fire to any building or structure shall be deemed to be an attempt to commit the crime of arson, and shall be punished as such. [1909 c 249 § 325; 1895 c 87 § 6; RRS § 2577.]

## Chapter 9.11 ASSAULT

### Sections

9.11.010	Assault in the first degree defined—How punished.
9.11.020	Assault in the second degree—How punished.
9.11.030	Assault in the third degree—How punished.
9.11.040	Force, when lawful.
9.11.050	Provoking assault.

*Aiming firearm at human being: RCW 9.41.230.*

*Mayhem, recovery from injury, conviction for assault: RCW 9.65.030.*

**9.11.010 Assault in the first degree defined—How punished.** Every person who, with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another—

(1) Shall assault another with a firearm or any deadly weapon or by any force or means likely to produce death; or

(2) Shall administer to or cause to be taken by another, poison or any other destructive or noxious thing so as to endanger the life of another person, shall be guilty of assault in the first degree and shall be punished by imprisonment in the state penitentiary for not less than five years. [1909 c 249 § 161; Code 1881 §§ 801–809; 1873 p 185 §§ 29–34; 1869 p 202 §§ 24–30; 1854 p 80 § 28; 1854 p 79 § 24; RRS § 2413.]

*Poisons, unlawful use: Chapters 69.36, 69.40 RCW.*

**9.11.020 Assault in the second degree—How punished.** Every person who, under circumstances not amounting to assault in the first degree—

(1) With intent to injure, shall unlawfully administer to or cause to be taken by another, poison or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or

(2) With intent thereby to enable or assist himself or any other person to commit any crime, shall administer to, or cause to be taken by, another, chloroform, ether, laudanum or any other intoxicating narcotic or anaesthetic; or

(3) Shall wilfully inflict grievous bodily harm upon another with or without a weapon; or

(4) Shall wilfully assault another with a weapon or other instrument or thing likely to produce bodily harm; or

(5) Being armed with a deadly weapon shall wilfully assault another with a whip; or

(6) Shall assault another with intent to commit a felony, or 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; or

(7) While hunting any game or other animals or birds, shall shoot another;

Shall be guilty of assault in the second degree and be punished by imprisonment in the state penitentiary for not more than ten years or by a fine of not more than one thousand dollars, or by both. [1909 c 249 § 162; Code 1881 §§ 801–809; 1873 p 185 §§ 29–34; 1869 p 202 §§ 24–30; 1854 p 80 § 28; 1854 p 79 § 24; RRS § 2414.]

**9.11.030 Assault in the third degree—How punished.** Every person who shall commit an assault or an assault and battery not amounting to assault in either the first or second degrees, shall be guilty of assault in the third degree, and shall be punished as for a gross misdemeanor. [1909 c 249 § 163; Code 1881 §§ 801–809; 1873 p 185 §§ 29–34; 1869 p 202 §§ 24–30; 1854 p 80 § 28; 1854 p 79 § 24; RRS § 2415.]

**9.11.040 Force, when lawful.** The use, attempt, or offer to use force upon or toward the person of another shall not be unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him and acting under his direction;

(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him to a public officer competent to receive him into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him, in preventing or attempting to prevent an offense against his person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his possession, in case the force is not more than shall be necessary;

(4) Whenever used in a reasonable and moderate manner by a parent or his authorized agent, a guardian, master, or teacher in the exercise of lawful authority, to restrain or correct his child, ward, apprentice or scholar;

(5) Whenever used by a carrier of passengers or his 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 shall be necessary to expel the offender with reasonable regard to his personal safety;

(6) Whenever used by any person to prevent an idiot, lunatic or insane person from committing an act dangerous to himself or another, or in enforcing necessary restraint for the protection of his person, or his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person. [1909 c 249 § 164; RRS § 2416.]

*Abuse of pupil by teacher: RCW 28A.87.140.*

*Justifiable homicide: RCW 9.48.160, 9.48.170.*

**9.11.050 Provoking assault.** Every person who shall by word, sign or gesture, wilfully provoke, or attempt to provoke, another person to commit an assault or breach of the peace, shall be guilty of misdemeanor. [1909 c 249 § 165; RRS § 2417. Prior: 1886 p 79 § 1; Code 1881 § 1887.]

### Chapter 9.12 BARRATRY

#### Sections

- 9.12.010 Barratry.  
9.12.020 Buying, demand or promising reward by justice or constable.  
9.12.030 Out-of-state solicitation of personal injury claims arising in state.

**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.]

*Rules of court: Code of Professional Responsibility (CPR)—Canon 2, Canon 5.*

*Attorneys at law: Chapter 2.44 RCW.*

*State bar act: Chapter 2.48 RCW.*

**9.12.020 Buying, demand or promising reward by justice or constable.** Every justice of the peace or constable who shall, directly or indirectly, buy or be interested in buying anything in action for the purpose of

commencing a suit thereon before a justice of the peace, 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 justice of the peace, shall be guilty of a misdemeanor. [1909 c 249 § 119; RRS § 2371.]

**9.12.030 Out-of-state solicitation of personal injury claims arising in state.** Whoever obtains or solicits for himself or another employment in asserting without the state any claims or right of action that arose within the state for death or personal injuries in favor of a resident of the state and against a resident thereof or a corporation subject to service of process therein, is guilty of a gross misdemeanor. [1923 c 156 § 1; RRS § 2696-3.]

### Chapter 9.15 BIGAMY

#### Sections

- 9.15.010 Bigamy defined—How punished—Exceptions.  
9.15.020 Punishment of consort.

*Family desertion: RCW 26.20.030.*

**9.15.010 Bigamy defined—How punished—Exceptions.** Every person who, having a husband or wife living, shall marry another person, or continue to cohabit with such second husband or wife in this state, shall be guilty of bigamy and be punished by imprisonment in the state penitentiary for not more than five years: *Provided*, That this section shall not extend to a person—

(1) Whose former husband or wife has been absent for five years exclusively then last past, without being known to him or her within that time to be living, and believed to be dead; or,

(2) Whose former marriage has been pronounced void, annulled or dissolved by a court of competent jurisdiction. [1909 c 249 § 201; 1895 c 149 §§ 6, 7; Code 1881 § 945; 1873 p 210 § 128; 1869 p 226 § 122; RRS § 2453.]

*Marriage license: Chapter 26.04 RCW.*

**9.15.020 Punishment of consort.** Every person who shall knowingly enter into a bigamous marriage with another, or, after such marriage, continue to cohabit with such other, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars. [1909 c 249 § 202; RRS § 2454.]

### 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.*

*Antifreeze misbranding: RCW 19.04.030, 19.04.110.*

*Egg law: RCW 69.24.420.*

*Defacement of motor serial numbers: RCW 9.54.030.*

*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.*

*Livestock remedies, brand alteration, etc.: Chapter 15.52 RCW.*

*Log patrols: Chapter 76.40 RCW.*

*Macaroni products, misbranding: RCW 69.16.160, 69.16.170.*

*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 wilfully 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 the state penitentiary 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. [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, shall place 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, shall—

(1) If done with intent to confuse or commingle such property with, or to appropriate to his own use, the property of such other owner, be guilty of a felony, and be punished by imprisonment in the state penitentiary 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, shall be guilty of a misdemeanor. [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 BRIBERY AND GRAFTING

Sections	
9.18.010	Bribery of public officer.
9.18.020	Asking or receiving bribe.
9.18.030	Juror, etc., accepting bribe.
9.18.040	Bribing witness.
9.18.050	Witness asking or receiving bribe.
9.18.060	Influencing juror, referee, etc.
9.18.070	Juror, referee, etc., promising decision, verdict, etc.
9.18.080	Offender a competent witness.
9.18.090	Interfering with public officer.
9.18.100	Offering reward for appointment.
9.18.110	Grafting.
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.*

*Industrial loan companies, misconduct of employees: RCW 31.04.220.*

*Irrigation districts, interest in contracts: RCW 87.03.465.*

*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.87.090.*

*Wages, rebating by employers: RCW 49.52.050, 49.52.090.*

**9.18.010 Bribery of public officer.** Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any executive or administrative officer of the state, with intent to influence him with respect to any act, decision, vote, opinion or other proceeding, as such officer; or who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to a member of the legislature, or attempt, directly or indirectly, by menace, deceit, suppression of truth or other corrupt means, to influence such member to give or withhold his vote or to absent himself from the house of which he is a member or from any committee thereof; or who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to a judicial officer, juror, referee, arbitrator, appraiser, assessor or other person authorized by law to hear or determine any question, matter, cause, proceeding or controversy, with intent to influence his action, vote, opinion or decision thereupon; or who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to a person executing any of the functions of a public officer other than as hereinbefore specified, with intent to influence him with respect to any act, decision, vote or other proceeding in the exercise of his powers or functions, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1909 c 249 § 68; Code 1881 § 880; 1873 p 200 § 84; 1869 p 216 § 80; 1859 p 119 § 75; 1854 p 89 §§ 74, 75; RRS § 2320.]

**9.18.020 Asking or receiving bribe.** Every executive or administrative officer or person elected or appointed to an executive or administrative office who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby; and every member of either house of

the legislature of the state who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity; and every judicial officer, and every person who executes any of the functions of a public office not hereinbefore specified, and every person employed by or acting for the state or for any public officer in the business of the state, who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion, judgment, action, decision or other official proceeding shall be influenced thereby, or that he will do or omit any act or proceeding or in any way neglect or violate any official duty, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1909 c 249 § 69; Code 1881 § 879; 1873 p 200 § 83; 1869 p 216 § 79; 1859 p 119 § 74; 1854 p 89 § 74; RRS § 2321.]

*Extortion by public officer: RCW 9.33.040.*

*Officer asking reward to permit escape: RCW 9.31.040.*

**9.18.030 Juror, etc., accepting bribe.** Every juror, referee, arbitrator, appraiser, assessor, or other person authorized by law to hear or determine any question, matter, cause, controversy or proceeding, who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion, action, judgment or decision shall be influenced thereby, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by fine of not more than five thousand dollars, or by both. [1909 c 249 § 70; Code 1881 § 878; 1873 p 199 § 82; 1869 p 216 § 78; 1859-60 p 118 § 73; 1854-55 p 89 § 73; RRS § 2322.]

*Juries, crimes relating to: Chapter 9.51 RCW.*

**9.18.040 Bribing witness.** Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any witness or person who may be called as a witness, upon an agreement or understanding that the testimony of such witness shall be thereby influenced, or who shall wilfully attempt by any other means to induce any witness or person who may be called as a witness to give false testimony, or to withhold true testimony, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1909 c 249 § 71; Code 1881 § 877; 1873 p 199 § 81; 1869 p 216 § 77; 1859 p 118 § 71; 1854 p 89 § 71; RRS § 2323.]

**9.18.050 Witness asking or receiving bribe.** Every person who is or may be a witness upon a trial, hearing, investigation or other proceeding before any court, tribunal or officer authorized to hear evidence or take testimony, who shall ask or receive, directly or indirectly,

any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing or other proceeding, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1909 c 249 § 72; RRS § 2324.]

**Reviser's note:** Caption for 1909 c 249 § 72 reads as follows: "*Sec. 72. Witness Accepting Bribe.*"

**9.18.060 Influencing juror, referee, etc.** Every person who shall influence, or attempt to influence, improperly, a juror in a civil or criminal action or any proceeding, or any person chosen or appointed as an arbitrator or referee, in respect to his verdict, judgment, report, award or decision in any cause or matter pending or about to be brought before him, in any case or in any manner not hereinbefore provided for, shall be guilty of a gross misdemeanor. [1909 c 249 § 73; Code 1881 § 880; 1873 p 200 § 84; RRS § 2325.]

**Reviser's note:** Caption for 1909 c 249 § 73 reads: "*Sec. 73. Influencing Juror.*"

**9.18.070 Juror, referee, etc., promising decision, verdict, etc.** Every juror and every person chosen or appointed arbitrator or referee, who shall make any promise or agreement to give a verdict, judgment, report, award or decision for or against any party, or who shall wilfully receive any communication, book, paper, instrument or information relating to a cause or matter pending before him, except according to the regular course of proceeding upon the trial or hearing of such cause or matter, shall be guilty of a gross misdemeanor. [1909 c 249 § 74; RRS § 2326.]

**Reviser's note:** Caption for 1909 c 249 § 74 reads: "*Sec. 74. Jurors, etc., Promising Verdict, etc.*"

**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.]

*Incriminating testimony not to be used: RCW 10.52.090.*

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

**9.18.090 Interfering with public officer.** Every person who, by means of any threat, force or violence, shall attempt to deter or prevent any executive or administrative officer from performing any duty imposed upon him by law, or who shall knowingly resist by force or violence any executive or administrative officer in the performance of his duty, shall be guilty of a gross misdemeanor. [1909 c 249 § 79; Code 1881 § 885; 1854 p 90 § 79; RRS § 2331.]

*Interfering with prison officer: RCW 9.94.030.*

**9.18.100 Offering reward for appointment.** Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward, in consideration that he or another person shall be appointed to a public office or to a clerkship, deputation or other subordinate position in such office, or that he or any other person shall be permitted to exercise, perform or discharge any prerogative or duty or receive any emolument of such office, shall be guilty of a gross misdemeanor. [1909 c 249 § 80; Code 1881 § 880; 1854 p 89 § 75; RRS § 2332.]

**9.18.110 Grafting.** Every person who shall ask or receive any compensation, gratuity or reward, or any promise thereof, upon the representation that he can, directly or indirectly, or in consideration that he shall, or shall attempt to, directly or indirectly, influence any public officer, whether executive, administrative, judicial or legislative, to refuse, neglect, or defer the performance of any official duty; or who shall ask or receive any compensation, gratuity or reward, or any promise thereof, the right to retain or receive which shall be conditioned that such person shall, directly or indirectly, successfully influence by any means whatever any executive, administrative or legislative officer, in respect to any act, decision, vote, opinion or other proceeding, as such officer; or who shall ask or receive any compensation, gratuity or reward, or any promise thereof, upon the representation that he can, directly or indirectly, or in consideration that he shall, or shall attempt to, directly or indirectly, influence any public officer, whether executive, administrative, judicial or legislative, in respect to any act, decision, vote, opinion or other proceeding, as such officer, unless it be clearly understood and agreed in good faith between the parties thereto, on both sides, that no means or influence shall be employed except explanation and argument upon the merits, shall be guilty of a gross misdemeanor, and, in any prosecution, under the third clause of this section, evidence of the means actually employed to influence such officer shall be admitted as proof of the means originally contemplated by the defendant. [1909 c 249 § 81; RRS § 2333.]

**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 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 9.19 BURGLARY

### Sections

9.19.010	First degree.
9.19.020	Second degree.
9.19.030	Presumption of intent.
9.19.040	Other crime in committing burglary punishable.
9.19.050	Making or having burglar tools.

*Attempt to commit a felony while armed: RCW 9.01.080.*

*Breaking or robbing mining appurtenances: RCW 9.75.030.*

*Interfering with railroad with intent to commit burglary: RCW 9.75.020.*

*Stolen property—Restoration to owner—Sale does not divest rights—Duty of officer: RCW 10.79.050.*

**9.19.010 First degree.** Every person who, with intent to commit some crime therein, shall enter in the nighttime, the dwelling house of another in which there shall be at the time a human being—

- (1) Being armed with a dangerous weapon; or
  - (2) Arming himself therein with such a weapon; or
  - (3) Being assisted by a confederate actually present;
- or

(4) Who, while engaged in the nighttime in effecting such entrance, or in committing any crime in such building or in escaping therefrom, shall assault any person; or

(5) Who, with intent to commit some crime therein, shall break and enter any bank, post office, railway express or railway mail car, shall be guilty of burglary in the first degree and shall be punished by imprisonment in the state penitentiary for not less than five years. [1909 c 249 § 326; 1888 p 14 § 1; Code 1881 § 827; 1873 p 190 § 48; 1854 p 83 § 44; RRS § 2578.]

**9.19.020 Second degree.** Every person who, with intent to commit some crime therein shall, under circumstances not amounting to burglary in the first degree, enter the dwelling house of another or break and enter, or, having committed a crime therein, shall break out of, any building or part thereof, or a room or other structure wherein any property is kept for use, sale or deposit, shall be guilty of burglary in the second degree and shall be punished by imprisonment in the state penitentiary for not more than fifteen years. [1909 c 249 § 327; 1888 p 14 § 1; Code 1881 § 827; 1873 p 190 § 48; 1854 p 83 § 44; RRS § 2579.]

**9.19.030 Presumption of intent.** Every person who shall unlawfully break and enter or unlawfully enter any building or structure enumerated in RCW 9.19.010 and 9.19.020 shall be deemed to have broken and entered or entered the same with intent to commit a crime therein, unless such unlawful breaking and entering or unlawful entry shall be explained by testimony satisfactory to the jury to have been made without criminal intent. [1909 c 249 § 328; Code 1881 § 828; 1873 p 190 § 49; RRS § 2580.]

**9.19.040 Other crime in committing burglary punishable.** Every person who, in the commission of a burglary shall commit any other crime, shall be punished therefor as well as for the burglary, and may be prosecuted for each crime separately. [1909 c 249 § 329; RRS § 2581.]

**Reviser's note:** Caption for 1909 c 249 § 329 reads: "Sec. 329. *Crime in Building—Punished Separately.*"

**9.19.050 Making or having burglar tools.** Every person who shall make or mend or cause to be made or mended, or have in his possession in the day or nighttime, any engine, machine, tool, false key, pick lock, bit, nippers or implement adapted, designed or commonly used for the commission of burglary, larceny, or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a crime, or knowing that the same is intended to be so used, shall be guilty of a gross misdemeanor. The possession thereof except by a mechanic, artificer or tradesman at and in his established shop or place of business, open to public view, shall be prima facie evidence that such possession was had with intent to use or employ or allow the same to be used or employed in the commission of a crime. [1909 c 249 § 330; 1893 c 90 § 1; RRS § 2582.]

### Chapter 9.22 CONSPIRACY

## Sections

- 9.22.010 Conspiracy.  
9.22.020 Overt act not necessary.  
9.22.030 Corporation to forfeit franchise.  
9.22.040 Conspiracy against governmental entities.

*Conspiracy to kidnap: RCW 9.52.020.*

**9.22.010 Conspiracy.** Whenever two or more persons shall conspire—

- (1) To commit a crime; or
- (2) Falsely and maliciously to procure another to be arrested or proceeded against for a crime; or
- (3) Falsely to institute or maintain any action or proceeding; or
- (4) To cheat or defraud another out of any property by unlawful or fraudulent means; or
- (5) To prevent another from exercising any lawful trade or calling, or from doing any other lawful act, by force, threats or intimidation, or by interfering or threatening to interfere with any tools, implements or property belonging to or used by another, or with the use or employment thereof; or
- (6) To commit any act injurious to the public health, public morals, trade or commerce, or for the perversion or corruption of public justice or the due administration of the law; or
- (7) To accomplish any criminal or unlawful purpose, or to accomplish a purpose, not in itself criminal or unlawful, by criminal or unlawful means;

Every such person shall be guilty of a gross misdemeanor. [1909 c 249 § 130; RRS § 2382.]

*Prosecution for forming or joining labor union prohibited: RCW 49.36.030.*

**9.22.020 Overt act not necessary.** In any proceeding for a violation of RCW 9.22.010, it shall [not] be necessary to prove that any overt act was done in pursuance of such unlawful conspiracy or combination. [1909 c 249 § 131; RRS § 2383.]

**Reviser's note:** Bracketed matter appears in session law but not in enrolled bill.

**9.22.030 Corporation to forfeit franchise.** Every corporation, whether foreign or domestic, which shall violate any provision of RCW 9.22.010, 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 section. [1909 c 249 § 132; RRS § 2384.]

**9.22.040 Conspiracy against governmental entities.** If two or more persons conspire either to commit any offense against, or to defraud the state, or any county, city, town, district, or other municipal corporation therein, or a department or agency of any thereof, in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. [1961 c 211 § 1.]

### Chapter 9.23 CONTEMPT

## Sections

- 9.23.010 Criminal contempt.

**9.23.010 Criminal contempt.** Every person who shall commit a contempt of court of any one of the following kinds shall be guilty of a misdemeanor:

- (1) Disorderly, contemptuous or insolent behavior committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority; or,
- (2) Behavior of like character in the presence of a referee, while actually engaged in a trial or hearing pursuant to an order of court, or in the presence of a jury while actually sitting in the trial of a cause or upon an inquest or other proceeding authorized by law; or,
- (3) Breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of a court, jury or referee; or,
- (4) Wilful disobedience to the lawful process or mandate of a court; or,
- (5) Resistance, wilfully offered, to its lawful process or mandate; or,
- (6) Contumacious and unlawful refusal to be sworn as a witness or, after being sworn, to answer any legal and proper interrogatory; or,
- (7) Publication of a false or grossly inaccurate report of its proceedings; or,
- (8) Assuming to be an attorney or officer of a court or acting as such without authority. [1909 c 249 § 120; Code 1881 § 725; 1869 p 167 § 667; RRS § 2372.]

*Contempts: Chapter 7.20 RCW.*

*Criminal act constituting contempt may be punished separately: RCW 9.92.040.*

*Justices of the peace—Contempts: Chapter 3.28 RCW.*

*Power of courts and judicial officers to punish for contempt: RCW 2.28.020, 2.28.070.*

*Publishing matter inciting disrespect for courts: RCW 9.05.150.*

*Using indecent or vulgar language, etc.: RCW 9.68.040.*

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

### 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.

*Agricultural cooperative associations: Chapter 24.32 RCW.*

*Banks and trust companies, penalties: RCW 30.04.020, 30.04.050, 30.04.060, 30.04.160, 30.04.230, 30.04.240, 30.04.260, 30.04.310, 30.12.050, 30.12.090-30.12.120, 30.12.190, 30.16.010, 30.44.110, 30.44.120.*

*Business corporations: Title 23A RCW.*

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

*Conspiracy, forfeiture of right to do business: RCW 9.22.030.*

*Copyrights, penalties: RCW 19.24.290.*

*Corporations, criminal process against: Chapter 10.01 RCW.*

*Credit unions, penalties: RCW 31.12.340, 31.12.430.*

*Crop credit associations, penalties: RCW 31.16.320.*

*Discrimination in employment: Chapter 49.60 RCW.*

*Factory act, penalty: RCW 49.20.110.*

*Falsely indicating person as corporate or public officer: RCW 9.44.050.*

*Female labor: Chapter 49.12 RCW.*

*Hours of labor: Chapter 49.28 RCW.*

*Industrial loan companies, penalties: RCW 31.04.220, 31.04.250.*

*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, 48.30.210-48.30.230, 48.36.330, 48.44.060, 48.52.080.*

*Labor, prohibited practices: Chapter 49.44 RCW.*

*Legal services, advertising of—Penalty: RCW 30.04.260.*

*Mutual savings banks, penalties: RCW 32.04.100-32.04.130, 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.*

*Small loan companies, penalties: RCW 31.08.210.*

*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.*

*Workmen's 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, wilfully and knowingly with intent to defraud, shall—

(1) Sell, pledge or issue or cause to be sold, pledged or issued, or sign or execute or cause 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) Reissue, sell, pledge or dispose of, or cause 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 the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [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 knows or has good reason to believe that such person, firm, corporation or association is unsafe or insolvent, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than ten thousand dollars. [1909 c 249 § 388; 1893 c 111 § 1; RRS § 2640. Formerly RCW 9.45.140.]

*Application of above section 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 of above section 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 the state penitentiary for not more than ten years, or by a fine of not more than five thousand



dollars. [1909 c 249 § 390; RRS § 2642. Formerly RCW 9.38.040.]

*Application of above section 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.

### Chapter 9.26 COUNTERFEITING

#### Sections

- 9.26.010 Possession of counterfeit coin.  
9.26.020 Advertising counterfeit money.  
9.26.030 Counterfeiting uncoined gold.

*Alcoholic beverage control, unlawful use of seal: RCW 66.44.120.*

*Ballots, counterfeiting or possession: RCW 29.85.010, 29.85.040.*

*Cigarette tax stamps, counterfeiting: RCW 82.24.100.*

*Conveyance tax stamps, counterfeiting: RCW 82.20.050.*

*Forgery: Chapter 9.44 RCW.*

*Public bonds, facsimile signatures: Chapter 39.44 RCW.*

*Search and seizure, counterfeiting coins, etc.: RCW 10.79.015.*

*State seal, improper use: RCW 9.91.050.*

**9.26.010 Possession of counterfeit coin.** Every person who shall have in his possession a counterfeit of any gold or silver coin, whether of the United States or any foreign country or government, knowing the same to be counterfeit, with intent to sell, utter, use, circulate or export the same as true or as false, or to cause the same to be so uttered or used, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars, or by both. [1909 c 249 § 339; Code 1881 §§ 856, 857; 1873 p 196 § 70; 1862 p 15 § 1; RRS § 2591.]

**9.26.020 Advertising counterfeit money.** Every person who, with intent to defraud, shall print, circulate or distribute a letter, circular, card, pamphlet, handbill or any other written or printed matter offering or purporting to offer for sale, exchange or as a gift, counterfeit coin or paper money, or giving or purporting to give information where counterfeit coin or paper money can be procured, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a

fine of not more than five thousand dollars. [1909 c 249 § 340; RRS § 2592.]

**9.26.030 Counterfeiting uncoined gold.** Any person who shall counterfeit any kind or species of gold dust, gold bullion or bars, lumps, pieces or nuggets of gold, or any description whatsoever of uncoined gold, currently passing in this state, or shall alter or put off any kind of uncoined gold mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold as aforesaid, every such person so offending, or any person or persons aiding or abetting in or about said offense or offenses, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than fourteen years. [Code 1881 § 857; 1873 p 196 § 70; 1862 p 15 § 7; RRS § 2702.]

### Chapter 9.26A

### CREDIT CARDS, CRIMES RELATING TO

#### Sections

- 9.26A.010 Definitions.  
9.26A.020 Falsely procuring a credit or identification card—Penalty.  
9.26A.030 Credit or identification card theft.  
9.26A.040 First and second degree forgery.  
9.26A.050 Use of stolen, forged, altered, expired, etc., cards—False representation.  
9.26A.060 Possessing incomplete cards or reproduction equipment—Felony.  
9.26A.070 Merchant furnishing goods, services, etc., knowing card false, altered, forged, etc.—Falsely representing goods services, etc., furnished.  
9.26A.080 Obtaining discounted airline, railroad, etc., tickets.  
9.26A.090 Telephone company credit cards—Publishing number or code—"Publishes" defined.

**9.26A.010 Definitions.** In this chapter, unless the context or subject matter otherwise requires:

(1) "Credit card" means any instrument or device, whether incomplete, revoked or expired, whether known as a credit card, credit plate, charge plate, courtesy card, or by any other name, issued with or without fee by any issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, including satisfaction of a debt or the payment of a check drawn by a cardholder, either on credit or in consideration of an undertaking or guaranty by the issuer.

(2) "Identification card" means any instrument or device issued, with or without a fee by any person or governmental agency for the use of the cardholder and which contains a signature, photograph, or descriptive information about the cardholder and is intended to be used for the purpose of establishing the identity, age, credit worthiness or other characteristic of the cardholder.

(3) "Cardholder" means the person or organization identified on the face of a credit card or identification

card and to whom or for whose benefit the card is issued by an issuer.

(4) "Issuer" means the person or organization or its duly authorized agent which issues a credit card or identification card.

(5) "Participating party" means a person or organization which is obligated by contract to acquire from a merchant a sales slip or sales draft or instrument for the payment of money evidencing a credit card transaction and from whom the issuer is obligated by contract to acquire such sales slip, sales draft, or instrument for the payment of money.

(6) "Merchant" means a person or organization or its duly authorized agent, which is authorized by an issuer or a participating party to furnish money, goods, services or anything else of value, including satisfaction of a debt or the payment of a check drawn by the cardholder upon presentation of a credit card or identification card by a cardholder.

(7) "Incomplete credit card or identification card" means a credit card or identification card on which any part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card or identification card before it can be used by a cardholder has not been stamped, embossed, imprinted, or written on it.

(8) "Expired credit card" means a credit card which shows on its face or by its terms that it has elapsed.

(9) "Revoked credit card" means a credit card for which permission to use it has been suspended or terminated by the issuer and notice thereof has been given to the cardholder in person or by mailing notice to the cardholder's last address known to the issuer.

(10) "Cardholder agreement" means the contract or agreement or conditions set forth by the issuer for use of the credit card or identification card which are contained in any credit or identification card application signed by the cardholder, any statement accompanying any credit card or identification card sent to a cardholder and any statements appearing on the credit card or identification card when received by the cardholder and any amendments to the agreement given pursuant to the terms of the agreement and prior to the cardholder's subsequent use of the credit card or identification card. [1970 ex.s. c 36 § 1.]

**9.26A.020 Falsely procuring a credit or identification card—Penalty.** A person is guilty of falsely procuring a credit card or identification card when he makes or causes to be made, either directly or indirectly, any false statement in writing, knowing it to be false and with the intent that it be relied upon, respecting his identity or that of any other person or organization, or his status or financial condition or the status or financial condition of any other person or organization, for the purpose of procuring the issuance of a credit card or identification card. A person falsely procuring a credit card or identification card shall be guilty of a misdemeanor. [1970 ex.s. c 36 § 2.]

**9.26A.030 Credit or identification card theft.** A person is guilty of credit card or identification card theft when:

(1) He acquires, obtains, takes or withholds a credit card or identification card from the person, possession, custody or control of another without the cardholder's or issuer's consent; or

(2) He acquires a credit card or identification card from another with knowledge that it has been acquired, taken, obtained or withheld, without the cardholder's consent, with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder; or

(3) He receives a credit card or identification card that he has reason to know to have been lost, mislaid or delivered under a mistake as to identity or address of the cardholder and he retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder; or

(4) He sells, transfers, conveys, or receives a credit card or identification card with the intent to defraud the issuer or the cardholder or a participating party or a merchant; or

(5) He obtains control of a credit card or identification card as security for a debt with the intent to defraud the issuer, the cardholder, a participating party or a merchant; or

(6) He with intent to use said card receives a credit card or identification card issued in the name of a cardholder other than himself which he has reason to know was taken or retained under circumstances which constitutes credit card or identification card theft.

When a person not an issuer or agent thereof has in his possession or under his control credit cards or identification cards issued in the names of two or more other persons he is presumed to have violated subsections (1) or (2) of this section.

A person who commits credit card or identification card theft is guilty of a felony. [1970 ex.s. c 36 § 3.]

*Larceny: Chapter 9.54 RCW.*

**9.26A.040 First and second degree forgery.** (1) Every person who, with intent to defraud, makes, stamps, alters, embosses, or completes a card purporting or appearing to be a credit card or identification card issued by another, whether or not it is incomplete, expired, or revoked, is guilty of forgery in the first degree, and shall be punished by imprisonment in the state penitentiary for not more than twenty years.

(2) A person, other than person authorized by the cardholder, who, with intent to defraud, signs his own name or the name of another or of a fictitious person to a credit card or identification card, sales slip, sales draft, or instrument which evidences a credit card transaction is guilty of forgery in the first degree, and shall be punished by imprisonment in the state penitentiary for not more than twenty years. [1970 ex.s. c 36 § 4.]

*Forgery: Chapter 9.44 RCW.*

**9.26A.050 Use of stolen, forged, altered, expired, etc., cards—False representation.** Every person, who with intent to defraud:

(1) Uses, for the purpose of obtaining money, goods, services or anything else of value, a credit card or identification card obtained or retained in violation of RCW 9.26A.030, or a credit card or identification card which he knows or has reason to believe is forged, expired, incomplete, revoked, or altered by anyone other than the issuer is guilty of a gross misdemeanor, and it shall be presumed that such use was with the intent to defraud and with knowledge that said credit card has been revoked, upon proof that: (a) notice that a credit card has been revoked has been mailed by registered or certified mail, return receipt requested, to the cardholder's last known address or delivered to cardholder or some other person residing with him; (b) the notice was received by the cardholder or someone else residing with him, proof of which may be accomplished by proof that a signed receipt was returned; and (c) said card was used by the cardholder or by any other person acting with his knowledge or authority, after the date the notice was received or the receipt signed; or

(2) Obtains money, goods, services or anything else of value, by representing, without the consent of the cardholder or issuer, that he is the holder of a credit card or identification card or by representing that he is the holder of a credit card or identification card and such credit card or identification card has not in fact been issued is guilty of a gross misdemeanor.

If the value of all the items so obtained under subsections (1) or (2) of this section exceeds seventy-five dollars, then the person is guilty of a felony. [1970 ex.s. c 36 § 5.]

**9.26A.060 Possessing incomplete cards or reproduction equipment—Felony.** (1) Every person who possesses an incomplete credit card or identification card with intent to complete it without the consent of the issuer is guilty of a felony.

(2) Every person who, with intent to defraud, possesses, with knowledge of its character, machinery, plates or any other contrivance designed for, and made use of in, the reproduction of instruments purporting or appearing to be the credit cards or identification cards of an issuer who has not consented to the preparation of such credit cards or identification cards, is guilty of a felony, and shall be punished by imprisonment in the state penitentiary for not more than twenty years. [1970 ex.s. c 36 § 6.]

**9.26A.070 Merchant furnishing goods, services, etc., knowing card false, altered, forged, etc.—Falsely representing goods, services, etc., furnished.** Every merchant who, with intent to defraud:

(1) Furnishes money, goods, services or anything else of value including the cancellation of a debt or the payment of a check, upon presentation of a credit card or identification card obtained or retained in violation of RCW 9.26A.030 or a credit card or identification

card which he knows or has reasonable grounds to believe is forged, altered, expired or revoked and who receives any payment therefor is guilty of a gross misdemeanor. If the payment so obtained exceeds seventy-five dollars, then the merchant is guilty of a felony.

(2) Has failed to furnish money, goods, services, or anything else of value which he represents to an issuer or a participating party that he has furnished, and who receives any payment therefor is guilty of a gross misdemeanor. If the payment so obtained exceeds seventy-five dollars, then the merchant is guilty of a felony. [1970 ex.s. c 36 § 7.]

**9.26A.080 Obtaining discounted airline, railroad, etc., tickets.** A person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company which was acquired in violation of RCW 9.26A.050, without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of RCW 9.26A.050. [1970 ex.s. c 36 § 8.]

*Stealing railway or steamboat tickets, coupons, or passes: RCW 9.54.110.*

**9.26A.090 Telephone company credit cards—Publishing number or code—"Publishes" defined.** Every person who publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone company credit card, or the numbering or coding which is employed in the issuance of telephone company credit cards, 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. As used in this section, "publishes" means the communication or dissemination of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book. [1974 1st ex.s. 160 § 1.]

*Fraud in obtaining telephone or telegraph service: RCW 9.45.240.*

## Chapter 9.27 DISTURBANCES, RIOT AND UNLAWFUL ASSEMBLY

Sections	
9.27.010	Disturbing meeting.
9.27.015	Interference, obstruction of any court, building or residence—Violations.
9.27.020	Disturbance on highway.
9.27.030	Offenses in public conveyances.
9.27.040	Riot defined.
9.27.050	Riot—Penalty.
9.27.060	Unlawful assembly.
9.27.070	Remaining after warning.
9.27.080	Destruction of property.
9.27.090	Disguised and masked persons.
9.27.100	Owner of premises allowing masqueraders.

*Disturbing school or school meeting: RCW 28A.87.060.*

*Homicide in suppressing riot: RCW 9.48.160.*

*Intoxicated person in public place: RCW 71.08.010.*

*Using indecent or vulgar language, etc.: RCW 9.68.040.*

**9.27.010 Disturbing meeting.** Every person who, without [authority] of law, shall wilfully disturb any assembly or meeting not unlawful in its character, shall be guilty of a misdemeanor. [1909 c 249 § 295; RRS § 2547.]

**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.

**9.27.020 Disturbance on highway.** Every person who shall ride or drive any horse upon a public highway, in a manner likely to endanger the safety or life of another, or on such highway shall create or participate in any noise, disturbance or other demonstration calculated or intended to frighten, intimidate or disturb any person, shall be guilty of a misdemeanor. [1909 c 249 § 282; RRS § 2534.]

**9.27.030 Offenses in public conveyances.** Every person who shall wilfully use profane, offensive, or indecent language or engage in any quarrel in any public conveyance, or interfere with or annoy any passenger therein, or, having refused to pay the proper fare, shall fail to leave any such conveyance upon demand, or, with intent to avoid the payment of fare shall ride upon any car or engine not commonly used for the carriage of passengers, shall be guilty of a misdemeanor. [1909 c 249 § 309; RRS § 2561.]

*Force to expel passenger: RCW 9.11.040(5).*

*Railroads—Special police and police regulations: Chapter 81.60 RCW.*

**9.27.040 Riot defined.** Whenever three or more persons, having assembled for any purpose, shall disturb the public peace by using force or violence to any other person, or to property, or shall threaten or attempt to commit such disturbance, or to do any unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they shall be guilty of a riot. [1909 c 249 § 296; Code 1881 §§ 859–861; 1873 p 197 §§ 73, 74; 1854 p 87 § 64; RRS § 2548.]

*Prison riot defined: RCW 9.94.010.*

**9.27.050 Riot—Penalty.** Every person who shall be guilty of riot or of participating therein, by being present at, or by instigation, permitting or aiding the same, shall be punished as follows:

(1) If the purpose of the assembly or the acts done therein, or intended by the persons engaged, shall be to resist the enforcement of a statute of this state or of the United States, or to obstruct any public officer of this state or the United States in serving or executing any process or other mandate of a court, or in the performance of any other duty, or if at the time of the riot the offender shall carry a firearm or any other dangerous weapon, or shall be disguised, by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars.

(2) If the offender shall direct, advise, encourage or solicit other persons present or participating in a riot or assembly to acts of force or violence, by imprisonment in the state penitentiary for not more than two years, or by a fine of not more than one thousand dollars.

(3) In every other case, by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars. [1909 c 249 § 297; Code 1881 §§ 859–861; 1873 p 197 §§ 73, 74; 1854 p 87 § 65; RRS § 2549.]

**9.27.060 Unlawful assembly.** Whenever three or more persons shall assemble with intent—

(1) To commit any unlawful act by force; or,

(2) To carry out any purpose in such manner as to disturb the public peace; or,

(3) Being assembled, shall attempt or threaten any act tending toward a breach of the peace, or an injury to persons or property, or any unlawful act—such an assembly is unlawful, and every person participating therein by his presence, aid or instigation, shall be guilty of a gross misdemeanor. [1909 c 249 § 298; Code 1881 §§ 859–861; 1873 p 197 §§ 73, 74; 1854 p 87 § 65; RRS § 2550.]

*Assemblages of anarchists: RCW 9.05.030.*

**9.27.070 Remaining after warning.** Every person who shall remain present at the place of an unlawful meeting after having been warned to disperse by a magistrate or public officer, unless as a public officer or at the request of such officer he is assisting in dispersing the same, or in protecting persons or property or in arresting offenders, shall be guilty of a misdemeanor. [1909 c 249 § 299; Code 1881 §§ 859–861; 1873 p 197 §§ 73, 74; 1854 p 87 §§ 65, 66; RRS § 2551.]

**9.27.080 Destruction of property.** Whenever any of the persons so unlawfully assembled shall pull down or destroy any dwelling house or other building, or any shop, steamboat or vessel, he shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars. [1909 c 249 § 300; Code 1881 § 863; RRS § 2552.]

**9.27.090 Disguised and masked persons.** Any assemblage of three or more persons, disguised by having their faces painted, discolored, colored or concealed, shall be unlawful; and every person so disguised present thereat, shall be guilty of a gross misdemeanor; but nothing herein shall be construed as prohibiting any peaceful assemblage for a masquerade or fancy dress ball or entertainment. [1909 c 249 § 301; RRS § 2553.]

**9.27.100 Owner of premises allowing masqueraders.** Every person, being the owner, lessee or occupant of any building, boat, or part thereof, who shall knowingly permit therein any unlawful assemblage of masked persons, shall be guilty of a gross misdemeanor. [1909 c 249 § 302; RRS § 2554.]

**Chapter 9.30  
DUELLING**

Sections

- 9.30.010 Duel, how punished.
- 9.30.020 Challenger, abettor, etc.
- 9.30.030 Attempt to induce challenge, posting.
- 9.30.040 Duel outside state, venue.
- 9.30.050 Witnesses.

**9.30.010 Duel, how punished.** Every person who shall fight a duel or engage in any combat with another with a deadly weapon, by previous agreement, or upon a previous quarrel, although no death or wound shall ensue, shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 167; Code 1881 § 799; 1869 p 202 § 22; 1854 p 79 § 22; RRS § 2419.]

*Killing person in duel: RCW 9.48.050.*

**9.30.020 Challenger, abettor, etc.** Every person who shall challenge another to fight a duel, or who shall send a written or verbal message purporting or intended to be a challenge to fight a duel, or an invitation to a combat with deadly weapons, or shall accept such a challenge or message, or shall knowingly carry or deliver such challenge or message, or be present at the time appointed for such duel or combat, or when the same is fought, either as second, aide, or surgeon, or who shall advise, or abet, or give any countenance or assistance to such duel or combat upon previous agreement, shall be punished by imprisonment in the state penitentiary for not more than five years. [1909 c 249 § 168; Code 1881 § 800; 1873 p 185 § 25; 1869 p 202 § 23; 1854 p 79 § 23; RRS § 2420.]

**9.30.030 Attempt to induce challenge, posting.** Every person who shall send or use to another any word or sign whatever with intent to provoke or induce such person to give or receive a challenge to fight a duel, or who shall post or advertise another for not fighting a duel or for not sending or accepting a challenge to fight a duel, or who, in writing or in print, shall use reproachful or contemptuous language to or concerning anyone for not sending or accepting a challenge to fight a duel, or for not fighting a duel, shall be guilty of a gross misdemeanor. [1909 c 249 § 169; RRS § 2421.]

**9.30.040 Duel outside state, venue.** Every person who shall leave the state with intent to elude any provision of RCW 9.30.010 or 9.30.020, or to commit any act outside of the state punished by the provisions thereof, if committed in the state, shall be guilty of the same offense and subject to the same punishment as if the act had been committed or was to have been consummated in the state and may be proceeded against and tried in any county therein, but a former conviction or acquittal in another state or county for the same offense shall be a bar to further proceedings against him for such offense. [1909 c 249 § 170; RRS § 2422.]

**9.30.050 Witnesses.** Every person offending against any provision contained in RCW 9.30.010 through 9.30.040, shall be a competent witness against any other offender in the same transaction, and shall not be excused from giving testimony tending to incriminate himself. [1909 c 249 § 171; RRS § 2423.]

**Chapter 9.31  
ESCAPE AND RESCUE**

Sections

- 9.31.005 Definitions.
- 9.31.010 Crime of escape, what constitutes.
- 9.31.020 Aiding prisoner to escape.
- 9.31.030 Custodian allowing or conniving at escape.
- 9.31.040 Officer asking reward to permit escape.
- 9.31.050 Concealing escaped prisoner.
- 9.31.060 Rescuing prisoner.
- 9.31.070 Taking property from an officer.
- 9.31.080 Unauthorized communication with prisoner.
- 9.31.090 Escaped prisoner recaptured.
- 9.31.100 Assisting escape of inmate of mental institution or custodial school.

*Homicide in retaking prisoner: RCW 9.48.160.*

*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.*

**9.31.005 Definitions.** The term "escape", for the purposes of this chapter, shall mean the unlawful departure of a prisoner from the custody of a penal or correctional institution of the state of Washington, with or without the exertion of force or fraud in the execution thereof. [1955 c 320 § 1.]

*Officers and guards as peace officers: RCW 9.94.050.*

**9.31.010 Crime of escape, what constitutes.** Every prisoner confined in a prison, or being in the lawful custody of an officer or other person, who escapes or attempts to escape from such prison or custody if he is held on a charge, conviction, or sentence of a felony, shall be guilty of a felony; if held on a charge, conviction, or sentence of a gross misdemeanor or misdemeanor, he shall be guilty of a misdemeanor. [1955 c 320 § 2; 1909 c 249 § 90; RRS § 2342.]

**9.31.020 Aiding prisoner to escape.** Every person who, with intent to effect or facilitate the escape of a prisoner, whether such escape shall be effected or attempted or not, shall convey or send to a prisoner any information or aid, or convey or send into a prison any

disguise, instrument, weapon or other thing, or aid or assist a prisoner in escaping or attempting to escape from the lawful custody of a sheriff or other officer or person, shall be guilty of a felony if such prisoner is held upon a charge, arrest, commitment, conviction or a sentence for a felony, and shall be guilty of a misdemeanor if such prisoner is held upon a charge, arrest, commitment, conviction or sentence for a gross misdemeanor or misdemeanor. [1909 c 249 § 91; 1905 c 46 §§ 1, 2; Code 1881 § 881; 1873 p 200 § 85; 1854 p 89 § 76; RRS § 2343.]

**9.31.030 Custodian allowing or conniving at escape.** Every person who shall allow a prisoner lawfully in his custody to escape, or shall connive at or assist such escape, or shall omit any act or duty by reason of which omission such escape is occasioned, contributed to or assisted, shall, if he connive at or assist such escape, be guilty of a felony; and in any other case, of a gross misdemeanor. [1909 c 249 § 92; Code 1881 § 882; 1873 p 201 § 86; 1854 p 90 § 77; RRS § 2344.]

**Reviser's note:** Caption for 1909 c 249 § 92 reads as follows: "Sec. 92. *Custodian Suffering Escape.*"

**9.31.040 Officer asking reward to permit escape.** Every officer who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or promise thereof, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape shall be attempted or not, or shall commit any unlawful act tending to hinder justice, shall be guilty of a gross misdemeanor. [1909 c 249 § 93; Code 1881 § 882; 1873 p 201 §§ 86, 87; 1854 p 90 § 77; RRS § 2345.]

**Reviser's note:** Caption for 1909 c 249 § 93 reads as follows: "Sec. 93. *Ministerial Officer Permitting Escape.*"

**9.31.050 Concealing escaped prisoner.** Every person who shall conceal, or harbor for the purpose of concealment, a prisoner who has escaped or is escaping from custody, shall be guilty of a felony if the prisoner is held upon a charge or conviction or sentence of felony, and of a misdemeanor if the prisoner is held upon a charge or conviction of a gross misdemeanor or misdemeanor. [1909 c 249 § 94; RRS § 2346.]

**9.31.060 Rescuing prisoner.** Every person who shall, by force or fraud, rescue from lawful custody, or from an officer or person having him in lawful custody, a prisoner held upon a charge, arrest, commitment, conviction or sentence for felony, shall be guilty of a felony; and every person who shall rescue a prisoner held upon a charge, arrest, commitment, conviction or sentence for a gross misdemeanor or misdemeanor shall be guilty of a misdemeanor. [1909 c 249 § 87; RRS § 2339.]

**9.31.070 Taking property from an officer.** Every person who shall take from the custody of any officer or other person any personal property in his charge under any process of law, or who shall wilfully injure or destroy such property, shall be guilty of a misdemeanor. [1909 c 249 § 88; RRS § 2340.]

**9.31.080 Unauthorized communication with prisoner.** Every person who, not being authorized by law or by any officer authorized thereto, shall have any verbal communication with any prisoner in any jail, reformatory, penitentiary or other penal institution, or shall bring into or convey out of the same any writing, clothing, food, tobacco or any article whatsoever, shall be guilty of a misdemeanor. [1909 c 249 § 125; RRS § 2377.]

*Trafficking with prisoner: RCW 9.94.060.*

**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.]

*Prison terms, paroles and probation: Chapter 9.95 RCW.*

**9.31.100 Assisting escape of inmate of mental institution or custodial school.** Any person who procures the escape of an inmate of a school for mental deficient, juvenile correctional institution, mental hospital or institution for psychopaths, or who advises, connives at, aids, or assists in such escape, or knowingly harbors any escapee, shall be guilty of a gross misdemeanor. [1951 c 182 § 1.]

*Maple Lane school, enticing inmates to leave: RCW 72.20.060.*

*Narcotic farm colony, assisting escape: RCW 72.48.090.*

### Chapter 9.33

#### EXTORTION, BLACKMAIL AND COERCION

##### Sections

9.33.010	Extortion.
9.33.020	Oppression under color of office.
9.33.040	Extortion by public officer.
9.33.050	Blackmail.
9.33.060	Coercion.
9.33.070	Extortion by ferryman, toll gate keeper, etc.

*Election, bribery or coercion: Chapter 29.85 RCW.*

*Threatening to publish libel: RCW 9.58.090.*

**9.33.010 Extortion.** Every person, who, under circumstances not amounting to robbery, shall extort or gain any money, property or advantage, or shall induce or compel another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, by means of force or any threat, either—

- (1) To accuse any person of a crime; or
- (2) To do any injury to any person or to any property; or
- (3) To publish or connive at publishing any libel; or
- (4) To expose or impute to any person any deformity or disgrace; or
- (5) To expose any secret,

Shall be guilty of extortion and shall be punished by imprisonment in the state penitentiary for not more than five years. [1909 c 249 § 358; Code 1881 § 822; RRS § 2610.]

**9.33.020 Oppression under color of office.** Every officer, or person pretending to be such, who unlawfully and maliciously, under pretense or color of official authority shall—

- (1) Arrest another or detain him against his will; or
- (2) Seize or levy upon another's property; or
- (3) Dispossess another of any lands or tenements; or
- (4) Do any act whereby another person shall be injured in his person, property or rights, commits oppression, shall be guilty of a gross misdemeanor.

(5) No officer or person having the custody and control of the body or liberty of any person under arrest, shall refuse permission to such arrested person to communicate with his friends or with an attorney, nor subject any person under arrest to any form of personal violence, intimidation, indignity or threats for the purpose of extorting from such person incriminating statements or a confession. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1909 c 249 § 359; Code 1881 § 894; 1873 p 203 § 96; 1854 p 91 § 87. Formerly 9.33.030, part.]

*Confession as evidence: RCW 10.58.030.*

*Kidnaping: Chapter 9.52 RCW.*

**9.33.040 Extortion by public officer.** Every public officer who shall ask or receive, or agree to receive a fee or other compensation for his official service, either—

(1) In excess of the fee or compensation allowed to him by statute therefor; or

(2) Where no fee or compensation is allowed to him by statute therefor, commits extortion, and is guilty of a misdemeanor. [1909 c 249 § 360; Code 1881 § 894; 1873 p 203 § 96; 1854 p 91 § 87; RRS § 2612.]

*Bribery and grafting: Chapter 9.18 RCW.*

**9.33.050 Blackmail.** Every person who, with intent thereby to extort or gain any money or other property or to compel or induce another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, or to influence the action of any public officer, or to do or abet or procure any illegal or wrongful act, shall threaten directly or indirectly—

- (1) To accuse any person of a crime; or
- (2) To do any injury to any person or to any property; or
- (3) To publish or connive at publishing any libel; or
- (4) To expose or impute to any person any deformity or disgrace; or
- (5) To expose any secret,

Shall be punished by imprisonment in the state penitentiary 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. [1909 c 249 § 361; Code 1881 § 822; RRS § 2613.]

**9.33.060 Coercion.** Every person who, with intent to compel another to do or abstain from doing an act which such other person has a right to do, or abstain from doing, shall wrongfully and unlawfully—

(1) Use violence or inflict injury upon such other person or any of his family, or upon his property, or threaten such violence or injury; or

(2) Deprive such person of any tool, implement or clothing, or hinder him in the use thereof; or

(3) Attempt to intimidate such person by threats or force,

Shall be guilty of a misdemeanor. [1909 c 249 § 362; RRS § 2614.]

**9.33.070 Extortion by ferryman, toll gate keeper, etc.** If any ferryman, ferry owner, ferry keeper, or keeper of a toll bridge or toll gate, himself, or by any person in his employment, shall demand or receive any greater fees on account of ferriage or toll, than is or may be fixed by law, or by the proper board doing county business, as the rates of ferriage or toll to be received by such person, upon conviction thereof, he shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one month. [Code 1881 § 923; 1873 p 208 § 119; 1854 p 95 § 108; RRS § 2715.]

## Chapter 9.34

### FALSE PERSONATION

#### Sections

9.34.010	Falsely personating another.
9.34.020	Personating an officer.

**9.34.010 Falsely personating another.** Every person who shall falsely personate another, and in such assumed character shall—

(1) Marry or pretend to marry or sustain the marriage relation towards another; or

(2) Become bail or surety for a party in an action or special proceeding, civil or criminal, before a court or officer authorized to take such bail or surety; or

(3) Confess a judgment; or

(4) Subscribe, verify, publish, acknowledge or approve a written instrument which by law may be recorded, with intent that the same may be delivered or issued as true; or

(5) Appear for arraignment, trial or judgment in any criminal proceeding; or

(6) Do any other act in the course of any action or proceeding, wherein, if it were done by the person falsely personated such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender or to any other person.

Shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 363; RRS § 2615.]

*Unlawfully performing marriage ceremony: RCW 26.04.240.*

**9.34.020 Personating an officer.** Every person who shall falsely personate a public officer, civil or military, or a policeman, or a private individual having special authority by law to perform an act affecting the rights or interests of another, or who, without authority shall

assume any uniform or badge by which such an officer or person is lawfully distinguished, and in such assumed character shall do any act purporting to be official, whereby another is injured or defrauded, shall be guilty of a gross misdemeanor. [1909 c 249 § 364; RRS § 2616.]

*Assuming to be attorney or officer of court: RCW 7.20.010(6).*  
*Military insignia, unlawful wearing: RCW 38.40.140.*

### Chapter 9.37 FALSE PRETENSES

#### Sections

9.37.010 Use of false permit, license or diploma.  
9.37.020 Obtaining signature by false pretense.  
9.37.030 Acting without lawful authority.  
9.37.040 Collecting for benefit without authority.  
9.37.050 Fraudulent use of name of secret societies.  
9.37.060 Unlawful use of name "Parent Teacher", etc.

*Animals or vehicles, false pretenses in obtaining: RCW 9.08.040.*

*Frauds on innkeeper: RCW 9.45.040.*

*Obtaining employment by false recommendation: RCW 49.44.040.*

*Pistol, obtaining by false pretense: RCW 9.41.130.*

*Production of pretended heir: RCW 9.45.010.*

*Search and seizure of property obtained by false pretenses: Chapter 10.79 RCW.*

**9.37.010 Use of false permit, license or diploma.** Every person who shall conduct any business or perform any act under color of, or file for record with any public officer, any false or fraudulent permit, license, diploma or writing, or any permit, license, diploma or writing not lawfully belonging to such person, or who shall obtain any permit, license, diploma or writing by color or aid of any false representation, pretense, personation, token or writing, shall be guilty of a gross misdemeanor. [1909 c 249 § 365; RRS § 2617.]

*Assuming to be attorney or officer of court: RCW 7.20.010(6), 9.23.010(8).*

*Chiropody, using false license: RCW 18.22.200.*

*Chiropractic, using false license: RCW 18.25.090.*

*Dentistry, filing false license, etc.: RCW 18.32.300, 18.32.360.*

*Engineer or land surveyor, practicing illegally as: RCW 18.43.120.*

*Liquor permit, procuring by false pretenses: RCW 66.20.200.*

*Optometry, using false license: RCW 18.53.140, 18.53.150.*

*Osteopathy, unlawful practices: RCW 18.57.160.*

*Pharmacy, using false license: RCW 18.64.250.*

*Registered nurses, using false diploma, etc.: RCW 18.88.270.*

*Veterinarians, filing false license: RCW 18.92.230.*

**9.37.020 Obtaining signature by false pretense.** Every person who, with intent to cheat or defraud another, shall designedly by color or aid of any false token or writing or other false pretense, representation or presentation, obtain the signature of any person to a written instrument, shall be punished by imprisonment in the state penitentiary 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. [1909 c 249 § 367; RRS § 2619.]

**9.37.030 Acting without lawful authority.** Every person who shall in any case not otherwise specially provided for, do any act, for the doing of which a license

or other authority is required by law, without having such license or other authority as required by law, shall be guilty of a misdemeanor. [1909 c 249 § 421; RRS § 2673.]

**Reviser's note:** See notes following RCW 9.37.010.

**9.37.040 Collecting for benefit without authority.** Every person who shall sell a ticket to any ball, benefit or entertainment, or ask or receive any subscription or promise thereof, for the benefit or pretended benefit of any person, association or order, without being duly authorized thereto by the person, association or order for whose benefit or pretended benefit the same is done, shall be guilty of a misdemeanor. [1909 c 249 § 422; RRS § 2674.]

**9.37.050 Fraudulent use of name of secret societies.** Any person, firm, association, society, order or organization or any officer, agent, representative or employee thereof, or person acting or pretending to act on behalf thereof who in a newspaper or other publication published in this state, or in any letter, writing, circular, paper, pamphlet or other writing or printed notice, matter or device without authority of the grand lodge hereinafter mentioned, fraudulently uses, or in any manner directly or indirectly aids in the use of the name or title of any secret fraternal association, society, order or organization which has had a grand lodge in this state for five years, or any secret fraternal association, society, order or organization having as a necessary qualification to membership, membership in a secret fraternal society, order or organization under the jurisdiction of said grand lodge, or any imitation of such name or title or any name or title so nearly resembling it as to be calculated to deceive, or without such authority publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device, or by word of mouth, directly or indirectly advertising for or soliciting members or applications for membership in such secret fraternal association, society, order or organization using or designated or claimed to be known by such title or imitation or resemblance thereof or who offers to sell or to confer or to communicate or to give information directly or indirectly where, how, of whom, or by what means any alleged or pretended secret work or any alleged or pretended secrets of such secret fraternal association, society, order or organization or of any alleged or pretended association, society, order or organization designated or claimed to be known by such title or imitation or resemblance thereof can or may be obtained, conferred or communicated, or any person who falsely represents himself to be a member of any such secret fraternal association, society, order or organization or any person who upon false representations as to membership therein seeks or obtains admission into any such secret fraternal association, society, order or organization shall be guilty of a gross misdemeanor. [1911 c 46 § 1; RRS § 2696-2.]



**9.37.060 Unlawful use of name "Parent Teacher", etc.** It shall be unlawful for any organization, group or association, not duly chartered as a member of the Washington Congress of Parents and Teachers, a Washington corporation, to apply to itself the name "Parent Teacher," "Parent Teacher Association," "Council of Parent Teacher Associations," or any name deceptively similar thereto. Any violation of this section shall constitute a misdemeanor. [1937 c 78 § 1; RRS § 2696-4.]

### Chapter 9.38 FALSE REPRESENTATIONS

#### Sections

- 9.38.010 False representation concerning credit.  
9.38.020 False representation concerning title.  
9.38.030 Publishing false statement to affect market price.  
9.38.050 Falsifying accounts.

*Agricultural co-ops, false statements: RCW 24.32.330.*

*Animals or vehicles, false representation to obtain: RCW 9.08.040.*

*County commissioners, falsifying inventory: RCW 36.32.220.*

*Domestic insurers, corrupt practices: RCW 48.06.190.*

*Egg law, falsification concerning: RCW 69.24.420.*

#### 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.*

*Food fish and shellfish, false reports: RCW 75.08.220, 75.16.040.*

*Honey act, falsification: RCW 69.28.180.*

*Innkeeper, fraud on: RCW 9.45.040.*

*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.*

*Physical therapist registration: RCW 18.74.100.*

*Production of pretended heir: RCW 9.45.010.*

*Public assistance falsification: RCW 74.04.250, 74.08.055.*

*State employees retirement, false statements, etc.: RCW 41.40.400.*

*State patrol retirement fund, falsification of records: RCW 43.43.320.*

#### Taxation

*cigarette tax: RCW 82.24.110.*

*house trailer excise tax: RCW 82.50.170.*

*inheritance and gift taxes: RCW 83.56.300.*

*motor vehicle excise tax: RCW 82.44.120.*

*motor vehicle fuel tax: RCW 82.36.330, 82.36.380 through 82.36.400.*

*Teachers' retirement, falsification: RCW 41.32.670.*

*Veterans' bonus falsification: RCW 73.32.160, 73.33.100, 73.33.110.*

*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.]

**9.38.030 Publishing false statement to affect market price.** Every person who, with intent to affect the market price of any security or property shall put off, circulate or publish any false or misleading writing, statement or intelligence, shall be guilty of a gross misdemeanor. [1909 c 249 § 370; RRS § 2622.]

**9.38.050 Falsifying accounts.** Every person who shall wilfully or maliciously make any false entry, or fail to make an entry of any material matter, in any book or record of account, shall be guilty of a gross misdemeanor. [1909 c 249 § 409; RRS § 2661.]

*County commissioners, falsifying inventory: RCW 36.32.220.*

*Credit unions, falsifying books: RCW 31.12.340.*

*Mutual savings banks, falsifying books: RCW 32.04.100.*

*Public officers, false reports, etc.: Chapter 42.20 RCW.*

*Public works, falsifying records: RCW 39.04.110, 39.12.050.*

*Savings and loan associations, falsifying books, etc.: RCW 33.36.040.*

### Chapter 9.40 FIRE, CRIMES RELATING TO

#### Sections

- 9.40.010 Obstruction of extinguishment of fire.  
9.40.020 Obstructing firemen.  
9.40.030 Smoking—Where prohibited.  
9.40.040 Operating engine or boiler without spark arrester.  
9.40.050 Maliciously setting fire or permitting spread thereof.  
9.40.060 Kindling fire with intent to injure another's property.  
9.40.070 Kindling fire on another's land without malice.  
9.40.080 Kindling fire on another's land while hunting or fishing.  
9.40.100 Injuring or tampering with fire alarm apparatus or equipment—Sounding false alarm of fire.  
9.40.110 "Incendiary devices"—Definitions.  
9.40.120 "Incendiary devices"—Penalty.  
9.40.130 "Incendiary devices"—Exceptions.

*Arson: Chapter 9.09 RCW.*

*Burning without permit in fire protection district: RCW 52.28.010, 52.28.050.*

*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.*

*Wilful destruction of vessel: RCW 9.91.070.*

**9.40.010 Obstruction of extinguishment of fire.** Every person who, with intent to prevent or obstruct the extinguishment of any fire, shall cut or remove any bell rope, wire or other apparatus for communicating an alarm of fire, or cut, injure or destroy any engine, hose, or other fire apparatus, or otherwise prevent or obstruct the extinguishment of any fire, shall be punished by imprisonment in the state penitentiary 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. [1909 c 249 § 267; RRS § 2519.]

**9.40.020 Obstructing firemen.** Every person who at the burning of any building shall be guilty of any disobedience to the lawful orders of a public officer or fireman or of resistance to or interference with the lawful efforts of any fireman, or company of firemen to extinguish the same, or of disorderly conduct likely to interfere with the extinguishment thereof, or who shall forbid, prevent or dissuade others from assisting to extinguish such fire, shall be guilty of a misdemeanor. [1909 c 249 § 268; RRS § 2520.]

**9.40.030 Smoking—Where prohibited.** Every person who shall light a pipe, cigar or cigarette in, or who shall enter with a lighted pipe, cigar or cigarette, any mill or other building on which is posted in a conspicuous place over and near each principal entrance a notice in plain, legible characters stating that no smoking is allowed in such building, shall be guilty of a misdemeanor. [1909 c 249 § 269; RRS § 2521.]

**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.]

**9.40.050 Maliciously setting fire or permitting spread thereof.** If any person shall maliciously or wantonly set on fire any prairie or other grounds, other than his own or those of which he is in lawful possession, or shall wilfully or negligently permit or suffer the fire to pass from his own grounds or premises to the injury of another, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars. [1890 p 127 § 9; Code 1881 § 847; RRS § 5650.]

**9.40.060 Kindling fire with intent to injure another's property.** If any person shall maliciously, with intent to injure any other person, by himself or any other person, kindle a fire on his own land, or the land of another person, and by means of such fire the buildings, fences, crops or other personal property or wooded timber lands of any other person shall be destroyed or injured, he shall, on conviction, be punished by a fine not less than twenty dollars nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than twelve months, according to the aggravation of the offense. [1891 c 69 § 13; Code 1881 § 1225; 1877 p 300 § 2; RRS § 5651.]

**9.40.070 Kindling fire on another's land without malice.** If any person shall, without malice, kindle a fire in any field, pasture, inclosure, forest, prairie or timber

land, not his own, without the consent of the owner, and the same shall spread and do damage to any buildings, fences, crops, cordwood, bark or other personal property, not his own, or to any wood or timber land, not his own, he shall, on conviction, be punished by a fine of not less than ten nor more than five hundred dollars, and costs, according to the aggravation of the offense, and shall stand committed till the fine and costs are paid. [1891 c 69 § 14; Code 1881 § 1224; 1877 p 300 § 1; RRS § 5652.]

**9.40.080 Kindling fire on another's land while hunting or fishing.** Any person who shall enter upon the lands of another person for the purposes of hunting or fishing, and shall, by the use of firearms or other means, kindle any fire thereon, shall be punished by a fine not less than ten nor more than five hundred dollars, if such fire be kindled without malice, and if such fire be kindled maliciously and with intent to injure any other person, such offender shall be punished by a fine not less than twenty nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than twelve months. [1891 c 69 § 15; Code 1881 § 1227; 1877 p 300 § 4; RRS § 5654.]

**9.40.100 Injuring or tampering with fire alarm apparatus or equipment—Sounding false alarm of fire.** Any person who wilfully 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 wilfully 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 state fire marshal official. [1967 c 204 § 1.]

**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.
9.41.025	Committing crime when armed— Penalties—"Inherently dangerous" defined—Resisting arrest.
9.41.030	Being armed prima facie evidence of intent.
9.41.040	Certain persons forbidden to possess arms.
9.41.050	Carrying pistol.
9.41.060	Exception to carrying pistol restriction.
9.41.070	Issue of licenses to carry.
9.41.080	Delivery to minors and others forbidden.
9.41.090	Sales regulated—Application to purchase—Grounds for denial.
9.41.093	Exemptions.
9.41.095	Denial of application—Appeal.
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.
9.41.160	General penalties.
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.
9.41.200	Machine gun defined.
9.41.210	Penalty.
9.41.220	Machine guns and parts contraband.
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, carrying, exhibiting, displaying or drawing unlawful—Penalty—Exceptions.

*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.** "Short firearm" or "pistol" as used in RCW 9.41.010 through 9.41.160 means any firearm with a barrel less than twelve inches in length.

"Crime of violence" as used in RCW 9.41.010 through 9.41.160 means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, riot, mayhem, first degree assault, second degree assault, robbery, burglary and kidnapping. [1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

**Reviser's note:** Throughout this chapter, the "director of licenses" has been changed to the "director of motor vehicles" as the department of licenses was abolished and its powers, duties and functions devolved upon the department of motor vehicles. See chapters 46.01 and 43.24 RCW.

**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.]

This applies to the 1971 amendments to RCW 9.40.110-9.40.130, 9.41.010, 9.41.070, 26.44.050, 70.74.135, 70.74.270, 70.74.280, and to 9.27.015, 9.91.110 and chapter 70.108 RCW.

**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.]

**9.41.025 Committing crime when armed—Penalties—"Inherently dangerous" defined—Resisting arrest.** Any person who shall commit or attempt to commit any felony, or any misdemeanor or gross misdemeanor categorized herein as inherently dangerous, while armed with, or in the possession of any firearm, shall upon conviction, in addition to the penalty provided by statute for the crime committed without use or possession of a firearm, be imprisoned as herein provided:

(1) For the first offense the offender shall be guilty of a felony and the court shall impose a sentence of not less than five years, which sentence shall not be suspended or deferred;

(2) For a second offense, or if, in the case of a first conviction of violation of any provision of this section, the offender shall previously have been convicted of violation of the laws of the United States or of any other state, territory or district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be guilty of a felony and shall be imprisoned for not less than seven and one-half years, which sentence shall not be suspended or deferred;

(3) For a third or subsequent offense, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the law of the United States or of any other state, territory or

district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be guilty of a felony and shall be imprisoned for not less than fifteen years, which sentence shall not be suspended or deferred;

(4) Misdemeanors or gross misdemeanors categorized as "Inherently Dangerous" as the term is used in this statute means any of the following crimes or an attempt to commit any of the same: Assault in the third degree, provoking an assault, interfering with a public officer, disturbing a meeting, riot, remaining after warning, obstructing firemen, petit larceny, injury to property, intimidating a public officer, shoplifting, indecent liberties, and soliciting a minor for immoral purposes.

(5) If any person shall resist apprehension or arrest by firing upon a law enforcement officer, such person shall in addition to the penalty provided by statute for resisting arrest, be guilty of a felony and punished by imprisonment for not less than ten years, which sentence shall not be suspended or deferred. [1969 ex.s. c 175 § 1.]

**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 Certain persons forbidden to possess arms.** No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control. Such person upon being convicted of a violation of this section shall be guilty of a felony and punished by imprisonment in the state penitentiary for not less than one year nor more than ten years. [1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

**9.41.050 Carrying pistol.** No person shall carry a pistol in any vehicle unless it is unloaded or carry a pistol concealed on his person, except in his place of abode or fixed place of business, without a license therefor as hereinafter provided. [1961 c 124 § 4; 1935 c 172 § 5; RRS § 2516-5.]

**9.41.060 Exception to carrying pistol restriction.** 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.** 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 person within this state for two years from date of issue, for the purposes of protection or while engaged in business, sport or while traveling. Such citizen's constitutional right to bear arms shall not be denied to him, unless he is ineligible to own a pistol under the provisions of RCW 9.41.040 as now or hereafter amended or there exists a record of his prior court conviction of a crime of violence or of drug addiction or of habitual drunkenness or of confinement to a mental institution: *Provided*, That such permit shall be revoked immediately upon conviction of a crime which makes such a person ineligible to own a pistol. The license shall be in triplicate, in form to be prescribed by the state director of motor vehicles, and shall bear the name, address, and description, fingerprints and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent by registered mail to the director of motor vehicles and the triplicate shall be preserved for six years, by the authority issuing said license.

(1) The fee for the original issuance of a two-year license shall be five dollars: *Provided*, That the fee shall be distributed as follows:

(a) Two dollars shall be paid to the state general fund;

(b) One dollar fifty cents shall be paid to the agency taking the fingerprints of the person licensed; and

(c) One dollar fifty cents shall be paid to the issuing authority for the purpose of enforcing this chapter.

(2) The fee for the renewal of such license shall be three dollars: *Provided*, That the fee shall be distributed as follows:

(a) One dollar shall be paid to the state general fund; and

(b) Two dollars shall be paid to the issuing authority for the purpose of enforcing this chapter. [1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

**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 Sales regulated—Application to purchase—Grounds for denial.** In addition to the other requirements of RCW sections 9.41.010 through 9.41-.150 as now or hereinafter amended, no seller shall deliver a pistol to the purchaser thereof until seventy-two hours shall have elapsed from the time of the application for the purchase thereof as provided herein, and, when delivered, said pistol shall be securely wrapped and shall be unloaded.

At the time of applying for the purchase of a pistol the purchaser shall sign in duplicate and deliver to the seller an application containing his full name, address, occupation, place of birth, and the date and hour of the application; and a description of the weapon including, the make, model, caliber and manufacturer's number; and a statement that he has never been convicted in this state or elsewhere of a crime of violence, drug addiction or habitual drunkenness, or is legally judged to be of unsound mind. The seller shall, by the end of the business day, sign and attach his address and deliver the original of such application 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 seventy-two hours thereafter 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 has been convicted in this state or elsewhere of a crime of violence, drug addiction, or habitual drunkenness, or is legally judged to be of unsound mind. 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. [1969 ex.s. c 227 § 1; 1961 c 124 § 7; 1935 c 172 § 9; RRS § 2516-9.]

**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.]

**9.41.100 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 motor vehicles effective for not more than one <sup>of</sup> year from the date <sup>(if)</sup> 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 motor vehicles 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 motor vehicles; 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. [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.** RCW 9.41.010 through 9.41.160 shall not apply to antique pistols and revolvers manufactured prior to 1898 and held as collector's items. [1961 c 124 § 11; 1935 c 172 § 15; RRS § 2516-15.]

**9.41.160 General penalties.** Any violation of any provision of RCW 9.41.010 through 9.41.150, as amended, other than those violations specified in RCW 9.41.020 and 9.41.040, shall be a misdemeanor and punishable accordingly. [1961 c 124 § 12; 1935 c 172 § 16; RRS § 2516-16.]

**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 motor vehicles, and such license is not to be issued by the director of motor vehicles 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. [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 the state penitentiary for not more than twenty years.

(3) If the death of a human being results therefrom, by imprisonment in the state penitentiary for not more than twenty years. [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 game 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. [1965 c 46 § 1.]

**9.41.190 Machine guns prohibited.** That it shall be 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. [1933 c 64 § 1; RRS § 2518-1.]

**9.41.200 Machine gun defined.** For the purpose of RCW 9.41.190 through 9.41.220 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. [1933 c 64 § 2; RRS § 2518-2.]

**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.]

**9.41.230 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, carrying, exhibiting, displaying or drawing unlawful—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.]

**Chapter 9.44  
FORGERY**

Sections

- 9.44.010 Definitions.
- 9.44.020 First degree.
- 9.44.030 False certificate to certain instruments.
- 9.44.040 Second degree.
- 9.44.050 Falsely indicating person as corporate or public officer, etc.
- 9.44.060 Uttering forged instruments, coins, etc., forgery.
- 9.44.070 True writing signed by wrong-doer's name.
- 9.44.080 Misconduct in signing a petition.

*Ballots, forgery: RCW 29.85.040.*

*Cigarette tax stamps, forgery: RCW 82.24.100.*

*Conveyance tax stamps, forgery: RCW 82.20.050.*

*Credit or identification cards: RCW 9.26A.040.*

*Dentistry license forgery, etc.: RCW 18.32.300.*

*Elections, forging on nomination paper: RCW 29.85.140.*

*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.*

*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 evidence: RCW 9.72.080.*

*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.*

**9.44.010 Definitions.** Within the provisions of this chapter relating to forgery, a "written instrument," or a "writing," shall include an instrument partly written and partly printed or wholly printed with a written signature thereto, or any signature or writing purporting to be a signature of or intended to bind an individual, partnership, corporation or association or an officer thereof.

The words "forge," "forgery," "forged," and "forging," shall include false making, "counterfeiting" and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.

A plate is in the "form and similitude," of the genuine instrument forged, if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument. [1909 c 249 § 338; RRS § 2590.]

**9.44.020 First degree.** Every person who, with intent to defraud, shall forge any writing or instrument by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, or any request for the payment of money or delivery of property or any assurance of money or property, or any writing or instrument for the identification of any person, or any public record or paper on file in any public office, or any certified or authenticated copy of such record or paper, or any entry in any public or private record of account, or any judgment, decree, order, mandate, return, writ or process of any court, tribunal, judge, justice of the peace, commissioner or magistrate, or the official return or report of, or a license issued by, any public officer, or any pleading, demurrer, motion, affidavit, appearance, notice, cost bill, statement of facts, bill of exceptions or proposed statement of facts or bill of exceptions in any action or proceeding whether pending or not, or the draft of any bill or resolution that has been presented to either house of the legislature of this state, whether engrossed or not, or the great seal of this state, the seal of any public officer, court, notary public or corporation, or any public seal authorized or recognized by the laws of this or any other state or government, or any impression of any such seal; or shall forge or counterfeit any coin or money of any state or government, or any bank or treasury bill, any note or postage or revenue

stamp; or who, without authority shall make or engrave any plate in the form or similitude of any writing, instrument, seal, coin, money, stamp or thing which may be the subject of forgery, shall be guilty of forgery in the first degree, and shall be punished by imprisonment in the state penitentiary for not more than twenty years. [1909 c 249 § 331; Code 1881 § 854; 1873 p 194 § 63; 1854 p 85 § 57; RRS § 2583.]

*Alcoholic beverage control, improper use of seal: RCW 66.44.120.*

*Counterfeiting: Chapter 9.26 RCW.*

*State seal, improper use: RCW 9.91.050.*

**9.44.030 False certificate to certain instruments.** Every officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, who shall wilfully certify falsely that the execution of such instrument was acknowledged by any party thereto, or that the execution thereof was proved, shall be guilty of forgery in the first degree. [1909 c 249 § 332; RRS § 2584.]

**9.44.040 Second degree.** Every person who, with intent to injure or defraud shall—

(1) Make any false entry in any public or private record or account; or

(2) Fail to make a true entry of any material matter in any public or private record or account; or

(3) Forge any letter or written communication or copy or purported copy thereof, or send or deliver, or connive at the sending or delivery of any false or fictitious telegraph message or copy or purported copy thereof, whereby or wherein the sentiments, opinions, conduct, character, purpose, property, interests or rights of any person shall be misrepresented or may be injuriously affected, or, knowing any such letter, communication or message or any copy or purported copy thereof to be false, shall utter or publish the same or any copy or purported copy thereof as true, shall be guilty of forgery in the second degree, and shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars. [1909 c 249 § 333; Code 1881 § 854; 1873 p 194 § 63; 1854 p 85 § 57; RRS § 2585.]

**9.44.050 Falsely indicating person as corporate or public officer, etc.** The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, association, state or government, is forgery in the same degree as if that person were in truth such officer or agent of such corporation, association, state or government. [1909 c 249 § 334; RRS § 2586.]

**Reviser's note:** Caption for 1909 c 249 § 334 reads as follows: "Sec. 334. *Falsely Indicating Person as Corporate Officer.*"

**9.44.060 Uttering forged instruments, coins, etc., forgery.** Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter,



offer, dispose of or put off as true, or have in his possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, shall be guilty of forgery in the same degree as if he had forged the same. [1909 c 249 § 335; Code 1881 § 854; 1873 p 194 § 63; 1854 p 85 § 57; RRS § 2587.]

**9.44.070 True writing signed by wrong-doer's name.** Whenever the false making or uttering of any instrument or writing is forgery in any degree, every person who, with intent to defraud shall offer, dispose of or put off such an instrument or writing subscribed or endorsed in his own name or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or endorsement is the act of another person of the same name, or that of a person not in existence, shall be forgery in the same degree. [1909 c 249 § 336; RRS § 2588.]

**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.*  
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## Chapter 9.45 FRAUDS AND SWINDLES

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*Warehouseman or common carrier issuing false documents: Chapter 22.32 RCW.*

**9.45.010 Production of pretended heir.** Every person who shall fraudulently or falsely pretend that any infant child was born of a parent whose child is or would be entitled to inherit real property or to receive any personal property, or who shall falsely represent himself or another to be a person entitled to an interest or share in the estate of a deceased person as executor, administrator, husband, wife, heir, legatee, devisee, next of kin or relative of such deceased person, shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 122; RRS § 2374.]

*Fraudulently failing to deliver a will: RCW 11.20.010.*

**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 the state penitentiary for not more than ten years. [1909 c 249 § 123; RRS § 2375.]

**9.45.030 Swindling.** Every person who, by color, or aid of any trick or sleight of hand performance, or by any fraud or fraudulent scheme, cards, dice, or device, shall win for himself or for another any money or property, or representative of either, shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 219; RRS § 2471.]

*Bunco steering: RCW 9.47.120.*

**9.45.040 Frauds on innkeeper.** Every person who shall obtain any food, lodging or accommodation at any hotel, restaurant, boarding house or lodging house without paying therefor, with intent to defraud the proprietor or manager thereof, or who shall obtain credit at a hotel, restaurant, boarding house or lodging house by color or aid of any false pretense, representation, token or writing, or who after obtaining board, lodging or accommodation at a hotel, restaurant, boarding house or lodging house, shall abscond or surreptitiously remove his baggage therefrom without paying for such food, lodging or accommodation, shall be guilty of a misdemeanor. [1909 c 249 § 373; 1899 c 27 § 1; RRS § 2625.]

*Hotels, restaurants, lodging houses, etc., fraud in obtaining accommodations, etc.: RCW 19.48.110.*

*Lien of hotels, lodging and boarding houses: Chapter 60.64 RCW.*

**9.45.050 Fraudulently presenting claim to public officer.** Every person who, with the intent to defraud, shall knowingly present for audit, allowance or payment to any officer or board of the state or of any county, city, town or school district, authorized to audit, allow or pay bills, claims or charges, any false or fraudulent claim, account, writing or voucher or any bill, account or demand containing false or fraudulent charges, items or claims, shall be guilty of a gross misdemeanor. [1909 c 249 § 375; RRS § 2627.]

*Allowance, payment of fraudulent claim by public officer: RCW 42.20.060.*

**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 renter 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: RCW 9.54.070.*

**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.]

*Presumption on failure to return vehicle, machinery, or equipment pursuant to rental or lease agreement: RCW 9.54.140.*

**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 the state penitentiary 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. [1909 c 249 § 378; RRS § 2630.]

*Auctioneering without license: RCW 36.71.070.*

*Auctioneers: Chapter 18.11 RCW.*

*Auctions of jewelry or appliances: Chapter 18.12 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.*

**9.45.120 Using false weights and measures.** Every person who shall injure or defraud another by using, with knowledge that the same is false, a false weight, measure or other apparatus for determining the quantity of any commodity or article of merchandise, or by knowingly misrepresenting the quantity thereof bought or sold; or who shall retain in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it or permit it to be used in violation of the foregoing provisions of this section, shall be guilty of a gross misdemeanor. [1909 c 249 § 385; 1891 c 69 § 33; 1886 p 122 §§ 1-3; RRS § 2637.]

*Weighing commodities in highway transport, weighmasters: Chapter 15.80 RCW.*

**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.] This applies to RCW 9.45.122-9.45.126, 9.92.060, 9.95.060, 9.95.210, 10.04.110, 10.82.030, 10.82.040 and 36.01.070.

*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 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 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 the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or both. [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 the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or both. [1967 c 200 § 3.]

**9.45.150 Concealing foreign matter in merchandise.** Every person who, with intent to defraud, shall place or conceal any foreign substance in any barrel, bag, bale, box or other package containing any article of merchandise, shall be guilty of a gross misdemeanor. [1909 c 249 § 366; RRS § 2618.]

**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.]

**9.45.180 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.]

**9.45.190 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.]

**9.45.200 Fraud in selling mine or mining claim.** Any person who shall, with intent to cheat, wrong or defraud, place in or upon any mine or mineral claim any ores or specimens of ores not extracted therefrom, or exhibit any ore or certificate of assay of ore not extracted therefrom, for the purpose of selling any mine or mining claim, or any interest therein, or who shall obtain any money or property by any such false pretenses or artifices, shall be deemed guilty of a felony. [1890 p 99 § 1; RRS § 2711.]

*Mines, minerals and petroleum: Title 78 RCW.*

**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 9.45.200 through 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. [1890 p 99 § 4; RRS § 2714.]

**9.45.240 Fraud in obtaining telephone or telegraph service—Penalty.** (1) Every person who, with intent to evade the provisions of any order of the Washington utilities and transportation commission or of any tariff,

rule or regulation lawfully filed with said commission by any telephone or telegraph company, or with intent to defraud, obtains telephone or telegraph service from any telephone or telegraph company through the use of a false or fictitious name or telephone number or the unauthorized use of the name or telephone number of another, or through any other trick, deceit or fraudulent device, shall be guilty of a misdemeanor: *Provided, however,* That if the value of the telephone or telegraph service which any person obtains in violation of this section during a period of ninety days exceeds seventy-five dollars in the aggregate, then such person shall be guilty of a gross misdemeanor: *Provided further,* That as to any act which constitutes a violation of both this subsection and RCW 9.26A.050 the provisions of RCW 9.26A.050 shall be exclusive.

(2) Every person who:

(a) Makes, possesses, sells, gives or otherwise transfers to another an instrument, apparatus, or 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 an instrument, apparatus or device described in subparagraph (a) of this subsection with knowledge or reason to believe that they may be used to make or assemble such instrument, apparatus or device shall be guilty of a gross misdemeanor. [1974 1st ex.s. c 160 § 2; 1972 ex.s. c 75 § 1; 1955 c 114 § 1.]

*Publishing number or code of telephone company credit card: RCW 9.26A.090.*

**9.45.250 Fraud in obtaining cable television services.**

Any person who intentionally and knowingly obtains broadcast signals from a cable antenna television system by making any connection by wire to the cable, excepting from the wall outlet to the set, and who makes the connection without the consent of the operator of the system and in order to avoid payment to the operator shall be guilty of a misdemeanor. [1973 1st ex.s. c 94 § 1.]

**Chapter 9.46  
GAMBLING—1973 ACT**

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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 non-profit 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.

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. [1974 1st ex.s. c 155 § 1; 1974 1st ex.s. c 135 § 1; 1973 1st ex.s. c 218 § 1.]

**Reviser's note:** Throughout this chapter as devolved 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) repealing RCW 9.47.150-9.47.170, 9.47.300-9.47.440, 9.59.010-9.59.050 and 82.28.010-82.28.060 and a legislative directive section (30) stating sections 1-28 should constitute a new chapter in Title 9 RCW.

**Severability—1974 1st 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 1st ex.s. c 155 § 13; 1974 1st ex.s. c 135 § 13.] This applies to RCW 9.46.010, 9.46.020, 9.46.030, 9.46.040, 9.46.070, 9.46.080, 9.46.110, 9.46.195, 9.46.200, 9.46.210, 9.46.230, 9.46.295 and to repeal of RCW 9.46.280. Section 14 of the act which provided for an effective date and that act would be subject to referendum petition was vetoed by the governor. Such veto and the message thereon can be found in chapter 155, Laws of 1974 first extraordinary session.

**9.46.020 Definitions.** (1) "Amusement game" means a game played for entertainment in which:

- (a) The contestant actively participates;
- (b) The outcome depends in a material degree upon the skill of the contestant;
- (c) Only merchandise prizes are awarded;
- (d) The outcome is not in the control of the operator;
- (e) 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
- (f) Said game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of said organization takes any part in the management or operation of said game, including the furnishing of equipment, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting such game or said game is conducted as part of any agricultural fair as authorized under chapters 15.76 and 36.37 RCW or said game is conducted as part of and upon the site of:

(i) a civic center of a city with a population of twenty thousand or more persons as of the most recent decennial census of the federal government; or

(ii) a worlds fair or similar exposition which is approved by the Bureau of International Expositions at Paris, France; or

(iii) a community-wide civic festival held not more than once annually and sponsored or approved by a city or town.

(2) "Bingo" means a game 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 and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game.

(3) "Bona fide charitable or nonprofit organization" means: (a) 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 (b) 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. 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.

(4) "Bookmaking" means accepting bets as a business, rather than in a casual or personal fashion, upon the outcome of future contingent events.

(5) "Commission" means the Washington state gambling commission created in RCW 9.46.040.

(6) "Contest of chance" 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.

(7) "Fishing derby" means a fishing contest, with the payment or giving of an entry fee or other consideration by some or all of the contestants; wherein the contestants compete with each other for a prize or prizes, whether money, merchandise or other thing of value; the prize or prizes is or are awarded based upon the lawful catching of fish by any one or more of the contestants; and when such contest is conducted by a bona fide charitable or nonprofit organization.

(8) "Gambling". A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include 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 subsection (13) of this section shall not constitute gambling.

(9) "Gambling device" means: (a) 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; (b) 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; (c) any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and (d) any subassembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation. But 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 further*, 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.

(10) "Gambling information" 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: *Provided, however*, That this subsection shall not apply to newspapers of general circulation or commercial radio and television stations licensed by the federal communications commission.

(11) "Gambling premises" 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.

(12) "Gambling record" means any record, receipt, ticket, certificate, token, slip or notation given, made[,] used or intended to be used in connection with professional gambling.

(13) "Lottery" 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.

For the purpose of this chapter, the following activities do not constitute "valuable consideration" as an element of a lottery:

(a) Listening to or watching a television or radio program or subscribing to a cable television service;

(b) Filling out and returning 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 a newspaper, magazine or program;

(c) Sending a coupon or entry blank by United States mail to a designated address in connection with a promotion conducted in this state;

(d) Visitation to any business establishment to obtain a coupon, or entry blank;

(e) Mere registration without purchase of goods or services;

(f) Expenditure of time, thought, attention and energy in perusing promotional material;

(g) Placing or answering a telephone call in a prescribed manner or otherwise making a prescribed response or answer; or

(h) Furnishing the container of any 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 on it is acceptable in lieu thereof: *Provided*, That where any drawing is held by or on behalf of in-state retail outlets in connection with business promotions authorized under subsections (d) and (e) hereof, no such in-state retail outlet may conduct more than one such drawing during each calendar year and the period of the drawing and its promotion shall not extend for more than seven consecutive days: *Provided further*, That if the sponsoring organization has more than one outlet in the state such drawings 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 drawing in connection with the initial opening of any such outlet.

For purposes of this chapter, radio and television broadcasting is hereby declared to be preempted by applicable federal statutes and the rules applicable thereto by the federal communications commission. Broadcast programming, including advertising and promotion, that complies with said federal statutes and regulations is hereby authorized.

(14) "Player" 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 therein does not otherwise render material assistance to the establishment, conduct or operation thereof 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 therefor, and supplying cards or other equipment used therein. A person who engages in "bookmaking" as defined in this section is not a "player".

(15) A person is engaged in "professional gambling" when:

(a) Acting other than as a player or in the manner set forth in RCW 9.46.030 as now or hereafter amended, he 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 set forth in RCW 9.46.030 as now or hereafter amended, he knowingly 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 gambling activity;

(c) He engages in bookmaking; or

(d) He conducts a lottery as defined in subsection (13) of this section.

Conduct under subparagraph (a), except as exempted under RCW 9.46.030 as now or hereafter amended, 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 said premises to be used with the person's knowledge for the purpose of conducting gambling activity other than gambling activities as set forth in RCW 9.46.030 as now or hereafter amended, and acting other than as a player, and said person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, he 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 game shall be open to public inspection.

(16) "Punch boards" and "pull-tabs" 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.

(17) "Raffle" means a game in which tickets bearing an individual number are sold for not more than one dollar each and in which a prize or prizes are awarded on the basis of a drawing from said tickets by the person or persons conducting the game, when said game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of said organization takes any part in the management or operation of said game, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game.

(18) "Social card game" 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:

(a) There are two or more participants and each of them are players; and

(b) 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; and



(c) 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 item (c) shall not preclude a player from collecting or obtaining his winnings; and

(d) 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 to play or results in or from his playing: *Provided*, That this item (d) shall not apply to the membership fee in any bona fide charitable or nonprofit organization or to an admission fee allowed by the commission pursuant to RCW 9.46.070; and

(e) The type of card game is one specifically approved by the commission pursuant to RCW 9.46.070; and

(f) 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.

(19) "Thing of value" 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.

(20) "Whoever" and "person" 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 corporation or partnership, he shall be punishable for such violation as if it had been directly committed by him. [1974 1st ex.s. c 155 § 2; 1974 1st ex.s. c 135 § 2; 1973 1st ex.s. c 218 § 2.]

**Severability—1974 1st ex.s. c 155:** See note following RCW 9.46.010.

**9.46.030 Certain gambling activities authorized.** (1) The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct bingo games, raffles, amusement games, fishing derby, to utilize punch boards and pull-tabs and to allow their premises and facilities to be used by members and guests only 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.

(2) 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 chapter 9.46 RCW, 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: *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.

(3) The legislature hereby authorizes any person, association or organization to conduct social card games and to utilize punch boards and pull-tabs as a commercial stimulant when licensed and utilized or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto.

(4) The legislature hereby authorizes the management of any agricultural fair as authorized under chapters 15.76 and 36.37 RCW to conduct amusement games when licensed and operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto as well as authorizing said amusement games as so licensed and operated to be conducted as a part of and upon the site of:

(a) A civic center of a city with a population of twenty thousand or more persons as of the most recent decennial census of the federal government; or

(b) A worlds fair or similar exposition which is approved by the Bureau of International Expositions at Paris, France; or

(c) A community-wide civic festival held not more than once annually and sponsored or approved by a city or town.

The penalties provided for professional gambling in this chapter, shall not apply to bingo games, raffles, punch boards, pull-tabs, amusement games, or fishing derby, when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations of the commission. [1974 1st ex.s. c 155 § 3; 1974 1st ex.s. c 135 § 3; 1973 1st ex.s. c 218 § 3.]

**Severability—1974 1st ex.s. c 155:** See note following RCW 9.46.010.

**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 1st ex.s. c 155 § 12; 1974 1st ex.s. c 152 § 27; 1974 1st ex.s. c 135 § 12; 1973 1st ex.s. c 218 § 4.]

**Severability**—1974 1st ex.s. c 155: See note following RCW 9.46.010.

**Referral to electorate**—1974 1st ex.s. c 152: RCW 67.67.900.

**9.46.050 Gambling commission—Chairman—Quorum—Meetings—Per diem 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 receive fifty dollars per diem for each day or major portion thereof spent in performance of their duties plus reimbursement for actual travel expenses incurred in the performance of their duties in the same manner as provided for state officials generally in chapter 43.03 RCW as now or hereafter amended.

(5) Before entering upon the duties of his office, each of said 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. [1973 1st ex.s. c 218 § 5.]

**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, fishing derby, 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 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, 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 RCW 9.46.030 as now or hereafter amended.

(4) 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 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 not less than fifty percent of any such license fee shall be retained by the commission upon the denial of any such license as its reasonable expense for investigation into the granting thereof: *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.

Notwithstanding any other provision of this subsection, raffles may be conducted by any bona fide charitable or nonprofit organization not more than once each year without payment of a license fee if such organization shall not receive in gross receipts therefrom an amount over five thousand dollars.

(5) To require that applications for all licenses contain such information as may be required by the commission: *Provided*, That all persons 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 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;

(6) To require that any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(7) 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;

(8) 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; (iii) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from nonprofit, purposes;

(9) To regulate and establish the type and scope of and manner of conducting social card games permitted to be played, and the extent of wager, money or other thing of value which may be wagered or contributed or won by a player in a social card game;

(10) To regulate and establish a reasonable admission 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. A "reasonable admission fee" under this item shall be limited to a fee which would defray or help to defray the expenses of the game and which would not be contrary to the purposes of this chapter;

(12) 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;

(13) 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 34.04 RCW;

(14) 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 in RCW 9.46.030 as now or hereafter amended;

(15) 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; and

(16) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1974 1st ex.s. c 155 § 4; 1974 1st ex.s. c 135 § 4; 1973 2nd ex.s. c 41 § 4; 1973 1st ex.s. c 218 § 7.]

**Reviser's note:** Hiatus in subsection numbering results from veto of subsection (11).

**Severability—1974 1st ex.s. c 155:** See note following RCW 9.46.010.

**Enforcement—Commission as a law enforcement agency:** RCW 9.46.210.

**9.46.080 Gambling commission—Administrator—Staff—Rules and regulations.** The department of motor vehicles, subject to the approval of the commission, shall employ a full time employee as director respecting gambling activities, who shall be the administrator for the commission in carrying out its powers and duties and who, with the advice and approval of the commission shall issue rules and regulations governing the activities authorized hereunder and shall supervise departmental employees in carrying out the purposes and provisions of this chapter. In addition, the department shall furnish two assistant directors, together with such investigators and enforcement officers and with such of its administrative services and staff as are necessary to carry out the purposes and provisions of this chapter. The 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 departmental employee working therefor shall be an officer or manager of any charitable or nonprofit organization, or of any organization which conducts gambling activity in this state. [1974 1st ex.s. c 155 § 7; 1974 1st ex.s. c 135 § 7; 1973 1st ex.s. c 218 § 8.]

**Severability—1974 1st ex.s. c 155:** See note following RCW 9.46.010.

**9.46.090 Gambling commission—Reports.** The commission shall, from time to time, make reports to the governor covering such matters in connection with this chapter as he may require, and in addition shall prepare and forward to the governor, to be laid before the legislature, a report for the period ending on the thirty-first day of December of 1973, and a report annually thereafter on the thirtieth day of June of each year, which report shall be a public document, and contain a detailed statement and balance sheet showing in general the fiscal condition of the commission and commission expenditures and receipts for the preceding interval, together with 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 first commission appointed pursuant to RCW 9.46.040 shall

conduct a thorough study of the types of gambling activity permitted and the types of gambling activity prohibited by this chapter and shall submit to the session of the legislature convened in September, 1973, if there be one, or, if not, to the session of the legislature convened in January, 1974, a report making specific recommendations 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 appropriate fee for each type of license and permit; and (5) the type and amount of tax that ought to be applied to each type of permitted gambling activity. [1973 1st ex.s. c 218 § 9.]

**9.46.100 Gambling revolving fund—Created—Receipts—Disbursements—Use.** There is hereby created a fund to be known as 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 such employees of the department of motor vehicles as are working therefor, shall be paid from the gambling revolving fund. [1973 1st ex.s. c 218 § 10.]

**9.46.110 Taxation of gambling activities—Limitations—Restrictions as to punch boards or 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 in RCW 9.46.030 as now or hereafter amended 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 such county including both incorporated and unincorporated areas, except for any city located therein with a population of twenty thousand or more persons as of the most recent decennial census taken by the federal government: *Provided further*, That (1) punch boards and pull-tabs, chances on which shall only be sold to adults, which shall have a twenty-five 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 five 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, raffles and amusement games 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 punch boards and pull-tabs shall not exceed five percent of gross receipts. [1974 1st ex.s. c 155 § 8; 1974 1st ex.s. c 135 § 8; 1973 1st ex.s. c 218 § 11.]

**Severability—1974 1st ex.s. c 155:** See note following RCW 9.41.010.

**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 RCW 9.46.030, 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 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 RCW 9.46.030 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. [1973 1st ex.s. c 218 § 12.]

**9.46.130 Inspection and audit of premises, paraphernalia, books and records—Reports for department of revenue.** The premises and paraphernalia, and all the books and records of any person, association or organization conducting gambling activities authorized under

RCW 9.46.030 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 adopted pursuant thereto.

The department of revenue shall be provided at such reasonable intervals as the department 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. Upon request, copies of such reports shall be provided by the department of revenue to any law enforcement agency. [1973 1st ex.s. c 218 § 13.]

**9.46.140 Gambling commission—Hearing and subpoena power.** For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the commission, or any person appointed by it in writing for the purpose, may 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. The commission, or its designee, may conduct hearings, administer oaths, take depositions, compel the attendance of witnesses and issue subpoenas pursuant to RCW 34.04.105. [1973 1st ex.s. c 218 § 14.]

**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.]

**9.46.160 Conducting gambling activity without license as violation—Penalties.** Any person who conducts gambling activities without a license issued by the commission shall be guilty of a felony and upon conviction shall be punished by imprisonment for not more than five years or by a fine of not more than one hundred thousand dollars, or both. If any corporation conducts any gambling activity without a 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. [1973 1st ex.s. c 218 § 16.]

**9.46.170 False or misleading entries or statements, refusal to produce records, as violations—Penalty.** 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 and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both. [1973 1st ex.s. c 218 § 17.]

**9.46.180 Causing organization to violate chapter as violation—Penalty.** Any person who knowingly causes, aids, abets, or conspires with another to cause any association or organization to violate any provision of this chapter or of any rule or regulation adopted pursuant to this chapter shall be guilty of a felony and 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. [1973 1st ex.s. c 218 § 18.]

**9.46.190 Violations relating to fraud or deceit—Penalty.** Any person or association or organization operating any gambling activity authorized under RCW 9.46.030, 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 and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both. [1973 1st ex.s. c 218 § 19.]

**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 1st ex.s. c 155 § 11; 1974 1st ex.s. c 135 § 11.]

**Severability—1974 1st ex.s. c 155:** See note following RCW 9.46.010.

**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 in RCW 9.46.030 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. [1974 1st ex.s. c 155 § 10; 1974 1st ex.s. c 135 § 10; 1973 1st ex.s. c 218 § 20.]

**Severability—1974 1st 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 and all peace officers or law enforcement officers or law enforcement agencies within this state are hereby empowered to investigate, and enforce and prosecute all violations of this chapter.

(2) 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, both assistant directors and each of the investigators and inspectors assigned by the department of motor vehicles to the commission 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. [1974 1st ex.s. c 155 § 9; 1974 1st ex.s. c 135 § 9; 1973 1st ex.s. c 218 § 21.]

**Reviser's note:** For codification of 1973 1st ex. sess. c 218 see note to RCW 9.46.010. The contents of chapter 9.46 RCW through the 1974 1st ex. sess. derive either from 1973 1st ex. sess. c 218, are amendatory thereof, or have been specifically added thereto.

**Severability—1974 1st ex.s. c 155:** See note following RCW 9.46.010.

**9.46.220 Professional gambling as violation—Penalty.** Whoever engages in professional gambling, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling, 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 section shall not apply to those activities enumerated in RCW 9.46.030 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. [1973 1st ex.s. c 218 § 22.]

**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 RCW 9.46.020(9) 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 justice court, except when in the possession of officers enforcing this chapter.

(2) No property right in any gambling device as defined in RCW 9.46.020(9) 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 utilized in activities enumerated in RCW 9.46.030 as now or hereafter amended or 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.

(4) Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs or transports any gambling device as defined in RCW 9.46.020 as now or hereafter amended 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 devices used in those activities enumerated in RCW 9.46.030 as now or hereafter amended, 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. 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 activities enumerated in RCW 9.46.030 as now or hereafter amended 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. In the enforcement of this subsection direct possession of any such gambling record shall be presumed to be knowing possession thereof. [1974 1st ex.s. c 155 § 5; 1974 1st ex.s. c 135 § 5; 1973 1st ex.s. c 218 § 23.]

**Severability—1974 1st ex.s. c 155:** See note following RCW 9.46.010.

**9.46.240 Gambling information, transmitting or receiving as violation—Penalty.** 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: *Provided, however*, That this section shall not apply to such information transmitted or received or equipment installed or maintained relating to activities as enumerated in RCW 9.46.030 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. [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 set out in RCW 9.46.030, 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 set out in RCW 9.46.030, 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. [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.]

**9.46.290 Chapter not applicable to state lottery.** The provisions of this chapter, as now law or hereafter amended, 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 67.67.010 when such conducting, operating, participating, or selling or purchasing is in conformity to the provisions of RCW 67.67.010 through 67.67.230 and to the rules and regulations adopted thereunder. [1974 1st ex.s. c 152 § 26.]

**Referral to electorate—1974 1st ex.s. c 152: RCW 67.67.900.**

**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 1st ex.s. c 155 § 6; 1974 1st ex.s. c 135 § 6.]

**Severability—1974 1st ex.s. c 155: See note following RCW 9.46.010.**

**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.**



## 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.  
 9.47.130 Evidence—Testimony of player.

*Action to recover leased premises used for gambling: RCW 4.24.080.*

*Action to recover 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 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 the state penitentiary for not more than five years. [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 the state penitentiary for not more than ten years. [1909 c 249 § 227; RRS § 2479.]

*Swindling: RCW 9.45.030.*

**9.47.130 Evidence—Testimony of player.** No person shall be excused from giving testimony concerning any offense committed by another against any of the provisions of RCW 9.47.010 or 9.47.060, by reason of his having bet or played at the prohibited game or device. [1909 c 249 § 228; RRS § 2480.]

*Incriminating testimony not to be used: RCW 10.52.090.*

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

## Chapter 9.47A GLUE SNIFFING

### Sections

- 9.47A.010 Glue sniffing—Definition.  
 9.47A.020 Glue sniffing—Unlawful inhalation—Exception.  
 9.47A.030 Glue sniffing—Possession of certain glue prohibited, when.  
 9.47A.040 Glue sniffing—Sale of certain glue prohibited, when.  
 9.47A.050 Glue sniffing—Penalty.

**9.47A.010 Glue sniffing—Definition.** As used in this chapter, the phrase "Glue containing a solvent having the property of releasing toxic vapors or fumes" shall mean and include any glue, cement, or other adhesive 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. [1969 ex.s. c 149 § 1.]

**9.47A.020 Glue sniffing—Unlawful inhalation—**  
**Exception.** It shall be unlawful for any person to intentionally smell or inhale the fumes of any type of glue 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: *Provided, however,* That this section shall not apply to the inhalation of any anesthesia for medical or dental purposes. [1969 ex.s. c 149 § 2.]

**9.47A.030 Glue sniffing—Possession of certain glue prohibited, when.** No person shall, for the purpose of violating RCW 9.47A.020, use, or possess for the purpose of so using, any glue containing a solvent having the property of releasing toxic vapors or fumes. [1969 ex.s. c 149 § 3.]

**9.47A.040 Glue sniffing—Sale of certain glue prohibited, when.** No person shall sell, offer to sell, deliver, or give to any other person under eighteen years of age any tube or other container of glue 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. [1969 ex.s. c 149 § 4.]

**9.47A.050 Glue sniffing—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 9.48 HOMICIDE

Sections	
9.48.010	Defined and classified.
9.48.020	Proof of death and of killing by defendant.
9.48.030	Murder—First degree—Death penalty up to jury.
9.48.040	Murder in the second degree.
9.48.050	Killing in duel.
9.48.060	Manslaughter.
9.48.070	Killing unborn quick child.
9.48.080	Killing unborn quick child by administering drugs.
9.48.090	Woman taking drugs.
9.48.100	Owner of vicious animal.
9.48.110	Killing by overloading passenger vessel.
9.48.120	Reckless operation of steamboat or engine.
9.48.130	Liability of intoxicated physician.

9.48.140	Keeping explosive unlawfully.
9.48.150	Homicide, when excusable.
9.48.160	Justifiable homicide by public officer.
9.48.170	Homicide by other person, when justifiable.

*Attempt to commit a felony when armed: RCW 9.01.080.*

*Evidence material to homicide, search and seizure: RCW 10.79.015.*

*Human remains, concealing or failing to report: Chapter 68.08 RCW.*

*Inheritance rights of slayers: Chapter 11.84 RCW.*

*Negligent homicide by means of a motor vehicle: RCW 46.61.520.*

*On plea of guilty jury to determine degree of murder: RCW 10.49.010.*

**9.48.010 Defined and classified.** 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) manslaughter, (3) excusable homicide or (4) justifiable homicide. [1970 ex.s. c 49 § 1; 1909 c 249 § 138; RRS § 2390.]

**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.] This applies to RCW 9.48.010, 9.48.060, 9.69.100, 10.31.030, 10.37.033, and 46.61.520.

**9.48.020 Proof of death and of killing by defendant.** No person shall be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant, as alleged, are each established as independent facts beyond a reasonable doubt. [1909 c 249 § 139; RRS § 2391.]

**9.48.030 Murder—First degree—Death penalty up to jury.** The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when committed either—

(1) With a premeditated design to effect the death of the person killed, or of another; or,

(2) By an act imminently dangerous to others and evincing a depraved mind, regardless of human life, without a premeditated design to effect the death of any individual; or,

(3) Without design to effect death, by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a robbery, rape, burglary, larceny or arson in the first degree; or,

(4) By maliciously interfering or tampering with or obstructing any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure or appliance pertaining to or connected with any railway, or any engine, motor or car of such railway.

Murder in the first degree shall be punishable by imprisonment in the state penitentiary for life, unless the jury shall find that the punishment shall be death; and in every trial for murder in the first degree, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the death penalty shall be inflicted; and if such special verdict is in the affirmative, the penalty shall be death, otherwise, it shall be as herein provided. All executions in accordance herewith shall take place at the state penitentiary under the direction of and pursuant to arrangements made by the superintendent thereof. [1919 c 112 § 1; 1913 c 167 § 1; 1909 c 249 § 140; 1891 c 69 § 1; Code 1881 § 786; 1873

p 182 § 12; 1869 p 200 § 12; 1854 p 78 § 12; RRS § 2392.]

*Railroads, damaging, sabotaging or stealing property: RCW 81.60-.070-81.60.090.*

**9.48.040 Murder in the second degree.** The killing of a human being, unless it is excusable or justifiable, is murder in the second degree when—

(1) Committed with a design to effect the death of the person killed or of another, but without premeditation; or

(2) When perpetrated by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a felony other than those enumerated in RCW 9.48.030.

Murder in the second degree shall be punished by imprisonment in the state penitentiary for not less than ten years. [1909 c 249 § 141; Code 1881 § 790; 1873 p 182 § 13; 1869 p 200 §§ 13, 14; 1854 p 78 § 13; RRS § 2393.]

**9.48.050 Killing in duel.** Every person who shall fight or participate in, as second or assistant, any duel within this state, in which any person is killed, or who, by previous appointment made within this state, shall fight or participate in, as second or assistant, any duel out of the state, in which any person is killed, shall be guilty of murder in the second degree; and, in the latter case, may be proceeded against in any county in this state. [1909 c 249 § 142; Code 1881 § 791; 1873 p 183 § 16; 1869 p 201 § 14; 1854 p 78 § 14; RRS § 2394.]

*Duelling prohibited: Chapter 9.30 RCW.*

**9.48.060 Manslaughter.** Any homicide other than, murder in the first degree, or murder in the second degree, and not being excusable or justifiable is manslaughter.

Manslaughter is punishable by imprisonment in the state penitentiary for not more than twenty 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. [1970 ex.s. c 49 § 2; 1909 c 249 § 143; 1891 c 69 § 2; Code 1881 § 793; 1873 p 183 § 18; 1869 p 201 § 16; 1854 p 78 § 16; RRS § 2395.]

**Severability—1970 ex.s. c 49:** See note following RCW 9.48.010.  
*Aiding suicide: RCW 9.80.030.*

**9.48.070 Killing unborn quick child.** The wilful killing of an unborn quick child, by any injury committed upon the mother of such child, is manslaughter. [1909 c 249 § 144; Code 1881 § 820; 1873 p 188 §§ 41, 42; 1863 p 209 §§ 37, 38; 1854 p 81 §§ 37, 38; RRS § 2396.]

*Abortion: Chapter 9.02 RCW.*

**9.48.080 Killing unborn quick child by administering drugs.** Every person who shall provide, supply or administer to a woman, whether pregnant or not, or shall prescribe for or advise or procure a woman to take any medicine, drug or substance, or shall use or employ, or cause to be used or employed, any instrument or other

means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman or of any quick child of which she is pregnant is thereby produced, shall be guilty of manslaughter. [1909 c 249 § 145; Code 1881 § 821; 1873 p 188 §§ 41, 42; 1863 p 209 §§ 37, 38; 1854 p 81 §§ 37, 38; RRS § 2397.]

*Abortion: Chapter 9.02 RCW.*

*Selling drugs, etc.: RCW 9.02.030.*

**9.48.090 Woman taking drugs.** Every woman quick with child who shall take or use, or submit to the use of, any drug, medicine or substance, or any instrument or other means, with intent to procure her own miscarriage, unless the same is necessary to preserve her own life or that of the child whereof she is pregnant, and thereby causes the death of such child, shall be guilty of manslaughter. [1909 c 249 § 146; RRS § 2398.]

*Pregnant woman attempting abortion: RCW 9.02.020.*

**9.48.100 Owner of vicious animal.** If the owner or custodian of any vicious or dangerous animal, knowing its propensities, shall wilfully or negligently allow it to go at large, and such animal while at large shall kill a human being not himself in fault, such owner or custodian shall be guilty of manslaughter. [1909 c 249 § 147; RRS § 2399.]

*Animals, crimes relating to: Chapter 9.08 RCW.*

**9.48.110 Killing by overloading passenger vessel.** Every person navigating a vessel for gain who shall wilfully or negligently receive so many passengers or such a quantity of other lading on board, that by means thereof such vessel shall sink, be overset or injured, and thereby a human being shall be drowned or otherwise killed, shall be guilty of manslaughter. [1909 c 249 § 148; Code 1881 § 795; 1873 p 184 § 20; 1869 p 201 § 18; 1854 p 78 § 18; RRS § 2400.]

*Navigation and harbor improvements: Title 88 RCW.*

**9.48.120 Reckless operation of steamboat or engine.** Every person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness or gross negligence, or for the purpose of excelling another boat in speed, shall create or allow to be created such an undue quantity of steam as to burst the boiler or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or applying steam, who, wilfully or from ignorance or gross negligence, shall create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or to cause any other accident, whereby the death of a human being is occasioned, shall be guilty of manslaughter. [1909 c 249 § 149; Code 1881 § 796; 1873 p 184 § 21; 1869 p 201 § 19; 1854 p 78 § 19; RRS § 2401.]

*Boilers and unfired pressure vessels: Chapter 70.79 RCW.*

*Excessive steam in boiler, penalty: RCW 70.54.080.*

*Operating steamboat while intoxicated: RCW 9.91.020.*

**9.48.130 Liability of intoxicated physician.** Every physician or surgeon, or person practicing as such, who, being in a state of intoxication, or under the influence of any narcotic drug, shall prescribe or administer any poison, drug or medicine, or do any other act as a physician, to another person, which, though done without design, shall cause the death of the latter, shall be guilty of manslaughter. [1909 c 249 § 150; Code 1881 § 955; 1873 p 211 § 136; 1869 p 227 § 130; 1854 p 97 § 124; RRS § 2402.]

*Medical disciplinary board: Chapter 18.72 RCW.*

*Physicians and surgeons: Chapter 18.71 RCW.*

*Poisons, misbranding and unlawful use: Chapters 69.36, 69.40 RCW.*

**9.48.140 Keeping explosive unlawfully.** Every person who shall make or keep gun powder, or any other explosive substance, in a city or village, in any quantity or manner prohibited by law or by ordinance of such municipality, if an explosion thereof shall occur whereby the death of a human being is occasioned, shall be guilty of manslaughter. [1909 c 249 § 151; RRS § 2403.]

*Explosives: Chapter 70.74 RCW.*

*Explosives, transportation: Chapter 46.48 RCW.*

*Fireworks: Chapter 70.77 RCW.*

**9.48.150 Homicide, when excusable.** Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, with ordinary caution and without any unlawful intent. [1909 c 249 § 152; RRS § 2404.]

**9.48.160 Justifiable homicide by public officer.** Homicide is justifiable when committed by a public officer, or person acting under his command and in his aid, in the following cases:

(1) In obedience to the judgment of a competent court.

(2) When necessary 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.

(3) When necessary in retaking an escaped or rescued prisoner who has been committed, arrested for, or convicted of a felony; or in arresting a person who has committed a felony and is fleeing from justice; or in attempting, by lawful ways or means, to apprehend a person for a felony actually committed; or in lawfully suppressing a riot or preserving the peace. [1909 c 249 § 153; RRS § 2405.]

**9.48.170 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. [1909 c 249 § 154; RRS § 2406.]

## 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 9.18.030.*

*Trial: Chapter 4.44 RCW.*

*Trial, justice courts: Chapter 12.12 RCW.*

*Trial 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 9.52 KIDNAPING

### Sections

9.52.010	Kidnaping, first and second degrees.
9.52.020	Conspiracy to kidnap.
9.52.030	Selling services of person kidnaped.
9.52.040	Venue—Effect of consent.

*Abduction: RCW 9.79.050.*

*Attempts: RCW 9.01.070, 9.01.080.*

*Extortion: Chapter 9.33 RCW.*

*Holding officer hostage: RCW 9.94.030.*

**9.52.010 Kidnaping, first and second degrees.** Every person who shall wilfully,

(1) Seize, confine or inveigle another with intent to cause him without authority of law to be secretly confined or imprisoned, or in any way held to service with the intent to extort or obtain money or reward for his release or disposition, shall be guilty of kidnaping in the first degree, and upon conviction thereof shall be punished by death or by imprisonment in the state penitentiary for life as the jury shall determine; and in every trial for kidnaping in the first degree, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the death penalty shall be inflicted;

and if such special verdict is in the affirmative, the penalty shall be death, otherwise, it shall be as herein provided. All executions in accordance herewith shall take place at the state penitentiary under the direction of and pursuant to arrangements made by the superintendent thereof: *Provided*, The time when such execution shall take place shall be set by the trial judge at the time of imposing sentence and as a part thereof.

(2) Lead, take, entice away or detain a child under the age of sixteen years with intent to conceal him from his parent, parents, guardian or other lawful person having care, custody or control over him, or with intent to steal any article from his person, but without the intent to extort or obtain money or reward for his return, or shall abduct, entice, or by force or fraud unlawfully take or carry away another to or from a place without the state, and shall afterwards send, bring or keep such person, or cause him to be kept or secreted within the state without the intent to extort or obtain money or reward for his release or disposition, shall be guilty of kidnaping in the second degree and shall be punished as in the case of a felony. [1933 ex.s. c 6 § 1; RRS § 2410-1. Prior: 1909 c 249 § 158; Code 1881 §§ 817, 818; 1873 p 187 § 39; 1869 p 204 § 37; 1854 p 81 § 35.]

**9.52.020 Conspiracy to kidnap.** It shall be a felony for two or more persons to enter into an agreement, confederation or conspiracy to commit kidnaping in the first degree or kidnaping in the second degree as the same are in RCW 9.52.010 defined, and in any prosecution for a violation of the provisions of this section it shall not be necessary to prove that any overt act has been done in furtherance of such agreement, confederation or conspiracy in order to prove the commission of such crime. [1933 ex.s. c 6 § 3; RRS § 2410-2.]

*Conspiracy: Chapter 9.22 RCW.*

**9.52.030 Selling services of person kidnaped.** Every person, who within this state or elsewhere, shall sell or in any manner transfer for any term, the services or labor of any person who has been forcibly taken, inveigled, or kidnaped in or from this state, shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 159; RRS § 2411.]

**9.52.040 Venue—Effect of consent.** Any proceeding for kidnaping may be instituted either in the county where the offense was committed or in any county through or in which the person kidnaped or confined was taken or kept while under confinement or restraint. Upon a trial for violation of RCW 9.52.010 or 9.52.030, the consent thereto of the person kidnaped or confined shall not be a defense unless it appears satisfactorily to the jury that such person was above the age of sixteen years and that his consent was not extorted by threats, duress or fraud. [1909 c 249 § 160; Code 1881 § 819; 1873 p 187 § 40; 1869 p 205 § 38; 1854 p 84 § 36; RRS § 2412.]

*Jurisdiction and venue: Chapter 10.25 RCW.*

**Chapter 9.54**  
**LARCENY**

## Sections

9.54.010	Larceny.
9.54.020	Taking motor vehicle without permission.
9.54.030	Motor vehicles, cycles, trailers, vessels, motorboats or parts—Buying, selling, etc. when identification numbers or marks removed, altered, etc.—Penalty—Enforcement and recovery procedures.
9.54.040	Possession prima facie evidence of guilt.
9.54.050	Unlawful issuance of bank checks or drafts.
9.54.060	Commission or part ownership no defense.
9.54.070	Sale of mortgaged property—When larceny.
9.54.080	Contractor failing to pay for labor or material.
9.54.090	Grand larceny—Petit larceny.
9.54.100	Value—How ascertained.
9.54.110	Stealing railway or steamboat tickets, coupons, or passes.
9.54.115	Larcenous appropriation of livestock.
9.54.120	Claim of title—When ground of defense.
9.54.130	Restoration of stolen property—Duty of officers.
9.54.140	Presumption on failure to return vehicle, machinery, or equipment pursuant to rental or lease agreement.

*Attempts: RCW 9.01.070, 9.01.080.*

*Insurance agent, appropriation of premiums: RCW 48.17.480.*

*Interfering with railroad with intent to commit larceny: RCW 9.75.020.*

*Pawnbrokers and second-hand dealers: RCW 19.60.063, 19.60.100.*

*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.*

*Robbing sluice boxes, etc.: RCW 9.75.030.*

*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.*

*Taking caught fish or stealing gear: RCW 75.12.090.*

**9.54.010 Larceny.** Every person who, with intent to deprive or defraud the owner thereof—

(1) Shall take, lead or drive away the property of another; or

(2) Shall obtain from the owner or another the possession of or title to any property, real or personal, by color or aid of any order for the payment or delivery of property or money or any check or draft, knowing that the maker or drawer of such order, check or draft was not authorized or entitled to make or draw the same, or by color or aid of any fraudulent or false representation, personation or pretense or by any false token or writing or by any trick, device, bunco game or fortune-telling; or

(3) Having any property in his 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 a person authorized by agreement or by competent authority to take or hold such possession, custody or control, or as a finder thereof, shall secrete, withhold or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto; or

(4) Having received any property by reason of a mistake, shall with knowledge of such mistake secrete, withhold or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto; and

(5) Every person who, knowing the same to have been so appropriated, shall bring into this state, or buy, sell, receive or aid in concealing or withholding any property wrongfully appropriated, whether within or outside of this state, in such manner as to constitute larceny under the provisions of this chapter—

Steals such property and shall be guilty of larceny. [1915 c 165 § 3; 1909 c 249 § 349; Code 1881 § 830; 1873 p 190 § 50; 1854 p 83 § 45; RRS § 2601.]

*Auctioneer receiving property of doubtful ownership: RCW 18.11.010, 18.11.030.*

*Embezzlement by county officers: RCW 36.18.170.*

*Embezzlement by state treasurer: RCW 43.08.140.*

*Ownership of property, proof of: RCW 10.58.060.*

**9.54.020 Taking motor vehicle without permission.**

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 a felony. [1919 c 64 § 1; 1915 c 155 § 1; RRS § 2601-1.]

*Driving vehicle from place where left by owner: RCW 9.61.040(8).*

*Obtaining vehicle by fraud: RCW 9.08.040.*

**9.54.030 Motor vehicles, cycles, trailers, vessels, motorboats or parts—Buying, selling, etc. when identification numbers or marks removed, altered, etc.—Penalty—Enforcement and recovery procedures.**

(1) Whoever knowingly buys, sells, receives, disposes of, conceals, or has knowingly in his possession any motor vehicle, motorcycle, motor-driven cycle, trailer, vessel, motorboat, or component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed for the purpose of concealment or misrepresenting the identity of the said motor vehicle, motorcycle, motor-driven cycle, trailer, vessel, motorboat or component part thereof shall be guilty of a gross misdemeanor.

(2) Any motor vehicle, motorcycle, motor-driven cycle, trailer, vessel, motorboat, or any component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed, there being probable cause to believe that such was done for the purpose of concealing or misrepresenting identity, shall be impounded and held by the seizing law enforcement agency until the original numbers or marks are restored, or it is determined that the motor vehicle, motorcycle, motor-driven cycle, trailer,

vessel, motorboat, or component part thereof, was reported as stolen and it is returned to the rightful owner as provided in this subsection. If reported as stolen the seizing law enforcement agency shall promptly return such motor vehicle, motorcycle, motor-driven cycle, trailer, vessel, motorboat, or parts thereof as have been stolen to the person who was the lawful owner or the lawful successor in interest, upon receiving proof that such person presently owns or has a lawful right to the return and possession of such motor vehicle, motorcycle, motor-driven cycle, trailer, vessel, motorboat, or component part thereof.

(3) If the original manufacturer's serial numbers or other distinguishing numbers or identification marks cannot be restored, and if the article was not reported stolen or was reported stolen and the seizing law enforcement agency cannot locate the person who was the lawful owner at the time it was reported stolen or his lawful successor in interest, or if such lawful owner or his lawful successor in interest fails to claim the article within forty-five days after receiving notice from the seizing law enforcement agency that the article is in its possession, the motor vehicle, motorcycle, motor-driven cycle, trailer, vessel, motorboat, or component part thereof may be destroyed or may be sold at public auction to the highest bidder or may be held by the seizing law enforcement agency for its official use and purposes: *Provided*, That no such disposition shall be undertaken until at least sixty days have elapsed from the date of seizure: *Provided further*, That written notice of the seizure and potential disposition shall have first been served upon the person who held possession or custody of the article when it was impounded and upon any other person who prior to final disposition of the article notifies the seizing law enforcement agency in writing of a claim to ownership or lawful right to possession thereof, and a reasonable opportunity to be heard as to the claim of ownership or right of possession shall have first been afforded to such person or persons. Such hearing shall be before the chief law enforcement officer of the seizing agency or his designee, except that any person claiming ownership or right of possession hereunder may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is one hundred dollars or more. A hearing before the agency and any appeal therefrom shall be pursuant to chapter 34.04 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to 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 to have the lawful right to possession. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon determination by the hearing officer or court that he is the present lawful owner or is lawfully entitled to possession thereof.

(4) Prior to the release from a law enforcement agency's custody or the future use of any motor vehicle, motorcycle, motor-driven cycle, trailer, motorboat, or component part thereof, from which the serial number or other distinguishing number or identification mark

has been removed, defaced, covered, altered or destroyed, an identification number shall be assigned in accordance with the rules and regulations promulgated by the department of motor vehicles. [1974 1st ex.s. c 124 § 1; 1917 c 60 § 1; RRS § 2601-3.]

*Auto wreckers handling vehicles with serial number removed: RCW 46.80.120.*

*Dealer handling vehicles with serial number removed: RCW 46.70.140.*

*Motor numbers, certificates of ownership, crimes relating to: Chapter 46.12 RCW.*

*Receiving or transferring vehicle believed stolen: RCW 46.12.210.*

**9.54.040 Possession prima facie evidence of guilt.** In any prosecution under the provisions of RCW 9.54.030 evidence that any person has, or at the time of his arrest charged with the violation of RCW 9.54.030 had in his possession any motor vehicle or motorboat from which the manufacturer's serial number or numbers or other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed shall constitute prima facie proof of the guilt of such person. [1917 c 60 § 2; RRS § 2601-4.]

**9.54.050 Unlawful issuance of bank checks or drafts.**

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 depository, to meet said check, in full upon its presentation, shall be guilty of larceny. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank 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. [1915 c 156 § 1; RRS § 2601-2.]

*Checks: Chapter 30.16 RCW.*

*Negotiable instruments: Title 62A RCW.*

**9.54.060 Commission or part ownership no defense.**

It shall be no defense to a prosecution for larceny that the accused was entitled to a commission out of the money or property appropriated, as compensation for collecting or receiving the same for or on behalf of the owner thereof, or that the money or property appropriated was partly the property of another and partly the property of the accused; but it shall not be larceny for any bailee, factor, pledgee, servant, attorney, agent, employee, or trustee, executor, administrator, guardian, officer or other person to retain his reasonable collection fee or charges. [1909 c 249 § 350; RRS § 2602.]

**9.54.070 Sale of mortgaged property—When larceny.** Every person who shall sell or mortgage any personal property which is at the time mortgaged or upon which any lien has been or may lawfully be filed, without informing the purchaser or mortgagee thereof, before the payment of the purchase price or money loaned, of the several amounts of all such mortgages

and liens, shall be deemed to have made a false representation within the meaning of RCW 9.54.010(2). [1909 c 249 § 351; RRS § 2603.]

*Destruction or removal of mortgaged property: RCW 9.45.060.*  
*Removal of property from mortgaged premises: RCW 61.12.030.*

**9.54.080 Contractor failing to pay for labor or material.** Every person having entered into a contract to supply any labor or materials for the value or price of which any lien might lawfully be filed upon the property of another, who shall receive the full price or consideration thereof, or the amount of any account stated thereon, shall be deemed within the meaning of RCW 9.54.010(3), to receive the same as the agent of the party with whom such contract was made, his successor or assign, for the purpose of paying all claims for labor and materials supplied. [1909 c 249 § 352; RRS § 2604.]

*Farm labor contractors: Chapter 19.30 RCW.*

**9.54.090 Grand larceny—Petit larceny.** Every person who steals or unlawfully obtains, appropriates, brings into this state, buys, sells, receives, conceals, or withholds in any manner specified in RCW 9.54.010—

(1) Property of any value by taking the same from the person of another or from the body of a corpse; or

(2) Property of any value by taking the same from any building that is on fire or by taking the same after it has been removed from a building in consequence of an alarm of fire; or

(3) A record of a court or officer, or a writing, instrument, or record kept, filed, or deposited according to law with or in the keeping of any public officer or officers; or

(4) From any range or pasture, any horse, mare, gelding, foal or filly, ass or mule, one or more head of neat cattle, or any sheep; or

(5) Property of the value of more than twenty-five dollars if obtained by color or aid of any order for the payment or delivery of property or money or any check or draft, knowing that the maker or drawer of such order, check, or draft was not authorized or entitled to make or draw the same; or

(6) Property of the value of more than seventy-five dollars, in any manner whatever; shall be guilty of grand larceny and be punished by imprisonment in the state penitentiary for not more than fifteen years.

Every other larceny shall be petit larceny and shall be a gross misdemeanor. [1955 c 97 § 1; 1909 c 249 § 353; RRS § 2605.]

*Certificates of land registration, theft is grand larceny: RCW 65.12.730.*

**9.54.100 Value—How ascertained.** The value of all instruments not having a market value, whether issued or delivered or not, by which any claim, privilege, right, obligation or authority or any right or title to property, real or personal, is, or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, shall be

deemed to be the amount of money due thereon or secured to be paid thereby and unpaid, or which in any contingency might be collected thereon or thereby, or the value of the property transferred or affected or the title to which is shown thereby, or the sum which might be recovered for the want thereof, as the case may be. In every other case not otherwise regulated by statute, "value" shall be deemed to mean market value. [1909 c 249 § 354; RRS § 2606.]

**9.54.110 Stealing railway or steamboat tickets, coupons, or passes.** If any person in the employ of a railway or steamboat company shall fraudulently neglect to cancel or to return to the proper officer or agent of such company, any ticket, coupon or pass, with intent to permit the same to be used in fraud of any railway or steamboat company, or if any person shall steal or fraudulently stamp, print, sign, sell or put into circulation any such ticket, coupon or pass, he shall be guilty of larceny. [1909 c 249 § 355; RRS § 2607.]

*Reviser's note:* Caption for 1909 c 249 § 355 reads as follows: "Sec. 355. *Stealing Railway Tickets.*"

**9.54.115 Larcenous appropriation of livestock.** Every person who, with intent to deprive or defraud the owner thereof, wilfully takes, leads or transports away, conceals, withholds, slaughters, or otherwise appropriates to his own use any horse, mule, cow, heifer, bull, or steer, or swine, or sheep, shall be guilty of grand larceny and shall be punished by imprisonment for not more than fifteen years, or by fine of not more than one thousand dollars, or by both such fine or imprisonment. [1961 c 63 § 1.]

*Larcenous taking of livestock from range or pasture: RCW 9.54.090 (4).*

*Shooting or poisoning livestock: RCW 9.08.050.*

**9.54.120 Claim of title—When ground of defense.** In any prosecution for larceny it shall be a sufficient defense that the property was appropriated openly and avowedly under a claim of title preferred in good faith, even though the claim be untenable. [1909 c 249 § 356; RRS § 2608.]

**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.]

**9.54.140 Presumption on failure to return vehicle, machinery, or equipment pursuant to rental or lease agreement.** Any person to whom a motor vehicle, or piece of machinery or equipment having a fair market



value in excess of two thousand dollars, is delivered on a rental or lease basis under any agreement in writing providing for its return to a particular place at a particular time, who refuses or wilfully neglects to return such vehicle or piece of machinery or equipment after the expiration of a reasonable time after a notice in writing proved to have been duly mailed by registered or certified mail with return receipt requested addressed to the last known address of the person who rented or leased the motor vehicle, or piece of machinery or equipment shall be presumed to have intended to deprive or defraud the owner thereof within the meaning of RCW 9.54.010 defining the crime of larceny. This presumption may be rebutted by evidence creating a reasonable inference that the failure to return the vehicle or piece of machinery or equipment was not with the intent to defraud or otherwise deprive the owner of his property. [1965 c 32 § 1.]

*Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.*

**Chapter 9.55  
LEGISLATURE, CRIMES RELATING TO**

Sections  
 9.55.010 Disturbing legislature or intimidating member.  
 9.55.020 Witness refusing to attend legislature or committee or to testify.

*Forgery of legislative bill or resolution: RCW 9.44.020.*

**9.55.010 Disturbing legislature or intimidating member.** Every person who shall wilfully disturb the legislature of this state, or either house thereof, while in session, or who shall commit any disorderly conduct in the presence or view of either house thereof, tending to interrupt its proceedings or impair the respect due to its authority, or who wilfully, by intimidation or otherwise, shall prevent any member of the legislature from attending any session of the house of which he shall be a member or any committee thereof, or from giving his vote upon any question which may come before such house or committee, or from performing any other official act, shall be guilty of a gross misdemeanor. [1909 c 249 § 85; RRS § 2337.]

**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.  
 9.58.100 Slander of financial institution.  
 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 9.33 RCW.*

**9.58.100 Slander of financial institution.** Any person who shall instigate, make, circulate or transmit to another any false statement concerning the moral or financial condition of, or affecting the solvency of, any bank, mutual savings bank, national banking association, building and loan association, savings and loan association, savings and loan society, industrial loan company or trust company doing business in this state, or who shall instigate, make, transmit or circulate any false report, rumor or prediction of the impending or future default, insolvency or closing of any such bank, association, society or trust company, or who shall counsel, advise, aid or induce another to start, transmit or circulate any such statement, report, rumor or prediction shall be guilty of a gross misdemeanor. [1933 c 61 § 1; 1913 c 97 § 1; 1925 ex.s. c 141 § 1; RRS § 2432-1.]

*Slandering financial standing of savings and loan association: RCW 33.36.050.*

**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.]

*Action for falsely charging sex crimes: RCW 4.24.120.*

**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	
9.61.010	Injuring public utilities —Penalty.
9.61.020	Unlawful interference with gas, electric, steam or water appliance—Penalty.
9.61.030	Interfering with dam, reservoir, etc.—Penalty.
9.61.040	Injury to property—Penalty.
9.61.050	Tampering with papers.
9.61.060	Injury to baggage.
9.61.070	Injury to other property—Penalty.
9.61.080	Disturbing settlers on unsurveyed lands.

- 9.61.090 Injury to buildings or contents—Penalty.  
 9.61.100 Destruction of monument records, etc.  
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 9.61.140 Endangering life and property by explosives—Penalty.  
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 9.61.160 Threats to bomb or injure property.  
 9.61.170 Threats to bomb or injure property—Hoax no defense.  
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 9.61.190 Carrier or racing pigeons—Injury to.  
 9.61.200 Carrier or racing pigeons—Removal or alteration of identification.  
 9.61.210 Carrier or racing pigeons—Penalty.  
 9.61.220 Interfering with coin or currency receptacle.  
 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 trespass: RCW 9.83.070.*

*Mutilation or destruction of property by school official: RCW 28A.87.130.*

*Nuisance: Chapter 9.66 RCW.*

*Ownership of property—Proof of: RCW 10.58.060.*

*Public library property, intentional injury: RCW 27.12.330.*

*Removing or destroying safety device used in extrahazardous employment: RCW 49.16.040.*

**9.61.010 Injuring public utilities—Penalty.** Every person who shall wilfully or maliciously remove, damage or destroy:

(1) A highway or a private way laid out by authority of law, or a bridge upon such public or private road, or wilfully or maliciously cause to be placed thereon any substance or thing dangerous to any person or animal traveling thereon or which might injure or puncture the tire of any vehicle; or,

(2) A pile or other material fixed in the ground and used for securing any bank or dam of any river or other water, or any dike, dock, quay, jetty or lock; or,

(3) A buoy or beacon lawfully placed in any waters within this state; or,

(4) A tree, rock, post or other monument erected or marked for the purpose of designating a point on the boundary of the state, of a county, city, town or of a farm, tract or lot of land, or any mark or inscription thereon; or,

(5) A mile board, milestone or guidepost erected upon a highway, or any inscription thereon; or,

(6) A telegraph, telephone or electric transmission line or any part thereof, or any appurtenance thereto, or apparatus connected with the operation thereof; or,

(7) A fence, gate, cattle guard, bridge, water tank, milepost, car, engine, motor or other useful structure on the line of any railway; or,

(8) A pipe or main for conducting gas, water or oil, or any works erected for the purpose of supplying buildings therewith, or any appurtenance or appendage thereto; or,

(9) A sewer or drain, or a pipe or main connected therewith or forming a part thereof; or,

(10) A ditch or flume lawfully erected for carrying water or draining land; or,

(11) Any engine, hose, hose-cart, truck, ladder, extinguisher or other apparatus used by any fire company or fire department, or any rope, wire, bell, signal, instrument or apparatus for the communication of alarms of fire or police calls; or,

(12) Any public building, or building used for educational, scientific, charitable or religious purpose, or any useful or ornamental thing therein; or,

(13) Any work of literature or art or copy thereof, object of curiosity or scientific interest, statue, picture or engraving, displayed, kept or erected in any public building, street, park or other public place or in any collection, exhibition, museum, fair, gallery or library, or in any building devoted to educational, scientific, charitable or religious purposes; or,

(14) A monument erected in any cemetery, street, park or other public place; or,

(15) A sign or notice erected or posted by any officer under lawful authority, or by the owner or occupant of the premises where posted; or,

(16) A legal notice or other legal paper posted in compliance with the requirement of any statute of this state, or under the direction or order of a court; and,

Every person—

(17) Who shall moor any vessel, scow, barge, raft or boom to any bridge or to any buoy or beacon lawfully in any waters within this state; or,

(18) Who shall intercept, read or in any manner interrupt or delay the sending of a message over any telegraph or telephone line; or,

(19) Who shall erect or maintain any unlawful structure in any stream or river;

Shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in RCW 9.61.070. [1971 ex.s. c 152 § 2; 1909 c 249 § 404; 1903 c 112 § 1; 1899 c 111 § 1; RRS § 2656.]

*Divulging telegram: RCW 9.73.010.*

*Forest protection notices, removing or destroying: RCW 76.04.210.*

*Harbor improvements—Specific acts prohibited: Chapter 88.08 RCW.*

*Malicious injury—Railroad property: RCW 81.60.070-81.60.090.*

*Obstructions declared public nuisance: RCW 9.66.010.*

*Throwing or placing of matter on highway: RCW 9.66.050.*

**9.61.020 Unlawful interference with gas, electric, steam or water appliance—Penalty.** Every person who, with intent to injure or defraud, shall—

(1) Break or deface the seal of any gas, electric, steam or water meter; or,

(2) Obstruct, alter, injure or prevent the action of any meter or other instrument used to measure or register the quantity of gas, electricity, steam or water supplied to a consumer thereof; or,

(3) Make any connections by means of a wire, pipe, conduit or otherwise with any wire, main or pipe used for the delivery of gas, electricity, steam or water to a consumer thereof, in such manner as to take gas, electricity, steam or water from said wire, main or pipe without its passage through the meter or other instrument provided for registering the amount or quantity

consumed; or use any gas, electricity, steam or water so obtained; or,

(4) Make any connection or reconnection with such wire, main or pipe, or turn on or off, or in any manner interfere with any valve, stop-cock or other appliances connected therewith; or,

(5) Prevent by the erection of any device or construction, or by any other means, free access to any meter or other instrument for registering or measuring the amount of gas, electricity, steam or water consumed, or interfere with, obstruct or prevent, by any means, the reading or inspection of such meter or instrument, by the person, company or corporation owning the same; or,

(6) Take or use any water from any irrigation flume, ditch or lateral, without the consent of the owner thereof, or open, close or interfere with any gate connected therewith;

Shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in RCW 9.61.070. [1971 ex.s. c 152 § 3; 1909 c 249 § 405; 1897 c 41 § 1; 1893 c 64 § 1; RRS § 2657.]

*Utility poles, unlawful to attach objects to:* RCW 70.54.090-70.54.100.

#### 9.61.030 Interfering with dam, reservoir, etc.—

**Penalty.** Every person who shall wilfully or maliciously displace, remove, injure or destroy any pier, boom, or dam lawfully erected or maintained upon, in or across any water in this state, or any dam or reservoir lawfully maintained for impounding water; or hoist any gate in or about such dam or reservoir, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in RCW 9.61.070. [1971 ex.s. c 152 § 4; 1909 c 249 § 406; 1891 c 69 § 16; RRS § 2658.]

*Crimes against water code:* RCW 90.03.400-90.03.420.

*Diking and drainage improvement districts' property, injuring:* RCW 85.08.690.

*Interfering with fishways, fish ladders, etc.:* RCW 75.20.070, 75.20.080, 77.16.160.

*Poisoning food or water:* RCW 69.40.030.

*Pollution of drinking water supply:* Chapter 70.54 RCW.

**9.61.040 Injury to property—Penalty.** Every person who shall wilfully—

(1) Cut down, destroy or injure any wood, timber, grain, grass or crop, standing or growing, or which has been cut down and is lying upon the lands of another, or of the state; or,

(2) Cut down, girdle or otherwise injure a fruit, shade or ornamental tree standing on the land of another or of the state, or in any road or street; or,

(3) Dig, take or carry away without lawful authority or consent, from any lot or land in any city, or town, or from any lands included within the limits of a street or avenue in such city or town, any earth, soil or stone; or,

(4) Enter without the consent of the owner or occupant, any orchard, garden or vineyard, with intent to

take, injure or destroy anything there grown or growing; or,

(5) Cut down, destroy or in any way injure any shrub, tree, vine or garden produce grown or growing within any such orchard, garden or vineyard, or any framework or erection therein; or,

(6) Damage or deface any building or part thereof, or throw any stone or other missile at any building or part thereof; or,

(7) Destroy or damage, with intent to prevent or delay the use thereof, any engine, machine, tool or implement intended for use in trade or husbandry; or,

(8) Untie, unfasten or liberate, without authority, the horse or team of another; or lead, ride or drive away, without authority, the horse, team, automobile or other vehicle of another from the place where left by the owner or person in charge thereof; or,

(9) Kill, maim or disfigure any animal belonging to another, or expose any poisons or noxious substance with intent that it should be taken by such animal; or,

(10) Take, carry away, interfere with or disturb any oysters or other shellfish of another in any river, bay, or other water of this state, or remove, pull up or destroy any stake or buoy used for designating any oyster bed; or,

(11) Intrude or place any hovel, shanty or building upon or within the limits of any lot or piece of land within any city or town, without the consent of the owner, or within the boundaries of any street in such city or town; or,

(12) Kill, wound or trap any animal or bird within the limits of any cemetery, park or pleasure ground, or remove therefrom or destroy the young of any such animal or the egg of any such bird; or,

(13) Injure, destroy or tamper with any rope, line, cable or chain with which any vessel, scow, boom, beacon or buoy shall be anchored or moored, or the steering gear, bell gear, engine, machinery, lights or other equipment of any vessel; or,

(14) Place upon or affix to any real property or any rock, tree, wall, fence or other structure thereupon, without the consent of the owner thereof, any word, character or device designed to advertise any article, business, profession, exhibition, matter or event; or,

(15) Suffer any animal to go upon the enclosed right-of-way of any railway company, or leave open any gate or bars so that an animal might stray upon such right-of-way;

Shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in RCW 9.61.070. [1971 ex.s. c 152 § 5; 1909 c 249 § 407; 1897 c 83 §1; 1891 c 69 §§ 4, 8, 11, 12, 13, 14, 16, 17; 1890 p 127 § 10; 1890 p 122 § 11; 1890 p 126 § 5; Code 1881 §§ 842, 843, 847, 848, 1224; 1877 p 300 § 1; 1862 p 30 § 1; RRS § 2659.]

*Cascara bark peeling without permission:* RCW 19.08.030.

*Cutting permits required:* RCW 76.08.030.

*Cutting trees in parks or parkways:* RCW 43.51.180.

*Destroying native flora:* RCW 47.40.080.

*Taking caught fish or stealing gear:* RCW 75.12.090.

**9.61.050 Tampering with papers.** Every person who shall wilfully or maliciously destroy, alter, erase, obliterate or conceal any letter, telegraph message, book or record of account, or any writing or instrument by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is, or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, shall be guilty of a gross misdemeanor. [1971 ex.s. c 152 § 6; 1909 c 249 § 408; RRS § 2660.]

*Failure to deliver will:* RCW 11.20.010.

*Public officer, false reports or certificates:* RCW 42.20.040, 42.20.050.

**9.61.060 Injury to baggage.** Every person employed by any person or corporation engaged wholly or in part in the business of carrying passengers or baggage for hire, and every express agent, stage driver, drayman, expressman or hackman who shall wilfully or carelessly break, injure or destroy any trunk, valise, box, package or other baggage, shall be guilty of a misdemeanor. [1909 c 249 § 414; RRS § 2666.]

**9.61.070 Injury to other property—Penalty.** Every person who shall wilfully or maliciously destroy or injure any real or personal property of another, for the destruction or injury of which no special punishment is otherwise specially prescribed, shall—

(1) If the value of the property destroyed, or the diminution in value by the injury, shall be less than twenty dollars, be guilty of a misdemeanor.

(2) If the value of the property destroyed, or the diminution in value by the injury, shall be twenty dollars or more but less than two hundred fifty dollars, be guilty of a gross misdemeanor.

(3) If the value of the property destroyed, or the diminution in value by the injury, shall be two hundred fifty dollars or more, be guilty of a felony. [1971 ex.s. c 152 § 1; 1909 c 249 § 415; RRS § 2667.]

**9.61.080 Disturbing settlers on unsurveyed lands.** Any person or persons who shall wilfully and maliciously disturb, or in anywise injure or destroy, the dwelling house or other building or any fence inclosing or being on the claim of any settler upon the unsurveyed public lands in this state, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than one hundred dollars for each and every offense, to which may be added imprisonment in the county jail not exceeding ninety days. [1891 c 69 § 17; 1883 p 71 § 2; RRS § 2704.]

**9.61.090 Injury to buildings or contents—Penalty.** If any person shall maliciously or wantonly destroy or deface any cabin or other building or place of shelter or any of the contents of such cabin, building or shelter constructed by any person or persons or society of persons upon any public land of the state of Washington, or of the United States within the state of Washington,

or upon any land not owned by such person so destroying or defacing the same, he shall be deemed guilty of property destruction and shall incur the penalties set forth in RCW 9.61.070. [1971 ex.s. c 152 § 7; 1899 c 114 § 1; RRS § 2705.]

**9.61.100 Destruction of monument records, etc.** If any person shall maliciously or wantonly remove, destroy or carry away any record or record book or document of any kind or any box or other receptacle for containing the same or any instrument or device for scientific purposes established or placed upon any mountain peak or summit or at any other place of resort, or upon any land belonging to this state or to the United States, or in or upon any body or stream of water within this state, such person shall be deemed guilty of a misdemeanor. [1899 c 114 § 2; RRS § 2706.]

**9.61.110 Penalty for violation of RCW 9.61.090, 9.61.100.** Every person convicted of a violation of any of the provisions of RCW 9.61.090 through 9.61.110 shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than six months or by both such fine and imprisonment. Any person acting as informer, in case of conviction under RCW 9.61.090 through 9.61.110, shall be entitled to one-half of the fine imposed. [1899 c 114 § 3; RRS § 2707.]

**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, place of worship or public assembly, or any other building, common carrier, structure or 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. [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 gross misdemeanor. [1959 c 141 § 3.]

**9.61.190 Carrier or racing pigeons—Injury to.** It shall be unlawful 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. [1963 c 69 § 1.]

**9.61.200 Carrier or racing pigeons—Removal or alteration of identification.** It shall be unlawful 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. [1963 c 69 § 2.]

**9.61.210 Carrier or racing pigeons—Penalty.** Any person who shall violate any of the provisions of RCW 9.61.190 or 9.61.200 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed twenty-five dollars for every such offense. [1963 c 69 § 3.]

**9.61.220 Interfering with coin or currency receptacle.** Any person who shall open, remove from its normal place of repose or in any other manner interfere with the operation of any coin or currency receptacle, with intent to unlawfully remove money therefrom, shall be guilty of a gross misdemeanor. [1963 c 133 § 1.]

**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 family; or

(4) without purpose of legitimate communication; shall be guilty of a misdemeanor. [1967 c 16 § 1.]

**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.] This applies to RCW 9.61.230-9.61.250.

*Communicating with child for immoral purposes: RCW 9.79.130, 71.06.010.*

*Interference with telephone message: RCW 9.61.010(18).*

*Using indecent or vulgar language: RCW 9.68.040.*

**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.

*Narcotic farm colony, contriving unlawful commitment: RCW 72.48.100.*

**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 is innocent—

(1) If such crime be a felony, shall be punished by imprisonment in the state penitentiary for not more than five years; and,

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor. [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 9.65

#### MAYHEM

##### Sections

9.65.010 Defined—How punished.

9.65.020 Instrument or manner of maiming.

9.65.030 Recovery from injury, when a defense.

**9.65.010 Defined—How punished.** Every person who, with intent to commit a felony, or to injure, disfigure or disable another, shall wilfully inflict upon him an injury which—

(1) Seriously disfigures his person by any mutilation thereof; or

(2) Destroys or displaces any member or organ of his body; or

(3) Seriously diminishes his physical vigor by the injury of any member or organ;

Shall be guilty of maiming and be punished by imprisonment in the state penitentiary for not more than ten years, and the wilful infliction of the injury shall be prima facie evidence of the intent. [1909 c 249 § 155; Code 1881 § 103; 1873 p 185 § 28; 1869 p 202 § 26; 1854 p 79 § 26; RRS § 2407.]

**9.65.020 Instrument or manner of maiming.** To constitute maiming it is immaterial by what means or instrument or in what manner the injury was inflicted. [1909 c 249 § 156; RRS § 2408.]

**9.65.030 Recovery from injury, when a defense.** Whenever upon a trial for maiming another person it shall appear that the injury inflicted will not result in any permanent disfigurement of appearance, diminution of vigor, or other permanent injury, no conviction for maiming shall be had, but the defendant may be convicted of assault in any degree. [1909 c 249 § 157; RRS § 2409.]

## 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 68.48.040.*

*Furnishing impure water: RCW 70.54.020.*

*Malicious mischief—Injury to property: Chapter 9.61 RCW.*

*Mausoleums and columbariums constructed illegally: RCW 68.28.060.*

*Nuisances: Chapter 7.48 RCW.*

*Poisoning food or water: RCW 69.40.030.*

*Quarantine for disease, breaking, etc.: Chapter 70.16, RCW, RCW 70.20.060, 70.20.070, 70.20.180.*

*Venereal disease control: 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:** See note following RCW 9.47.300.

*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 justice court, the justice of the peace 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. [1957 c 45 § 4; 1909 c 249 § 251; Code 1881 §§ 1244, 1245; 1875 p 80 §§ 10, 11; RRS § 2503.]

*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.*

*Filth removal: RCW 70.20.160, 70.20.170.*

*Throwing or placing of matter on highway: RCW 9.61.010(1), 9.61.120.*

*Water pollution: Chapter 35.88 RCW, RCW 70.54.010–70.54.030, chapter 90.48 RCW.*

## Chapter 9.68 OBSCENITY

### Sections

- 9.68.010 Obscene literature, shows, etc.—Exception.  
9.68.015 Obscene literature, shows, etc.—Exemptions.  
9.68.020 Prohibited publications.  
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 provisions of 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.

*Immoral dances prohibited: RCW 67.12.040, 67.12.070.*

*Injunctions, obscene materials: Chapter 7.42 RCW.*

*Sufficiency of indictment or information, obscene literature: RCW 10.37.130.*

*Telephone calls using obscene language: RCW 9.61.230-9.61.250.*

**9.68.010 Obscene literature, shows, etc.—Exception.** Every person who —

(1) Having knowledge of the contents thereof shall exhibit, sell, distribute, display for sale or distribution, or having knowledge of the contents thereof shall have in his possession with the intent to sell or distribute any book, magazine, pamphlet, comic book, newspaper, writing, photograph, motion picture film, phonograph record, tape or wire recording, picture, drawing, figure, image, or any object or thing which is obscene; or

(2) Having knowledge of the contents thereof shall cause to be performed or exhibited, or shall engage in the performance or exhibition of any show, act, play, dance or motion picture which is obscene;

Shall be guilty of a gross misdemeanor.

The provisions of this section 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 manager or owner of the theatre or other place of showing. [1969 c 92 § 1; 1961 c 146 § 1; 1959 c 260 § 1; 1909 c 249 § 207; 1891 c 69 § 24; 1886 p 122 § 1; Code 1881 § 850; 1873 p 210 § 130; 1869 p 226 § 124; 1854 p 96 § 118; RRS § 2459.]

*Comic books, sale and distribution: Chapter 19.18 RCW.*

**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:** The language "this act" appears in chapter 260, Laws of 1959, section 1 of which amended RCW 9.68.010.

**9.68.020 Prohibited publications.** Every person who shall publish, and every proprietor, manager or editor who shall permit to be published, in any book, newspaper, magazine or other printed publication circulated wholly or in part in this state—

(1) Any detailed account of the commission or attempted commission of the crime of rape, carnal

knowledge, seduction, adultery, sodomy or any other sexual crime, or of the trial of any person charged therewith; or,

(2) Any detailed account of the execution of any person convicted of crime; or,

(3) Any detailed statement of any evidence of indecent, obscene or immoral acts offered in any trial or proceeding; or,

(4) Any interview with, advertisement for, communication from or account of the actions of any public prostitute, except upon a matter concerning public welfare;

Shall be guilty of a misdemeanor. [1909 c 249 § 209; RRS § 2461.]

**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.]

*Advertising cures of venereal diseases: RCW 9.04.030.*

*Manufacture or sale of means of abortion: RCW 9.02.030.*

**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, 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, or motion pictures. [1969 ex.s. c 256 § 13.]

**Severability—1969 ex.s. c 256:** See note following RCW 72.50.120.

**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, the court shall issue an order requiring that an "adults only" label be placed on the publication, if such publication is going to continue to be distributed. Whenever the superior court orders a publication to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication 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. All dealers and distributors are hereby prohibited from displaying erotic publications in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make them 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. [1969 ex.s. c 256 § 14.]

**Severability**—1969 ex.s. c 256: See note following RCW 72.50.120.

**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, 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. [1969 ex.s. c 256 § 15.]

**Severability**—1969 ex.s. c 256: See note following RCW 72.50.120.

**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 72.50.120.

**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 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. [1969 ex.s. c 256 § 17.]

**Severability**—1969 ex.s. c 256: See note following RCW 72.50.120.

**9.68.100 Exceptions to provisions of 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 72.50.120.

**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 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 72.50.120.

**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 72.50.120.

### Chapter 9.69 OBSTRUCTING JUSTICE

#### Sections

9.69.010	Combination to resist process.
9.69.020	Neglect or refusal to receive a person into custody.
9.69.030	Refusal to make arrest or to aid officer.
9.69.040	Resisting public officer.
9.69.050	Intimidating public officer.
9.69.060	Obstructing public officer.
9.69.070	Destroying evidence.
9.69.080	Tampering with witness.
9.69.090	Compounding crimes.
9.69.100	Withholding knowledge of felony involving violence— 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.

*Wills, fraudulently failing to deliver:* RCW 11.20.010.

**9.69.010 Combination to resist process.** Every person who shall enter into a combination with another to resist the execution of any legal process or other mandate of a court of competent jurisdiction, under circumstances not amounting to a riot, shall be guilty of a gross misdemeanor. [1909 c 249 § 303; RRS § 2555.]

**9.69.020 Neglect or refusal to receive a person into custody.** Every officer who, in violation of any legal duty, shall wilfully neglect or refuse to receive a person into his official custody or into a prison under his charge, shall, in a case where no other punishment is specially provided by law, be guilty of a gross misdemeanor. [1909 c 249 § 112; Code 1881 § 883; 1873 p 201 § 87; 1854 p 90 § 78; RRS § 2364.]

**9.69.030 Refusal to make arrest or to aid officer.** Every person who, after having been lawfully commanded by any magistrate to arrest another person, shall wilfully neglect or refuse so to do; and every person who, after having been lawfully commanded to aid an officer in arresting any person, or in retaking any person who has escaped from lawful custody, or in executing any lawful process, shall wilfully neglect or refuse to aid such officer, shall be guilty of a misdemeanor. [1909 c 249 § 113; Code 1881 § 886; 1873 p 201 § 88; 1854 p 90 § 79; RRS § 2365.]

*Citizen immunity if aiding officer, scope—When:* RCW 9.01.055.

**9.69.040 Resisting public officer.** Every person who, in any case or under any circumstances not otherwise specially provided for, shall wilfully resist, delay or obstruct a public officer in discharging or attempting to discharge any legal duty of his office, shall be guilty of a misdemeanor. [1909 c 249 § 114; Code 1881 § 885; 1873 p 201 § 88; 1854 p 90 § 79; RRS § 2366.]

**9.69.050 Intimidating public officer.** Every person who shall, directly or indirectly, address any threat or intimidation to a public officer or to a juror, referee, arbitrator, appraiser or assessor, or to any other person authorized by law to hear or determine any controversy or matter, with intent to induce him, contrary to his duty to do or make or to omit or delay any act, decision or determination, shall be guilty of a misdemeanor. [1909 c 249 § 116; RRS § 2368.]

**9.69.060 Obstructing public officer.** Every person who, after due notice, shall refuse or neglect to make or furnish any statement, report or information lawfully required of him by any public officer, or who, in such statement, report or information shall make any wilfully untrue, misleading or exaggerated statement, or who shall wilfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties, shall be guilty of a misdemeanor. [1909 c 249 § 420; RRS § 2672.]

*Fisheries inspector, resisting or obstructing:* RCW 75.08.190.

*Labor and industries employee, refusal of entry to factory, etc.:* RCW 43.22.310.

**9.69.070 Destroying evidence.** Every person who, with intent to conceal the commission of any felony, or to protect or conceal the identity of any person committing the same, or with intent to delay or hinder the administration of the law or to prevent the production thereof at any time, in any court or before any officer, tribunal, judge or magistrate, shall wilfully destroy, alter, erase, obliterate or conceal any book, paper, record, writing, instrument or thing, shall be guilty of a gross misdemeanor. [1909 c 249 § 110; RRS § 2362.]

*Bank officers, employees, concealing or destroying evidence:* RCW 30.12.100, 32.04.110.

*Dead body, concealing or failing to report:* RCW 68.08.020, 68.08.050, 68.08.090.

*Savings and loan association employee concealing or destroying evidence:* RCW 33.36.060.

**9.69.080 Tampering with witness.** Every person who shall wilfully prevent or attempt to prevent, or who shall wilfully conspire to prevent, by persuasion, threats, or otherwise, any person from appearing before any court, or officer authorized to subpoena witnesses, as a witness in any action, proceeding, trial, investigation, hearing, inquiry, or other proceedings authorized by law, with intent thereby to obstruct the course of justice, shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for a term of five years. [1969 ex.s. c 56 § 1; 1909 c 249 § 111; 1901 c 17 § 1; RRS § 2363.]

**9.69.090 Compounding crimes.** Every person who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that he will compound or conceal a crime or violation of a statute, or abstain from testifying thereto, delay a prosecution therefor or withhold any evidence thereof, except in a case where a compromise is allowed by law, shall be guilty—

(1) Of a felony and punished by imprisonment in the state penitentiary for not more than five years, where the agreement or understanding relates to a felony;

(2) Of a misdemeanor, where the agreement or understanding relates to a gross misdemeanor or misdemeanor, or to a violation of statute for which a pecuniary penalty or forfeiture is prescribed.

In any proceeding against a person for compounding a crime, it shall not be necessary to prove that any person has been convicted of the crime or violation of statute in relation to which an agreement or understanding herein prohibited was made. [1909 c 249 § 115; RRS § 2367.]

**9.69.100 Withholding knowledge of felony involving violence—Penalty.** Whoever, having witnessed the actual commission of a felony involving violence or threat of violence or having witnessed preparations for the commission of a felony involving violence or threat of violence, does not as soon as reasonably possible make known his knowledge of such to the prosecuting attorney, police, or other public officials of the state of Washington having jurisdiction over the matter, shall be guilty of a gross misdemeanor: *Provided*, That nothing in this act shall be so construed to affect existing privileged relationships as provided by law. [1970 ex.s. c 49 § 8.]

**Reviser's note:** "this act" [1970 ex.s. c 49] is codified as RCW 9.48.010, 9.48.060, 9.69.100, 10.31.030, 10.37.033, 46.61.520 and 72.50.040.

**Severability—1970 ex.s. c 49:** See note following RCW 9.48.010.

## Chapter 9.72 PERJURY

### Sections

9.72.010	Perjury—First degree.
9.72.020	Knowledge of materiality not necessary.
9.72.030	Perjury—Second degree.
9.72.040	"Oath" and "swear" defined.
9.72.050	Irregularity in administering oath or incompetency of witness no defense.
9.72.060	Deposition—When complete.
9.72.070	Statement of what one does not know to be true.
9.72.080	Offering false evidence.
9.72.090	Committal of witness—Detention of documents.
9.72.100	Subornation of perjury.
9.72.110	Attempt to suborn perjury.

*Agricultural co-ops, false statements:* RCW 24.32.330.

### 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 service voting law, false statement:* RCW 29.39.200.

*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.

*Person convicted of perjury, competency as witness:* RCW 5.60.040.

*Public assistance, falsification of application:* RCW 74.08.055.

*State fire marshal hearing, false swearing:* RCW 48.48.070.

*Sufficiency of indictment or information charging perjury:* RCW 10.37.140.

*Taxation, false property listing:* RCW 84.40.120.

*Veterans' bonus, falsification:* RCW 73.32.160, 73.33.100.

**9.72.010 Perjury—First degree.** Every person who, in any action, proceeding, hearing, inquiry, or investigation, in any of which an oath may lawfully be administered, shall swear that he will testify, declare, depose, or certify truly, or that any testimony, declaration, deposition, certificate, affidavit, or other writing by him sworn to or affirmed or subscribed as true, and who, in any such action, proceeding, hearing, inquiry, or investigation shall state or subscribe as true any material matter which he knows to be false, shall be guilty of perjury in the first degree and shall be punished by imprisonment in the state penitentiary for not more than fifteen years. [1957 c 46 § 1; 1909 c 249 § 99; Code 1881 § 867; 1873 p 199 § 79; 1859 p 118 § 69; 1854 p 88 § 69; RRS § 2351.]

**9.72.020 Knowledge of materiality not necessary.** It shall be no defense to a prosecution for perjury in the first degree that the defendant did not know the materiality of his false statement or that it did not in fact affect the proceeding in or for which it was made. It shall be sufficient that it was material and might have affected such proceeding. [1909 c 249 § 100; Code 1881 § 870; RRS § 2352.]

**9.72.030 Perjury—Second degree.** Every person who, whether orally or in writing, and whether as a volunteer, or in a proceeding or investigation authorized by law, shall knowingly swear falsely concerning any matter whatsoever, shall be guilty of perjury in the second degree and shall be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year. [1909 c 249 § 101; RRS § 2353.]

**9.72.040 "Oath" and "swear" defined.** The term "oath" shall include an affirmation and every other mode authorized by law of attesting the truth of that which is stated. A person who shall state any matter under oath shall be deemed to "swear" thereto. [1909 c 249 § 102; Code 1881 § 868; RRS § 2354.]

*False affirmation deemed perjury:* RCW 5.28.060.

**9.72.050 Irregularity in administering oath or incompetency of witness no defense.** It shall be no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner or that the defendant was not competent to give the testimony, deposition, certificate or affidavit of which falsehood is alleged. It shall be sufficient that he actually gave such testimony or made such deposition, certificate or affidavit. [1909 c 249 § 103; Code 1881 § 869; RRS § 2355.]

**9.72.060 Deposition—When complete.** The making of a deposition, certificate, or affidavit shall be deemed to be complete when it is sworn to or affirmed by a person: (1) after signature has been waived by stipulation of such person; or (2) when it is subscribed to by such person with intent that it be uttered or published as true. [1957 c 46 § 2; 1909 c 249 § 104; Code 1881 § 872; RRS § 2356.]

*Depositions: Rules of court: Pleading—CR 26 through 37.*

**9.72.070 Statement of what one does not know to be true.** Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false. [1909 c 249 § 105; Code 1881 § 873; RRS § 2357.]

**9.72.080 Offering false evidence.** Every person who, upon any trial, hearing, inquiry, investigation or other proceeding authorized by law, shall offer or procure to be offered in evidence, as genuine, any book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 106; RRS § 2358.]

**9.72.090 Committal of witness—Detention of documents.** Whenever it shall appear probable to a judge, justice of the peace, magistrate, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before him has committed perjury in any testimony so given, or offered any false evidence, he may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for his appearance to answer such charge. In such case he may detain any book, paper, document, record or other instrument produced before him or direct it to be delivered to the prosecuting attorney. [1909 c 249 § 107; RRS § 2359.]

**9.72.100 Subornation of perjury.** Every person who shall wilfully procure another to commit perjury, in either degree, or to offer any false evidence, shall be guilty of subornation of perjury and shall be punished in the same manner as if he had himself committed the perjury so procured or offered the false evidence so offered. [1909 c 249 § 108; Code 1881 § 876; 1873 p 199 § 81; RRS § 2360.]

**9.72.110 Attempt to suborn perjury.** Every person who, without giving, offering or promising a bribe, shall incite or attempt to procure another to commit perjury, in either degree, or to offer any false evidence, or to withhold true testimony, though no perjury be committed or false evidence offered or true testimony withheld, shall be guilty of a gross misdemeanor. [1909 c 249 § 109; Code 1881 § 877; 1873 p 199 § 81; 1869 p 216 § 77; 1854 p 89 § 71; RRS § 2361.]

## 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, recording, or divulging private communication—Court order permitting interception—Grounds for issuance—Duration—Renewal.
9.73.050	Intercepting, recording, or divulging private communication—Admissibility in evidence.
9.73.060	Intercepting, recording, or divulging private communication—Civil action for violations—Liability for damages.
9.73.070	Intercepting, recording, or divulging private communication—Persons and activities excepted.
9.73.080	Intercepting, recording, or divulging private communication—Penalty.
9.73.090	Police and fire personnel exempted from RCW 9.73.030-9.73.080—Standards.
9.73.100	Recordings available to defense counsel.

**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 9.61.010(18).*

**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.** 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, record or divulge any:

(1) 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;

(2) 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.

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 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, radio or television station from divulging the communication. [1967 ex.s. c 93 § 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.] This applies to RCW 9.73.030–9.73.080.

**9.73.040 Intercepting, recording, or divulging 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.]

**9.73.050 Intercepting, recording, or divulging private communication—Admissibility 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.]

**9.73.060 Intercepting, recording, or divulging private communication—Civil action for violations—Liability for damages.** Any person who, directly or by means of a detective agency or any other agent, violates the provisions of RCW 9.73.030 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, in addition to other injuries, to recover for mental pain and suffering endured by him on account of violation of the provisions of RCW 9.73.030. [1967 ex.s. c 93 § 4.]

**9.73.070 Intercepting, recording, or divulging private communication—Persons and activities excepted.** 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. [1967 ex.s. c 93 § 5.]

**9.73.080 Intercepting, recording, or divulging private communication—Penalty.** Any person who shall violate RCW 9.73.030 shall be guilty of a gross misdemeanor. [1967 ex.s. c 93 § 6.]

**9.73.090 Police and fire personnel exempted from RCW 9.73.030–9.73.080—Standards.** The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police and fire personnel in the following instances:

(1) Recording incoming telephone calls to police and fire stations for the purpose and only for the purpose of verifying the accuracy of reception of emergency calls.

(2) 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:

(a) the arrested person shall be informed that such recording is being made and the statement so informing him shall be included in the recording,

(b) the recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof,

(c) 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,

(d) the recordings shall only be used for valid police or court activities. [1970 ex.s. c 48 § 1.]

**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.] This applies to RCW 9.73.090 and 9.73.100.

**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.]

## Chapter 9.75 ROBBERY

### Sections

- 9.75.010 Defined.  
9.75.020 Interfering with railroad with intent to commit robbery, etc.  
9.75.030 Robbing sluice boxes, etc.

*Attempt to commit a felony while armed: RCW 9.01.080.*

*Offenses against transportation—Standing reward: RCW 10.85.020, 10.85.025.*

*Stolen property—Restoration to owner—Sale does not divest rights—Duty of officer: RCW 10.79.050.*

**9.75.010 Defined.** Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. 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. If used merely as a means of escape, it does not constitute robbery. 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.

Every person who shall commit robbery shall be punished by imprisonment in the state penitentiary for not less than five years. [1909 c 249 § 166; Code 1881 § 829; 1873 p 187 § 38; 1869 p 204 § 36; 1854 p 81 §§ 3, 4; RRS § 2418.]

**9.75.020 Interfering with railroad with intent to commit robbery, etc.** Every person who, with intent to commit any robbery, burglary or larceny, shall go upon or board any train, motor, car or engine; mask, extinguish or alter any light or other signal; exhibit or compel any other person to exhibit any false light or signal; or stop any such train, car or engine or slacken the speed thereof or compel or attempt to compel any other person in charge or control thereof to stop such train, car or engine or slacken the speed thereof, shall be punished by imprisonment in the state penitentiary for not less than five years. [1909 c 249 § 399; RRS § 2651.]

**Reviser's note:** Caption for 1909 c 249 § 399 reads as follows: "Sec. 399. Attempt to Commit Train Robbery." State v. Vaughan, 163 Wash. 681.

*Malicious injury to railroad property: RCW 81.60.070–81.60.090.*

*Obstructing or delaying train: RCW 81.48.020.*

*Offenses against transportation, standing reward: RCW 10.85.020, 10.85.025.*

**9.75.030 Robbing sluice boxes, etc.** Any person who shall break or rob in any manner, or who shall attempt to break or rob, any flume, rocker, quartz mill, quartz vein, or lode, bedrock sluice, sluice box, or mining claim not his own, or who shall trespass upon such mining claim with the intent to commit a felony, shall, upon conviction thereof, be punished by imprisonment in the penitentiary of this state not less than one nor more than five years, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such imprisonment and fine, as the court or judge thereof may direct. [1890 p 126 § 6; RRS § 2703.]

## Chapter 9.76 SABBATH BREAKING

### Sections

- 9.76.020 Observance of other day.  
9.76.030 Service of process on the sabbath prohibited.  
9.76.040 Preventing religious act.  
9.76.050 Disturbing religious meeting.

**9.76.020 Observance of other day.** It shall be a sufficient defense to a prosecution for performing work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time and that the act complained of was done in such manner as [will] not disturb others in the observance of the sabbath. [1909 c 249 § 244; RRS § 2496.]

**9.76.030 Service of process on the sabbath prohibited.** Every person who shall serve any legal process on the sabbath day, except in case of a breach, or apprehended breach, of the peace, or when sued out for the apprehension of a person charged with a crime, or where such service is expressly authorized by statute,

shall be guilty of a misdemeanor. [1909 c 249 § 245; Code 1881 § 1267; RRS § 2497.]

**9.76.040 Preventing religious act.** Every person who by threats or violence shall wilfully prevent another person from performing any lawful act enjoined upon or recommended to him by the religion which he professes, shall be guilty of a misdemeanor. [1909 c 249 § 246; RRS § 2498.]

**9.76.050 Disturbing religious meeting.** Every person who shall wilfully disturb, interrupt, or disquiet any assemblage of people met for religious worship—

(1) By noisy, rude or indecent behavior, profane discourse, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting; or,

(2) By exhibiting shows or plays, or promoting any racing of animals, or gaming of any description, or engaging in any boisterous or noisy amusement; or,

(3) By disturbing in any manner, without authority of law within one mile thereof, free passage along a highway to the place of such meeting, or by maliciously cutting or otherwise injuring or disturbing a harness, conveyance, tent or other property belonging to any person in attendance upon such meeting;

Shall be guilty of a misdemeanor. [1909 c 249 § 247; Code 1881 § 865; RRS § 2499.]

*Using indecent or vulgar language, etc.: RCW 9.68.040.*

### Chapter 9.78 SHOPLIFTING

#### Sections

9.78.010	Shoplifting.
9.78.020	Arrest without warrant authorized, when.
9.78.040	"Peace officer" defined.

**9.78.010 Shoplifting.** A person who wilfully takes possession of any goods, wares or merchandise of the value of less than seventy-five dollars offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the seller, with the intention of converting such goods, wares or merchandise to his own use without having paid the purchase price thereof, is guilty of a gross misdemeanor of shoplifting. Upon a first conviction therefor, he shall be punished by a fine of not less than fifty dollars and not more than one thousand dollars, or by imprisonment in the county jail for not less than five days and not more than six months, or both such fine and imprisonment. Upon each subsequent conviction he shall be punished by a fine of not less than five hundred dollars and not more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days and not more than one year, or both such fine and imprisonment. [1967 c 76 § 1; 1959 c 229 § 1.]

*Civil action for being detained to investigate shoplifting, reasonable grounds as defense: RCW 4.24.220.*

*Criminal action for being detained to investigate shoplifting, reasonable grounds as defense: RCW 9.01.116.*

**9.78.020 Arrest without warrant authorized, when.** A peace officer may, upon a charge being made and without a warrant, arrest any person whom he has reasonable cause to believe has committed or attempted to commit the crime of shoplifting. [1959 c 229 § 2.]

**9.78.040 "Peace officer" defined.** For the purposes of this chapter "peace officer" means a duly appointed city, county or state law enforcement officer. [1959 c 229 § 4.]

### Chapter 9.79 SEX CRIMES

#### Sections

9.79.010	Rape.
9.79.020	Carnal knowledge—Penalties.
9.79.030	Sexual intercourse, carnal knowledge, prostitution, sexual conduct, defined.
9.79.040	Compelling a person to marry.
9.79.050	Abduction.
9.79.060	Placing persons in house of prostitution—Pimping.
9.79.070	Seduction.
9.79.080	Indecent liberties, exposure, etc.
9.79.090	Incest—Penalties.
9.79.100	Sodomy—Penalties.
9.79.110	Adultery.
9.79.120	Lewdness.
9.79.130	Solicitation of minor for immoral purposes.

*Action for falsely charging sex crimes: RCW 4.24.120.*

*Attempt to commit a felony while armed: RCW 9.01.080.*

*Sexual psychopaths: Chapter 71.06 RCW.*

*Telephone calls soliciting immoral act: RCW 9.61.230–9.61.250.*

**9.79.010 Rape.** Rape is an act of sexual intercourse with a person not the wife or husband of the perpetrator committed against the person's will and without the person's consent. Every perpetrator of such an act of sexual intercourse with a person of the age of ten years or upwards not his wife or husband:

(1) When, through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, the person is incapable of giving consent; or

(2) When the person's resistance is forcibly overcome; or

(3) When the person's resistance is prevented by fear of immediate and great bodily harm which the person has reasonable cause to believe will be inflicted upon her or him; or

(4) When the person's resistance is prevented by stupor or weakness of mind produced by an intoxicating narcotic or anaesthetic agent administered by or with the privity of the defendant; or

(5) When the person is at the time unconscious of the nature of the act, and this is known to the defendant;

Shall be punished by imprisonment in the state penitentiary for not less than five years. [1973 1st ex.s. c 154 § 122; 1909 c 249 § 183; 1897 c 19 § 1; 1887 p 84 § 1; Code 1881 § 812; 1873 p 187 § 37; 1869 p 204 § 35; 1854 p 80 § 33; RRS § 2435.]

*Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.*

*Punishment by prevention of procreation: RCW 9.92.100.*

*Unlawful possession and use of narcotic drugs: RCW 69.32.080, 69.32.100, 69.32.130.*

**9.79.020 Carnal knowledge—Penalties.** Every male person who shall carnally know and abuse any female child under the age of eighteen years, not his wife, and every female person who shall carnally know and abuse any male child under the age of eighteen years, not her husband, shall be punished as follows:

(1) When such an act is committed upon a child under the age of ten years, by imprisonment in the state penitentiary for life;

(2) When such an act is committed upon a child of ten years and under fifteen years of age, by imprisonment in the state penitentiary for not more than twenty years;

(3) When such act is committed upon a child of fifteen years of age and under eighteen years of age, by imprisonment in the state penitentiary for not more than fifteen years. [1973 1st ex.s. c 154 § 123; 1943 c 112 § 1; 1937 c 74 § 1; 1919 c 132 § 1; 1909 c 249 § 184; 1897 c 19 § 1; 1886 p 84 § 1; Code 1881 § 814; 1873 p 187 § 37; 1869 p 204 § 35; 1854 p 80 § 33; Rem. Supp. 1943 § 2436.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**9.79.030 Sexual intercourse, carnal knowledge, prostitution, sexual conduct, defined.** Any sexual penetration, however slight, is sufficient to complete sexual intercourse or carnal knowledge. The word prostitution as used in this chapter and title means any sexual conduct engaged in for a fee or agreed or offered to be engaged in for a fee between persons not married to each other. Sexual conduct means either or both sexual intercourse or any conduct involving the sex organs of one person and the mouth or anus of another. [1973 1st ex.s. c 154 § 124; 1909 c 249 § 185; 1873 p 187 § 37; RRS § 2437.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**9.79.040 Compelling a person to marry.** Every person who, by force, menace, or duress, shall compel another person against his or her will to marry him or her or to marry any other person, or to be defiled, shall be punished by imprisonment in the state penitentiary for not more than twenty years, or by a fine of not more than one thousand dollars, or by both. [1973 1st ex.s. c 154 § 125; 1909 c 249 § 186; Code 1881 § 813; RRS § 2438.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**9.79.050 Abduction.** Every person who—

(1) Shall take another person who is under the age of eighteen years for the purpose of prostitution or sexual intercourse, or without the consent of his or her father, mother, guardian or other person having legal charge of such other person, for the purpose of marriage; or

(2) Shall inveigle or entice an unmarried person of previously chaste character into a house of ill fame or assignation, or elsewhere, for the purpose of prostitution; or

(3) Shall take or detain another person unlawfully against such person's will, with intent to compel such

person by force, menace or duress, to marry him or her or another person, or to be defiled; or

(4) Being the parent, guardian or other person having legal charge of a person under the age of eighteen years, shall consent to the taking or detention of such person by any other person for the purpose of prostitution or sexual intercourse or for any obscene, indecent or immoral purpose;

Shall be guilty of abduction and punished by imprisonment in the state penitentiary for not more than ten years or by a fine of not more than one thousand dollars, or by both. [1973 1st ex.s. c 154 § 126; 1909 c 249 § 187; Code 1881 § 815; RRS § 2439.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

*Kidnaping: Chapter 9.52 RCW.*

**9.79.060 Placing persons in house of prostitution—Pimping.** Every person who—

(1) Shall place a female or male in the charge or custody of another person for immoral purposes, or in a house of prostitution, with intent that he or she shall live a life of prostitution, or who shall compel any female or male to reside with him or her or with any other person for immoral purposes, or for the purpose of prostitution, or shall compel any female or male to reside in a house of prostitution or to live a life of prostitution; or

(2) Shall ask or receive any compensation, gratuity or reward, or promise thereof, for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons not her husband, or any male for the purpose of causing him to cohabit with any female person or persons not his wife; or

(3) Shall give, offer, or promise any compensation, gratuity or reward, to procure any person for the purpose of placing such person for immoral purposes in any house of prostitution, or elsewhere; or

(4) Being the spouse of any person, or the parent, guardian or other person having legal charge of such person shall connive at, consent to or permit such person being or remaining in any house of prostitution or leading a life of prostitution; or

(5) Shall live with or accept any earnings of a common prostitute, or entice or solicit any person to go to a house of prostitution for any immoral purpose;

Shall be punished by imprisonment in the state penitentiary for not less than one year nor more than five years. [1973 1st ex.s. c 154 § 127; 1927 c 186 § 1; 1909 c 249 § 188; RRS § 2440.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

*Permitting minor in house of prostitution, etc.: RCW 26.28.080.*

**9.79.070 Seduction.** Every person who shall seduce and have sexual intercourse with any person of previously chaste character, shall be punished by imprisonment in the state penitentiary 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:



*Provided*, That if at any time before judgment upon an information or indictment, a defendant shall marry such person, the court shall order all further proceedings stayed. [1973 1st ex.s. c 154 § 128; 1909 c 249 § 189; 1905 c 33 § 1; Code 1881 § 816; RRS § 2441.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

*Action by parent for seduction of daughter: RCW 4.24.020.*

*Action by woman for her own seduction: RCW 4.24.030.*

*Wife testifying against husband: RCW 5.60.060.*

**9.79.080 Indecent liberties, exposure, etc.** (1) Every person who takes any indecent liberties with, or on the person of any other person of chaste character, without the other person's consent, shall be guilty of a gross misdemeanor;

(2) Every person who takes any indecent liberties with or on the person of any child under the age of fifteen years, or makes any indecent or obscene exposure of his person, or of the person of another, whether with or without his or her consent, shall be guilty of a felony, and shall be punished by imprisonment in the state penitentiary for not more than twenty years, or by imprisonment in the county jail for not more than one year. [1973 1st ex.s. c 154 § 129; 1955 c 127 § 1; 1909 c 249 § 190; 1937 c 74 § 2; RRS § 2442.]

**Severability**—1973 1st ex.s. c 154: See note following RCW 2.12.030.

**9.79.090 Incest—Penalties.** Sexual intercourse between any male and female persons, nearer of kin to each other than second cousins, computing by the rules of the civil law, shall constitute the crime of incest and shall be punished as follows:

(1) When such act is committed by any male or female person upon a child under the age of ten years, such male or female person shall be guilty of incest and be punished by imprisonment in the state penitentiary for life;

(2) When such act is committed by any male or female person upon a child of ten years and under fifteen years of age, such male or female person shall be guilty of incest and be punished by imprisonment in the state penitentiary for not more than twenty years;

(3) When such an act is committed by any male or female person upon a child of fifteen years of age and under eighteen years of age, such male or female person shall be guilty of incest and be punished by imprisonment in the state penitentiary for not more than fifteen years;

(4) When such act is committed by persons eighteen years of age or more, such persons shall both be guilty of incest and be punished by imprisonment in the state penitentiary for not more than ten years. [1943 c 111 § 1; 1909 c 249 § 203; 1895 c 149 §§ 1, 2; 1873 p 209 § 127; 1869 p 225 § 121; Rem. Supp. 1943 § 2455.]

**9.79.100 Sodomy—Penalties.** Every person who shall carnally know in any manner any animal or bird; or who shall carnally know any male or female person by the anus or with the mouth or tongue; or who shall voluntarily submit to such carnal knowledge; or who

shall attempt sexual intercourse with a dead body, shall be guilty of sodomy and shall be punished as follows:

(1) When such act is committed upon a child under the age of fifteen years, by imprisonment in the state penitentiary for not more than twenty years.

(2) In all other cases by imprisonment in the state penitentiary for not more than ten years. [1937 c 74 § 3; 1909 c 249 § 204; 1893 c 139 § 2; RRS § 2456.]

**9.79.110 Adultery.** Whenever any married person shall have sexual intercourse with any person other than his or her lawful spouse, both such persons shall be guilty of adultery and upon conviction thereof shall be punished by imprisonment in the state penitentiary for not more than two years or by a fine of not more than one thousand dollars: *Provided*, That no prosecution for violation of the provisions of this section shall be commenced except on complaint of the husband or wife made before a committing magistrate, or by filing an affidavit with the prosecuting attorney, nor after one year from the commission of the offense. [1917 c 98 § 1; 1909 c 249 § 205; 1895 c 149 §§ 3, 4; Code 1881 §§ 943, 944; 1873 p 209 § 126; 1869 p 225 § 120; RRS § 2457.]

*Adultery grounds for divorce: RCW 26.08.020.*

**9.79.120 Lewdness.** Every person who shall lewdly and viciously cohabit with another not the husband or wife of such person, and every person who shall be guilty of open or gross lewdness, or make any open and indecent or obscene exposure of his person, or of the person of another, shall be guilty of a gross misdemeanor. [1909 c 249 § 206; Code 1881 § 948; 1873 p 209 § 126; 1869 p 225 § 120; 1854 p 95 § 117; RRS § 2458.]

**9.79.130 Solicitation of minor for immoral purposes.** Every person who solicits, entices or otherwise communicates with a child under the age of eighteen years for immoral purposes shall be guilty of a gross misdemeanor. [1961 c 65 § 2.]

*Sexual psychopaths and psychopathic delinquents—Communicating with child for immoral purposes: RCW 71.06.010.*

## Chapter 9.80 SUICIDE

Sections	
9.80.010	Defined.
9.80.020	Attempting suicide.
9.80.030	Aiding suicide.
9.80.040	Abetting attempt at suicide.
9.80.050	Incapacity of person aided no defense.

**9.80.010 Defined.** Suicide is the intentional taking of one's own life. [1909 c 249 § 133; RRS § 2385.]

**9.80.020 Attempting suicide.** Every person who, with intent to take his own life, shall commit upon himself any act dangerous to human life, or which, if committed upon or toward another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, shall be punished by imprisonment in the state penitentiary for not more than two

years, or by a fine of not more than one thousand dollars. [1909 c 249 § 134; RRS § 2386.]

**9.80.030 Aiding suicide.** Every person who, in any manner, shall wilfully advise, encourage, abet or assist another in taking his own life, shall be guilty of manslaughter. [1909 c 249 § 135; Code 1881 § 794; 1873 p 184 § 19; 1869 p 201 § 17; 1854 p 78 § 17; RRS § 2387.]

**9.80.040 Abetting attempt at suicide.** Every person who, in any manner, shall wilfully advise, encourage, abet or assist another person in attempting to take the latter's life shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 136; RRS § 2388.]

**9.80.050 Incapacity of person aided no defense.** The fact that the person attempting to take his own life was incapable of committing crime shall not be a defense to a prosecution under RCW 9.80.030 or 9.80.040. [1909 c 249 § 137; RRS § 2389.]

### 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.
9.81.060	Public employment—Subversive person ineligible.
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.
9.81.130	Attorney general—Report and recommendations.

*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 act, 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.]

**Reviser's note:** "this act" appeared in 1951 c 254 codified as RCW 9.81.010 through 9.81.080 and 9.81.090 through 9.81.130. RCW 9.81.010 was amended by 1953 c 142 § 1. RCW 9.81.070 and 9.81.080 were amended by 1955 c 377 which also contained two independent sections codified herein as RCW 9.81.082 and 9.81.083.

**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:** "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. For historical outline of chapter 9.81 RCW see note following RCW 9.81.060.

**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 act, 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 act, 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 act, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of \*this act, 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 act 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 act. 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.]

**\*Reviser's note:** "this act", see note following RCW 9.81.060.

**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 act. 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.]

**\*Reviser's note:** "this act", see note following RCW 9.81.060.

**9.81.110 Misstatements are punishable as perjury—Penalty.** Every written statement made pursuant to \*this act 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 act, or (3) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions pursuant to \*this act, 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 act, 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.]

**\*Reviser's note:** "this act", see note following RCW 9.81.060.

**9.81.120 Constitutional rights—Censorship or infringement.** Nothing in \*this act 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.]

**\*Reviser's note:** "this act", see note following RCW 9.81.060.

**9.81.130 Attorney general—Report and recommendations.** The attorney general shall prepare and report to the governor, to the legislature, at or before the convening of each biennial session a concise statement of all matters pertaining to his official duties together with his recommendations for the enforcement of the provisions of \*this act. [1951 c 254 § 9.]

**\*Reviser's note:** "this act", see note following RCW 9.81.060.

## 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 the state penitentiary for not more than five years or in a county jail for not more than one year. [1971 c 81 § 45; 1909 c 249 § 67; RRS § 2319.]

## Chapter 9.83 TRESPASS

Sections	
9.83.010	Trespass on railway track.
9.83.020	Trespass on double track.
9.83.030	Exceptions.
9.83.040	Signs or warnings.
9.83.050	Penalty.
9.83.060	Trespass upon another's land.
9.83.070	Malicious trespass—Penalty.
9.83.080	Criminal trespass—Penalty—Defense.

*Attaching signs, etc., to utility poles: RCW 70.54.100.*

*Cascara bark peeling without permission: RCW 19.08.030.*

*Forcible entry and detainer: RCW 59.12.230.*

*Highways, entering upon closed portion: RCW 47.48.040.*

*Mining claim, trespass on: RCW 9.75.030.*

*Ownership of property—Proof of: RCW 10.58.060.*

*State lands, trespass on: Chapter 79.01 RCW.*

*Waste and trespass: Chapter 64.12 RCW.*

**9.83.010 Trespass on railway track.** Every person who, without permission from the person or corporation owning or operating the same, shall enter, or take any animal or vehicle upon any railway, bridge or trestle, or ride, operate or propel a handcar, velocipede, track bicycle or tricycle on or along the track of any railway, shall be guilty of a misdemeanor. [1909 c 249 § 412; RRS § 2664.]

**9.83.020 Trespass on double track.** It shall be unlawful for any person to go upon or be upon that portion of any railroad right-of-way upon which is constructed and operated more than one main line track or upon which is constructed and operated an electric interurban line of one or more tracks where the electricity is transmitted by a third rail. [1913 c 128 § 1; RRS § 2664-1.]

**9.83.030 Exceptions.** RCW 9.83.020 shall not be construed to include that part of any right-of-way embraced in any highway crossing or any lawful private crossing; and shall not be construed to prohibit officers or employees of any such railroad or public officers from going or being upon any portion of the right-of-way in the performance of their duties. [1913 c 128 § 2; RRS § 2664-2.]

**9.83.040 Signs or warnings.** The utilities and transportation commission of Washington shall require any company operating such a railroad as is described in RCW 9.83.020 to erect and maintain upon such part of its line, at every point where a highway crosses such line, a sign or a warning, in form to be prescribed by such commission. [1913 c 128 § 3; RRS § 2664-3.]

**9.83.050 Penalty.** Any person violating the provisions of RCW 9.83.020 shall be guilty of a misdemeanor. [1913 c 128 § 4; RRS § 2664-4.]

**9.83.060 Trespass upon another's land.** Every person who shall go upon the land of another with the intent to vex or annoy the owner, or occupant thereof, or to commit any unlawful act, or shall enter upon the enclosed land of another for the purpose of hunting or fishing without having first obtained the permission of the owner or occupant of said land, or shall enter upon any land of another bounded on one or more sides by water when notices not to trespass thereon have been posted as often as every seven hundred feet on or near the other boundaries thereof for either of said purposes, or shall wilfully go or remain upon any land after having been warned by the owner or occupant thereof not to trespass thereon, shall be guilty of a misdemeanor.

An entryman on land under the laws of the United States shall be deemed an owner within the meaning of this section.

Enclosed land shall for the purpose of this section mean any land fenced either with a lawful fence or with such a fence as is usually used in the neighborhood of such land. [1913 c 139 § 1; 1909 c 249 § 413; 1890 p 124 § 1; RRS § 2665.]

*Fences: Chapter 16.60 RCW.*

*Force, use to prevent trespass: RCW 9.11.040.*

*Game code, unlawful posting of land: RCW 77.16.190.*

*Kindling fire while hunting or fishing: RCW 9.40.080.*

*Trespass of animals: Chapters 16.04, 16.12 RCW.*

*Trespass on public lands: Chapter 79.01 RCW.*

*Waste and trespass: Chapter 64.12 RCW.*

**9.83.070 Malicious trespass—Penalty.** Every person who shall maliciously or mischievously injure or destroy, or cause to be injured or destroyed, any property of another, or any public property, shall be deemed guilty of a malicious trespass, and on conviction thereof, be fined not exceeding threefold the value of the damage done, to which may be added imprisonment in the county jail not exceeding one year. [1873 p 195 § 67; 1869 p 212 § 64. No RRS.]

*Malicious mischief—Injury to property: Chapter 9.61 RCW.*

**9.83.080 Criminal trespass—Penalty—Defense.**

(1) Every person, knowing that he is not licensed or privileged to do so, who enters or remains in any building or occupied structure or separately secured or occupied portion thereof including but not limited to publicly owned or occupied buildings, structures or portions thereof shall be guilty of criminal trespass, a misdemeanor.

(2) Every person, knowing that he is not licensed or privileged to do so, who enters or remains in any public or private place or on any public or private premises as to which notice against trespass thereon is given by the owner or some other authorized person, through (a) actual communication to the actor, or (b) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders or (c) fencing or other enclosure manifestly designed to exclude intruders, shall be guilty of criminal trespass, a misdemeanor.

(3) Every person, knowing that he is not licensed or privileged to remain, who defies an order to leave public or private places or public or private premises communicated to him by the owner of said place or premises or by some other authorized person, shall be guilty of criminal trespass, a misdemeanor.

It is a defense to prosecution for criminal trespass under this section that (a) the building or occupied structure referred to in subsection (1) above was abandoned, or (b) any place or premises referred to in this section 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 (c) the actor reasonably believed that the owner of any of the places or premises referred to in this section or other person empowered to license access thereto would have licensed him to enter or remain or (d) the actor had possession of the premises originally under a landlord-tenant relationship or as mortgagor or vendee on a real estate contract. [1969 c 7 § 1.]

**Severability—1969 c 7:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected." [1969 c 7 § 3.] This applies to RCW 9.83.080.

## 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.02.030.*

*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 9.87 VAGRANCY

#### Sections

- 9.87.010 Vagrancy.  
9.87.020 False representation of physical defects.  
9.87.030 Arrest without warrant.

*Common drunkard—Who may be adjudged: RCW 71.08.020.*

*Intoxicated person in public place: RCW 71.08.010.*

*Public nuisance—Place where vagrants resort: RCW 9.66.010.*

#### 9.87.010 Vagrancy. Every—

(1) Person who asks or receives any compensation, gratuity or reward for practicing fortune telling, palmistry or clairvoyance; or,

(2) Person who keeps a place where lost or stolen property is concealed; or,

(3) Person practicing or soliciting prostitution or keeping a house of prostitution; or,

(4) Common gambler found in any place where gambling is conducted or where gambling paraphernalia or devices are kept; or,

(5) Healthy person who solicits alms; or,

(6) Lewd, disorderly or dissolute person; or,

(7) Person who lodges in any barn, shed, shop, out-house, vessel, car, saloon or other place not kept for lodging purposes, without the permission of the owner or person entitled to the possession thereof; or,

(8) Person who lives or works in a house of prostitution or solicits for any prostitute or house of prostitution; or,

(9) Person who solicits business for an attorney around any court, jail, morgue or hospital, or elsewhere; or,

(10) Habitual user of opium, morphine, alkaloid-cocaine or alpha or beta eucaine, or any derivation, mixture or preparation of any of them; or,

(11) Person, except a person enrolled as a student in or parents or guardians of such students or person employed by such school or institution, who without a lawful purpose therefor wilfully loiters about the building or buildings of any public or private school or institution of higher learning or the public premises adjacent thereto—

Is a vagrant, and shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than five hundred dollars. [1972 ex.s. c 122 § 29; 1965 ex.s. c 112 § 1; 1909 c 249 § 436; Code 1881 § 1271; 1875 p 85 § 1; RRS § 2688.]

**Reviser's note:** The effective date of the amendment to this section by chapter 122, Laws of 1972 ex. sess. was changed to January 1, 1975. See note following RCW 70.96A.010.

**Effective date—1972 ex.s. c 122:** January 1, 1974, see note following RCW 70.96A.010.

**Severability—1965 ex.s. c 112:** "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 112 § 2.] This applies to RCW 9.87.010.

#### 9.87.020 False representation of physical defects.

That it shall be unlawful for any person to falsely represent himself or herself as blind, deaf, dumb, crippled or otherwise physically defective for the purpose of obtaining money or other thing of value or making sales of any character of personal property and any person so falsely representing himself or herself as blind, deaf, dumb, crippled or otherwise physically defective and securing aid or assistance on account of such representations shall be deemed guilty of a misdemeanor. [1915 c 62 § 1; RRS § 2688-1.]

**9.87.030 Arrest without warrant.** All peace officers shall arrest any vagrant whom they may find at large, and take him before some justice of the peace, of the county, city, or town, in which the arrest is made. [Code 1881 § 1273; 1875 p 90 § 3; RRS § 1969.]

### 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.  
9.91.040 Importing pauper.  
9.91.050 Improper use of state seal.  
9.91.055 Improper use of state seal—Penalty.  
9.91.060 Leaving children unattended in parked automobile.  
9.91.070 Wilful destruction of vessel.  
9.91.080 Making false manifest, invoice, etc.  
9.91.090 Fraudulent destruction of insured property.  
9.91.110 Metal buyers—Records of purchases—Penalty.  
9.91.120 Food stamps and food purchased with stamps—Reselling or purchasing.

*Accountancy practice regulations, penalty: RCW 18.04.370.*

*Aeronautics regulations, penalty: RCW 14.04.240.*

*Agricultural co-ops, penalties: RCW 24.32.320, 24.32.330, 24.32.340.*

#### Agriculture

*agricultural enabling act, penalties: RCW 15.66.210.*

*apple advertising regulations, penalty: RCW 15.24.200.*

*Bang's disease control, penalty: RCW 16.40.130.*

*co-ops, penalties: RCW 24.32.320, 24.32.330, 24.32.340.*

*eggs and egg products, penalties for violations concerning: RCW 69.24.420.*

*farm labor contractors regulations, penalty: RCW 19.30.150.*

*fertilizers, minerals and limes, penalty: RCW 15.54.470.*

*filled dairy products, penalty: RCW 15.38.050.*

*honey bees, poisoning, penalty: RCW 15.60.150.*

*honey, penalty for violation of law regulating: RCW 69.28.180.*

*horticultural plants and certification act, prohibited acts: Chapter 15.13 RCW.*

*livestock remedies, penalty: RCW 15.52.330.*

*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.*

*planting stock, prohibited acts: RCW 15.14.090, 15.14.140.*

*soft tree fruits, penalty: RCW 15.28.270.*

*standards of grades and packs, penalties: Chapter 15.17 RCW.*

*Aircraft and airman licensing violations: RCW 14.16.060.*

*Airport zoning violations: RCW 14.12.210.*

- Airspace obstacles, refusal to report: RCW 14.04.350.
- Alcoholic beverages, transfer of identification of age to minor: RCW 66.44.325.
- Aliens, employment of certain aliens on public works prohibited, penalty: RCW 39.20.040.
- 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.
- Animals  
 bulls, permitting to run at large, penalty: RCW 16.20.040.  
 cruelty to animals, penalties: Chapter 16.52 RCW.  
 dead animals, disposal of, penalty: RCW 16.68.180.  
 diseased animals, quarantine, penalty: RCW 16.36.110.  
 dog license tax violations, penalties: RCW 36.49.070.  
 estrays, cattle, horses and mules, penalties: RCW 16.28.150, 16.13.090.  
 livestock, removal from common range, duty: RCW 16.28.165.  
 meat inspection act violations: RCW 16.49.510.  
 obliteration of brands and marks, penalty: RCW 16.57.120, 16.57.320, 16.57.360.  
 public livestock marketing act violations: Chapter 16.65 RCW.  
 sheep and goats, permitting to run at large, penalty: RCW 16.12.100.  
 stallions and jacks, permitting to run at large, penalty: RCW 16.16.010.  
 swine, permitting to run at large: RCW 16.12.010.
- Antifreeze regulations, penalty: RCW 19.04.110.
- Antitrust, consumer protection: Chapter 19.86 RCW.
- Architects licensing regulations, penalty: RCW 18.08.270.
- Auctioneering  
 county licensing regulations, penalty: RCW 36.71.070.  
 jewelry or appliances, penalty: RCW 18.12.200.  
 regulations generally, penalty: RCW 18.11.030.
- Automobiles (see Motor vehicles)
- Bakeries and bakery products, penalties: RCW 69.11.100, 69.12.120.
- Ballots, (see also Elections)  
 counterfeiting or unlawful possession, penalty: RCW 29.85.010.  
 disclosing choice of voter, penalty: RCW 29.85.030.  
 divulging ballot count, penalty: RCW 29.54.035.  
 tampering with, penalty: RCW 29.85.020.  
 unlawful printing or distribution of official ballots, penalty: RCW 29.85.040.  
 unlawful to mislead voter in marking, penalty: RCW 29.85.050.
- Banks and trust companies  
 advertising legal services, penalty: RCW 30.04.260.  
 certification of checks, penalty for violation of regulations: RCW 30.16.010.  
 commission, etc., to officer or employee to procure loan prohibited, penalty: RCW 30.12.110.  
 companies, commingling trust property, penalty: RCW 30.04.240.  
 examinations, penalty for falsification: RCW 30.04.060.  
 false entries or statements, penalty: RCW 30.12.090.  
 general penalties for violation of laws concerning: RCW 30.04.310, 30.12.190.  
 general penalty for violation of rules and regulations: RCW 30.04.050.  
 holding companies regulations, penalty: RCW 30.04.230.  
 illegal pledge of securities or assets, exceeding indebtedness limitations, or unlawful borrowing and rediscounting, penalty: RCW 30.04.160.  
 loans from trust funds prohibited, penalty: RCW 30.12.120.  
 preferential transfers in contemplation of insolvency, penalty: RCW 30.44.110.  
 purchase of assets by officers, etc., penalty: RCW 30.12.050.  
 receiving deposits when insolvent prohibited, penalty: RCW 30.44.120.  
 records, destroying or secreting, penalty: RCW 30.12.100.  
 unlawful use of words indicating, penalty: RCW 30.04.020.
- Barbering and haircutting licensing regulations, penalty: RCW 18.15.160.
- Baseball  
 minors, penalty for violations concerning: RCW 67.04.150.  
 penalties for bribery or fraud concerning: RCW 67.04.010, 67.04.020, 67.04.050.
- Basic science law, penalty for violation: RCW 43.74.090.
- Beauty culture licensing regulations, penalty: RCW 18.18.160, 18.18.270.
- 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  
 contests prohibited on Sunday, etc., penalty: RCW 67.08.070.  
 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 and grafting 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 resistance standards, penalty: RCW 70.86.040.
- Bulls, permitting to run at large, penalty: RCW 16.20.040.
- Capitol grounds traffic regulations, penalty for violations: RCW 46.08.170.
- Cascara bark peeling regulations, penalty: RCW 19.08.030.
- Cattle, slaughtering and transportation regulations, penalties: RCW 16.48.320.
- Caustic poisons act, penalty for violation: RCW 69.36.060.
- Cemeteries  
 embalmers and funeral director regulations, penalty: RCW 18.39.220, 18.39.230.  
 endowment care cemeteries, penalties: RCW 68.40.085, 68.40.090.  
 establishment in violation of laws regulating, penalty: RCW 68.48.040.  
 mausoleums and columbariums, penalty for violation of construction regulations: RCW 68.28.060.  
 property, penalties for violations concerning: RCW 68.24.130, 68.24.140, 68.24.150, 68.24.190, 68.48.010.  
 record of caskets required when cremation made, penalty: RCW 68.20.100, 68.20.105.
- Charitable trusts, penalty for violations: RCW 19.10.140.
- Children (see Minors)
- Chiropody licensing regulations, penalty: RCW 18.22.220.
- Chiropractic licensing regulations, penalty: RCW 18.25.090.
- Christmas tree exportation regulations, penalty: RCW 19.12.090.
- Cigarettes, unfair cigarette sales act violations: RCW 19.91.020, 19.91.170.
- Cities and towns  
 budgets in cities over 300,000, penalty for violation of regulations: RCW 35.32A.090.  
 cities of the first class, powers to prescribe crimes by ordinance: RCW 35.22.280.  
 cities of the second class, powers to prescribe penalties for violation of ordinances: RCW 35.23.440.  
 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.  
 commission form, free services to officers and employees prohibited, penalty: RCW 35.17.150.  
 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.
- unclassified cities, powers to prescribe penalties for violation of ordinances: RCW 35.30.010.
- 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.
- Code of ethics violation: RCW 42.22.070.
- Collection agency regulations, penalty: RCW 19.16.050.
- Colleges, interfering by force or violence with any administrator, faculty member or student unlawful—Penalty: RCW 28B.10.570, 28B.10.572, 28B.10.573.
- Colleges, intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty: RCW 28B.10.571–28B.10.573.
- Comic book regulations, penalty: RCW 19.18.140.
- Commercial automobile drivers' training schools, violation of act, penalty: RCW 46.82.250.
- Commercial feed law, crimes against: Chapter 15.53 RCW.
- Commercial sprayers and dusters regulations, violations, penalty: Chapter 17.21 RCW.
- Commission merchants regulations, penalty: RCW 20.01.460.
- Confections, penalty for violations of law regulating: RCW 69.20.150.
- Consumer protection, crimes and penalties relating to: Chapter 19.86 RCW.
- Control of pet animals infested with diseases communicable to humans, violation, penalty: RCW 16.70.050.
- Controlled atmosphere storage, penalty: RCW 15.30.250.
- Conveyances, fraudulent: Chapter 19.40 RCW.
- Convict-made goods regulations, penalty: RCW 19.20.060.
- unlawful sale, penalty: RCW 72.60.170.
- Copyright regulations, penalty: RCW 19.24.290.
- Counties
- budget regulations, penalty: RCW 36.40.240.
  - building codes and fire regulations, penalty for violation: RCW 36.43.040.
  - dog license tax violation, penalty: RCW 36.49.070.
  - garbage disposal regulations, penalty for violations: RCW 36.58.020.
  - hawkers and auctioneers, penalty for selling without license: RCW 36.71.060.
  - officers failing to pay over fees, penalty: RCW 36.18.170.
  - officers taking illegal fees, penalty: RCW 36.18.160.
  - parks, playgrounds or other recreational facilities, violation of rules and regulations adopted by county commissioners, penalty: RCW 36.68.080.
  - roads and bridges
    - construction of approaches, penalty for violation of provisions concerning: RCW 36.75.150.
    - general penalty for violation of provisions concerning: RCW 36.75.290.
    - use of oil or other material restricted, penalty: RCW 36.86.060.
  - trading stamp licenses, penalty: RCW 19.83.050.
  - violation of regulations for taking of census for classification of counties: RCW 36.13.070.
- 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.
- County treasurer, failure to call for or pay warrants, penalty: RCW 36.29.070.
- Credit unions
- false statements and entries, etc., penalty: RCW 31.12.340.
  - general penalty for violations of laws governing: RCW 31.12.430.
- Crop credit associations, general penalty for violation of regulations: RCW 31.16.320.
- Cruelty to animals, penalties: Chapter 16.52 RCW.
- Dance halls
- marathon dances prohibited, penalty: RCW 67.12.080, 67.12.100.
  - penalties for violation of regulations concerning: RCW 67.12.040, 67.12.070.
- Dental hygienist licensing regulations, penalties: RCW 18.29.080, 18.29.090, 18.29.100.
- Dentistry practice regulations, penalties: RCW 18.32.300, 18.32.310, 18.32.340, 18.32.350, 18.32.360, 18.32.390.
- Diking and drainage improvement districts, damaging improvements, penalty: RCW 85.08.690.
- Discrimination, interference with board against discrimination, 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, 70.20.060, 70.20.070, 70.20.180, 70.24.080, 70.54.050.
- Dispensing opticians, practicing without license, penalty: RCW 18.34.140.
- Disposal of dead animals, violations, penalty: RCW 16.68.180.
- Doors of buildings used by public, safety requirements, penalty: RCW 70.54.070.
- Drivers' licenses (see Motor vehicles)
- Drugless healing regulations, penalty: RCW 18.36.140, 18.36.165.
- Drugs (see Narcotic drugs; Poisons and dangerous drugs)
- Earthquake resistance standards for public buildings, penalty: RCW 70.86.040.
- Eggs and egg products, penalties for violations of law regulating: RCW 69.24.420.
- Elections
- absentee service voting regulations, penalty for violations: RCW 29.39.200.
  - absentee voting law, penalty for violations: RCW 29.36.110.
  - bribery of voters, penalty: RCW 29.85.080.
  - bribery or coercion of voters, penalty: RCW 29.85.060.
  - bribery or fraud in commission form cities, penalty: RCW 29.85.130.
  - canvassing of votes regulations, penalty: 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 29.54.035.
  - electioneering for hire in commission form cities prohibited, penalty: RCW 29.85.120.
  - forgery of signature on nomination paper, penalty: RCW 29.85.140.
  - fraud as to certificates of nomination, penalty: RCW 29.85.100.
  - general penalty for violations: Chapter 29.85 RCW.
  - inducing noncitizen Indian to vote, penalty: RCW 29.85.150.
  - influencing voters to vote or not to vote by unlawful means, penalty: RCW 29.85.070.
  - initiative and referendum regulations, penalties: RCW 29.79.440–29.79.490.
  - misleading voter in marking ballots, penalty: RCW 29.85.050.
  - officer disclosing choice of voter on ballot, penalty: RCW 29.85.030.
  - officer tampering with ballots, penalty: RCW 29.85.020.
  - penalty for failure to transmit returns: RCW 29.54.130.
  - perjury when vote challenged: RCW 29.85.180.
  - printing or distributing official ballots unlawfully, penalty: RCW 29.85.040.
  - recall petition regulations, penalties: RCW 29.82.170–29.82.220.
  - registration law violations, penalties: RCW 29.85.190, 29.85.200.
  - 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.
    - violations by officers, penalty: RCW 29.85.160.
  - voting violations, penalty: RCW 29.51.230.
- Electrical construction, penalty: RCW 19.29.060.
- Electricians and electrical installation regulations, penalty: RCW 19.28.350.
- Embalmer and funeral director regulations, penalty: RCW 18.39.230, 18.39.220.

- Endowment care cemeteries, penalties for violations of regulations: RCW 68.40.085, 68.40.090.
- Engineer and land surveyor regulations, penalty: RCW 18.43.120.
- Escrow agent, uncertificated: RCW 18.44.140.
- Estrays, cattle and hogs, penalties: RCW 16.28.150.
- Explosives and devices regulated, penalties: Chapter 70.74 RCW.
- Facsimile signatures and seals, fraud in use of: RCW 39.62.040.
- Family desertion and nonsupport, penalty: RCW 26.20.030.
- 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 52.28.010, 52.28.050.
- Firearms in vehicle, penalty: RCW 77.16.250, 77.16.280.
- 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, unlawful acts relating to: RCW 70.77.120-70.77.910.
- Fireworks regulations, penalty: RCW 70.77.255.
- Fisheries, commercial digging of hard shell clams: RCW 75.28.285.
- Flag, failure to display and require ceremony in schools, penalty: RCW 28A.02.030.
- 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
  - compacts, penalty for violations: RCW 75.40.070.
  - discharging explosives in water, penalty: RCW 75.12.080.
  - false information and reports, penalty: RCW 75.08.220.
  - fish guards required on pipe lines and ditches, etc., penalty: RCW 75.20.040.
  - fisheries code violations, general penalty: RCW 75.08.260.
  - fishways required over dams, etc., penalty: RCW 75.20.060.
  - hatcheries to be provided if fishways impractical, penalty: RCW 75.20.090.
  - licenses required, penalty: RCW 75.28.010.
  - privilege and catch fee violations, penalty: RCW 75.32.120.
  - resisting officer, penalty: RCW 75.08.190.
  - seal or sea lion bounty falsification, penalty: RCW 75.16.040.
  - shellfish taking contrary to law, penalty: RCW 75.24.050.
  - taking caught fish or stealing gear, penalty: RCW 75.12.090.
- Food locker regulations, penalty: RCW 19.32.180.
- Forcible entry and detainer, penalty: RCW 59.12.230.
- Forest practices, cutting permits, penalty: RCW 76.08.030.
- 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
  - blasting fuse regulations, penalty: RCW 76.04.245, 76.04.270.
  - closed season violations, penalty: RCW 76.04.150.
  - closure of forest operation, penalty: RCW 76.04.190.
  - extinguishment of fires set, penalty: RCW 76.04.340.
  - lighted material disposal, penalty: RCW 76.04.300.
  - mill wood waste burning, penalty: RCW 76.04.240, 76.04.270.
  - notices, removing or defacing, penalty: RCW 76.04.210.
  - power driven machinery, penalty: RCW 76.04.277.
  - prosecuting attorney failing to prosecute, penalty: RCW 76.04.090.
  - rules and regulations
    - general penalty: RCW 76.04.480.
    - penalty for violation: RCW 76.04.120.
  - setting fires, etc., penalty: RCW 76.04.210, 76.04.220.
  - snag removal, penalty: RCW 76.04.227.
  - violating statutes or work stoppage notice: RCW 76.04.270.
- Fraudulent conveyances: Chapter 19.40 RCW.
- Furniture and bedding industry regulations, penalty for violations: RCW 18.45.500.
- Gambling, civil action: RCW 4.24.070.
- Game and game fish, prohibited acts and penalties: Chapter 77.16 RCW, RCW 77.20.060, 77.32.020.
- Game and game fish, trafficking in prohibited: RCW 77.16.040.
- Garbage collection, unlawful acts: Chapter 81.77 RCW.
- 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, regulations and commodity inspection, penalties for violations: RCW 22.09.200, 22.09.320, 22.09.560.
- Habitual drunkards, furnishing liquor to, penalty: RCW 71.08.070.
- 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, 46.61.650.
  - permitting escape of load from vehicle: RCW 46.61.655.
  - pipe lines, etc., across or on highways, penalty 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.
- Honey, prohibited acts: RCW 69.28.080-69.28.090.
- Horse racing, penalty for violations of regulations concerning: RCW 67.16.060.
- Horses, mules, and asses, permitting to run at large, penalty: RCW 16.13.090.
- Hospital licensing required, penalty: RCW 70.41.170.
- Hotel sanitation and safety requirements, penalty: RCW 70.62.100, 70.62.110, 70.62.120.
- Hotels, fraud in obtaining accommodations, etc., penalty: RCW 19.48.110.
- Human remains, penalties for violations concerning: Chapter 68.08 RCW.
- Indian grave and records, mutilation or disturbing, penalty: RCW 27.44.010.
- Industrial loan companies
  - doing business for foreign industrial loan company prohibited, penalty: RCW 31.04.250.
  - violations of regulations specified, penalties: RCW 31.04.220.
- Initiative and referendum regulations, penalties: RCW 29.79.440-29.79.490.
- Insane (see Mentally ill)
- Insect pest control regulations, violations: RCW 17.24.100.
- Institutional industries commission, unlawful sale of inmate goods, etc., penalty: RCW 72.60.170.
- 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.
  - employee welfare trust funds, penalty for violation of regulations: RCW 48.52.080.
  - false claims or proof, etc., penalty: RCW 48.30.230.
  - fire marshal hearings, false swearing, penalty: RCW 48.48.070.
  - fraternal societies, insurance regulations, penalties: RCW 48.36.330.

- fraud and unfair practices violations: Chapter 48.30 RCW.  
 general penalty for violations: RCW 48.01.080.  
 health care services, penalty for violation of regulations: 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.
- Intoxicating liquor (see Liquor control)
- Ionizing radiation, prohibited acts: Chapter 70.98 RCW.
- Industrial insurance, attorney's fees: RCW 51.52.120, 51.52.132.
- Insurance, destruction, secretion, abandonment, etc., of property: RCW 48.30.220.
- Irrigation and rehabilitation districts, violation of regulations: RCW 87.84.090.
- Irrigation districts, interest in contracts, penalty: RCW 87.08.110.
- 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 49.44.100–49.44.110.
- Labor regulations
- blacklisting prohibited, penalty: RCW 49.44.010.
  - bribery of labor representative, penalties: RCW 49.44.020, 49.44.030.
  - discrimination, penalty for interference with state board against discrimination: RCW 49.60.310.
  - extrahazardous employment safety regulations, penalties for violations: RCW 49.16.040, 49.16.151.
  - factories, mills, etc., safety and health regulations, penalty: RCW 49.20.110.
  - female and child labor regulations, penalties for violations: RCW 26.28.070, 49.12.130, 49.12.170, 49.12.230.
  - 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 regulations, 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 settlement regulations, penalty: RCW 89.04.120.
- 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 44.16.120–44.16.150.
- 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 regulations: Chapter 66.44 RCW.
  - purchase, attempt, by minor: RCW 66.44.280–66.44.292.
  - records of sales confidential, penalty: RCW 66.16.090.
  - sale on election day, exceptions: RCW 66.44.260.
  - transfer of identification card prohibited, penalty: RCW 66.20.200.
- Litter—bugs, depositing glass, debris, etc., on highways, beaches, waters, penalty, removal: RCW 46.61.645, 46.61.650.
- Livestock, removal from common range, duty, penalty: RCW 16.28.165, 16.28.170.
- Livestock 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.
- Macaroni and macaroni products, penalty for violation of laws regulating: RCW 69.16.170.
- Maple Lane School, unauthorized entrance to grounds or enticing girls away, etc., penalty: RCW 72.20.065.
- Marathon dances prohibited, penalty: RCW 67.12.080, 67.12.100.
- Marine biological preserve, penalty for violation: RCW 28B.20.320–28B.20.324.
- Marriage certificates, penalty for failure to record: RCW 26.04.110.
- Marriage license requirements and regulations, penalty for violations: RCW 26.04.200, 26.04.210, 26.04.230, 26.04.240.
- Maternity homes licensing regulations, penalty: RCW 18.46.120.
- Mausoleums and columbariums, penalty for violation of regulations concerning construction of: RCW 68.28.060.
- Meat inspection act: Chapter 16.49A RCW.
- Medicine and surgery, unlawful practice: RCW 18.71.020.
- Mentally ill, private establishments for, licensing violations: RCW 71.12.460.
- Midwifery regulations, penalties for violations: RCW 18.50.070, 18.50.120.
- Military affairs offenses defined, penalties: Chapter 38.32 RCW, RCW 38.40.040, 38.40.050, 38.40.110, 38.40.120, 38.40.140.
- 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 agencies regulations, penalty: RCW 26.36.060.
  - child labor prohibited, penalty: RCW 26.28.070. (see also Labor regulations)
  - contributing to delinquency, penalty: RCW 13.04.170.
  - 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.
- Mobile home identification tags—Unlawful acts relating to: RCW 46.16.510.
- Mobile homes, movement without permit as misdemeanor—Exception: RCW 46.16.106.
- Motor boat safety requirements: RCW 88.12.060.
- Motor vehicles
- accidents and reports
    - duty of operator when accident causes injury or damage, penalty: RCW 46.52.020.
    - repairmen, storage men, etc., report when vehicle in accident required, penalty: RCW 46.52.090.
  - auto wreckers
    - handling of vehicles with serial number removed, etc., penalty: RCW 46.80.120.
    - licenses and reports, penalties for violations: RCW 46.80.020, 46.80.090.
  - bicycle violations: Chapter 46.61 RCW.
  - certificates of ownership, penalties: Chapter 46.12 RCW.
  - clearance, minimum, passenger cars: RCW 46.61.680.
  - dealers handling vehicles with serial number removed, etc., penalty: RCW 46.70.140.
  - destruction of, duty to notify director, penalty: RCW 46.12.070.
  - disabled persons, unauthorized use of decal issued to: RCW 46.16.380.
  - driver's licenses: Chapter 46.20 RCW.
  - driving delinquencies: Chapter 46.61 RCW.
    - negligent driving defined, penalty: RCW 46.61.525.
    - negligent homicide defined, penalty: RCW 46.61.520.
    - operating under influence of liquor or drugs, penalty: RCW 46.61.506, 46.61.510, 46.61.515.
    - operating when license suspended or revoked, penalty: RCW 46.52.100.
    - reckless driving defined: RCW 46.61.500, 46.61.665.

- explosives and flammables, transportation, penalty: RCW 46.48.175.
- financial responsibility law, penalties for violations: RCW 46.29.620.
- firearms in vehicle: RCW 77.16.250, 77.16.280.
- floaters license plates: RCW 46.85.250.
- general penalty for violations: RCW 46.64.050.
- inspection requirements, penalties for violations: RCW 46.32.010, 46.32.050, 46.32.060.
- installation of new motor, duty to notify director: RCW 46.12.080.
- licensing regulations, penalties for violations: RCW 46.16.090, 46.16.135, 46.16.137, 46.16.140, 46.16.145, 46.44.097.
- logging trucks, illegal operations, penalty: RCW 46.16.138.
- operator's license, out-of-state, unlawful to operate under if Washington license invalid: RCW 46.20.420.
- operators' licensing regulations, penalties: RCW 46.20.342.
- rules of the road: Chapter 46.61 RCW.
- safety violations: Chapter 46.48 RCW.
- school buses, failure to stop when loading or unloading: RCW 46.61.370(1).
- size, weight and load violations: Chapter 46.44 RCW.
- size, weight, load, combination of units: RCW 46.44.045.
- standing with motor running leaving minor child therein: RCW 46.61.685.
- toll facilities and approaches, unlawful operation on: RCW 46.61.690.
- transportation of explosives and flammables, etc., penalty: RCW 46.48.175.
- transporters' licenses, penalty for violation: RCW 46.76.080.
- vehicle inspection violations: Chapter 46.32 RCW.
- vehicle licensing violations: Chapter 46.16 RCW.
- vehicle lighting and equipment violations: Chapter 46.37 RCW.
- weight and size violations, penalty: RCW 46.44.045, 46.44.097.
- wreckers, fence or hedge required: RCW 46.80.130.
- 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 9.38.030 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**
- control of through state board of health, rules and regulations, penalty for violation: RCW 69.32.100, 69.32.130.
- unlawful possession and use, penalty: RCW 69.32.080.
- Narcotic farm colony**
- assisting escape, etc., penalty: RCW 72.48.090.
- bringing narcotics, liquor or weapons, etc., into institution, penalty: RCW 72.48.080.
- conniving at improper commitment, penalty: RCW 72.48.100.
- Native flora on state lands or on land adjoining highways and parks, penalty for removal, etc.: RCW 47.40.080.**
- Navigation**
- pilotage on Puget Sound: RCW 88.16.120, 88.16.130, 88.16.150.
- violations generally: Chapter 88.08 RCW.
- Nuisances, civil remedies: Chapter 7.48 RCW.**
- Nurses**
- practical nurses licensing, penalty: RCW 18.78.170.
- registered nurses regulations, penalty: RCW 18.88.270.
- Nursing home regulations, penalty for violations: RCW 18.51.150.**
- Occupational motor vehicle operators' licenses, violation of act: RCW 46.20.410.**
- Offering false or forged instruments for filing: RCW 40.16.030.**
- Oil and gas conservation, general penalty for violations of regulations: RCW 78.52.550.**
- Operation of unlicensed camper: RCW 46.16.505.**
- Operators' licenses (see Motor vehicles)**
- Optometry regulations, penalty for violations: RCW 18.53.150.**
- Osteopathy violations, penalties: RCW 18.57.030, 18.57.100, 18.57.160.**
- Parks and beaches, depositing glass or debris, etc., upon, penalty, removal: RCW 46.61.650.**
- 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.**
- Passenger charter carrier act violations, penalty: RCW 81.70.170.**
- Patent medicine peddlers licensing regulations, penalty: RCW 18.64.047.**
- Pawnbrokers and second-hand dealers regulations, penalties: RCW 19.60.063, 19.60.100.**
- Peaches, standards, inspection, penalty for violations: RCW 15.17.290.**
- Peddlers, penalty for selling without license: RCW 36.71.060.**
- Penitentiary prisoners, trafficking with prohibited, penalty: RCW 72.08.150.**
- 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 regulations, penalties: RCW 18.64.140, 18.64.250.**
- Pharmacy owners, pharmacists and wholesale druggists regulations, penalties: Chapter 18.64 RCW.**
- Physical therapist, holding oneself out as, penalty: RCW 18.74.090.**
- Physical therapy practice regulations, penalties: RCW 18.74.090, 18.74.100, 18.74.110.**
- Physicians and surgeons licensing regulations, penalties: RCW 18.71.020.**
- Poisons and dangerous drugs, penalties for violation of law governing: Chapter 69.50 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.**
- Practical nurses licensing, penalty: RCW 18.78.170.**
- Prophylactic vendors regulations, penalty for violations: RCW 18.81.070.**
- Psychologists licensing act, violations, penalty: RCW 18.83.180.**
- Psychology practice regulations, penalty: RCW 18.83.180.**
- Public assistance**
- falsification of application, etc., penalty: RCW 74.04.250, 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 and regulations, 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 81.44.08 , 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 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 regulations, general penalties: RCW 80.04.380, 80.04.390.
- Public works**
- employment of certain aliens prohibited, penalty: RCW 39.20.040.
- 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.
- Quarantine of house for disease, penalty for breaking: RCW 70.20.180.
- Quarantine of vessels for disease, etc., penalties for disobeying: RCW 70.16.040, 70.16.060, 70.16.080, 70.16.090, 70.16.110, 70.16.130, 70-16.150, 70.16.200.
- Real estate brokers and salesmen regulations, penalty: RCW 18.85.340.
- Real estate 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 petitions regulations, penalties: RCW 29.82.170-29.82.220.
- Recreational devices, inspection of, penalty: RCW 70.88.020, 70.88.040.
- Referendum and initiative regulations, penalties: RCW 29.79.440-29.79.490.
- Registered nurses regulations, penalty: RCW 18.88.270.
- Retail sales tax—Fraudulent application or use of nonresident permit: RCW 82.08.030.
- Rules of the road: Chapter 46.61 RCW.
- Sanitarians, advertising as without a license: RCW 18.90.070.
- 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**
- abuse of pupil by teacher, penalty: RCW 28A.87.140.
- compulsory attendance
- penalties: RCW 28A.27.100, 28A.28.100, 28A.28.110.
- penalty for falsification: RCW 28A.87.020.
- disclosing examination questions, penalty: RCW 28A.87.070.
- disturbing meetings, penalty: RCW 28A.87.060.
- failure to deliver books, etc., to successor, penalty: RCW 28A.87.130.
- grafting by school officials, penalty: RCW 28A.87.090.
- 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-10.571-28B.10.573.
- Securities act violations, penalty: RCW 21.20.400-21.20.420.
- Sexual psychopaths: Chapter 71.06 RCW.
- Sheep and goats, permitting to run at large, penalty: RCW 16.12.100.
- 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.
- Shoddy disinfection required, penalty: RCW 70.70.040.
- Ski lifts and other recreational conveyances: RCW 70.88.040.
- Slaughtering and transportation of cattle, violation of regulations: RCW 16.48.320.
- Small loan companies, penalty for violations of laws governing: RCW 31.08.210.
- Snowmobile act
- additional violations—Penalty: RCW 46.10.130.
- operating violations, general penalty: RCW 46.10.090, 46.10.190.
- Sporting contest, fraud, penalty: RCW 67.24.010.
- Stallions and jacks, permitting to run at large, penalty: RCW 16.16.010.
- State bonds, fraud by engraver: RCW 39.44.101.
- State employees' retirement, falsification of statements, etc., penalty: RCW 41.40.400.
- 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.
- State universities, traffic regulations, penalty: RCW 28B.10.565.
- Steam boilers, safety requirements, penalty: RCW 70.54.080.
- Stink or gas bombs prohibited, penalty: RCW 70.74.310.
- Storage warehousemen regulations, penalties for violations: RCW 81-92.130-81.92.140.
- Support of dependent children—Alternative method—1971 act: Chapter 74.20A RCW.
- Swimming pools, violation of health regulations: RCW 70.90.040.
- Swine, permitting to run at large: RCW 16.12.010.
- Taxation**
- cigarette tax, penalties: RCW 82.24.100, 82.24.110.
- conveyance tax, penalties: RCW 82.20.050, 82.20.060.
- general penalties: RCW 82.32.290.
- house trailer excise, penalty: RCW 82.50.090, 82.50.120, 82.50.170.
- inheritance and gift taxes, penalties: RCW 83.52.020, 83.56.300.
- 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
- forests and forest lands: RCW 84.32.120.
- listing of property: RCW 84.40.120.
- reforestation lands, penalty: RCW 84.28.170.
- 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.87.010.
- Teachers and school directors, regulations concerning, penalty: RCW 28A.57.326.
- Teachers' retirement, falsification of statements, etc., penalty: RCW 41.32.670.
- 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.

Terminal warehouse act of 1915, penalties: RCW 22.09.250.

#### 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 commission on equipment—Penalty: RCW 46.37.425.

Tobacco, etc., minors procuring or possessing, penalties: RCW 26.28.100.

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.

town clerk, failure to make return of election, penalty: RCW 45.28.090.

Trademark regulations, penalties: Chapter 19.76 RCW.

Trading stamps and premiums regulations, penalty: RCW 19.84.040, 36.91.050.

Trusts, public charitable trust, penalty for violations: RCW 19.10.140.

Tuberculosis, control of in cows, violation: RCW 16.40.130.

Unclaimed property act, penalties for violations: RCW 63.28.310, 63.28.330.

Unemployment compensation, penalties for violations: Chapter 50.36 RCW.

Unfair trade practices, penalty for price cutting or discrimination: RCW 19.90.100.

University, state college of Washington, traffic regulations, penalty: RCW 28B.10.565.

Unlawful operations of motor vehicle by habitual offender—Penalty—Procedure to enforce: RCW 46.65.090.

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.

Venereal diseases, penalty for violation of control of: RCW 70.24.080.

Veterans' bonus acts, penalties for false claims, etc., and charges for filing or discounting of claims: RCW 73.32.160, 73.33.100, 73.33.110.

Veterinarian regulations, penalty: RCW 18.92.230, 18.92.240.

Violations constituting abandoning junk motor vehicles—Evidence—Penalty: RCW 46.52.160.

Vital statistics requirements, penalty for violation: RCW 70.58.280.

Vouchers, public, false certification, penalty: RCW 42.24.100.

Wages (see Labor regulations)

Warehouses, grain and terminal, regulations and commodity inspection, penalties: RCW 22.09.200, 22.09.310, 22.09.560.

Warehousing deposits, general penalties: Chapter 22.32 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.

Water rights, violations of water code: Chapter 90.32 RCW.

Waters, depositing glass or debris, etc., in waters adjacent to public beaches, penalty, removal: RCW 46.61.650.

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 regulations, penalties for violations: Chapter 19.94 RCW.

Wheat commission act (1961), prohibited acts: RCW 15.63.220, 15.63.230.

Wills, failing to deliver, penalty: RCW 11.20.010.

Wiping rags sterilization, penalty: RCW 70.72.080.

Workmen's 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, 46.61.505, 46.61.510.*

*Railroads, employees, equipment, operations: Chapters 81.40, 81.44, 81.48 RCW.*

*Reckless operation of steamboat or engine: RCW 9.48.120.*

**9.91.040 Importing pauper.** If any person knowingly bring within this state any pauper or poor person, with the intent of making him a charge on any county or counties therein, he shall be punished by fine not exceeding five hundred dollars and stand charged with his support. [Code 1881 § 932; RRS § 9992.]

*Importing insane, etc.: RCW 72.25.040.*

**9.91.050 Improper use of state seal.** It shall be unlawful for any individual, person, firm, association or corporation to use or make any die of the state seal, or any impression thereof, for any use whatsoever, unless written permission has first been obtained for the use of same from the secretary of state. [1947 c 170 § 1; Rem.

Supp. 1947 § 10995-1. FORMER PART OF SECTION: 1947 c 170 § 2; Rem. Supp. 1947 § 10995-2, now codified as RCW 9.91.055.]

**9.91.055 Improper use of state seal—Penalty.** Any person violating the provisions of RCW 9.91.050 shall be guilty of a gross misdemeanor. [1947 c 170 § 2; Rem. Supp. 1947 § 10995-2. Formerly RCW 9.91.050, part.]

**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.]

**9.91.070 Wilful destruction of vessel.** Every person who shall wreck, burn, sink, scuttle or otherwise injure or destroy a vessel or its cargo, or wilfully permit the same to be done, with the intent to prejudice or defraud an insurer or any other person, or who shall fit out a vessel, or shall load any cargo on board thereof with intent to permit or cause the same to be wrecked, sunk or otherwise injured or destroyed, and thereby defraud or prejudice an insurer or other person, shall be punished by imprisonment in the state penitentiary for not more than twenty years. [1909 c 249 § 382; RRS § 2634. Formerly codified as RCW 88.08.040.]

**9.91.080 Making false manifest, invoice, etc.** Every person who shall prepare, make or subscribe a false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than one thousand dollars, or by both. [1909 c 249 § 383; RRS § 2635. Formerly codified as RCW 88.08.010.]

**9.91.090 Fraudulent destruction of insured property.** Every person who, with intent to defraud or prejudice the insurer thereof, shall wilfully injure or destroy any property not specified or included hereinbefore in this subdivision, which is insured at the time against loss or damage by fire or other casualty, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1909 c 249 § 384; RRS § 2636. Formerly codified as RCW 9.45.110.]

**Reviser's note:** "this subdivision" apparently refers to 1909 c 249 §§ 382, 383, and 384 which appear in the session law under the heading "FRAUDULENT INJURY OF VESSEL" and are herein codified as RCW 9.91.070, 9.91.080 and 9.91.090.

*Insurance code, wilful 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.

**9.91.120 Food stamps and food purchased with stamps—Reselling or purchasing.** Any person who resells food stamps manufactured under the food stamp program established pursuant to RCW 74.04.500, 74.04.505 and 74.04.510, or food purchased therewith, and any person who knowingly purchases such resold stamps or food, shall (1) if the face value of the stamps or food transferred be one hundred dollars or more, be guilty of a gross misdemeanor and (2) if the face value of the stamps or food transferred be less than one hundred dollars, shall be guilty of a misdemeanor. [1973 2nd ex.s. c 6 § 1.]

*Food stamp program: RCW 74.04.500–74.04.527.*

## Chapter 9.92 PUNISHMENT

Sections	
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.
9.92.050	Commitment to state reformatory.
9.92.060	Suspending sentences.
9.92.062	Suspended sentence—Termination date—Application.
9.92.064	Suspended sentence—Termination date—Establishment.
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.  
9.92.150 Reduction for good behavior.

*County jails: Chapter 36.63 RCW.*

*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.*

*Removal of diseased prisoners: RCW 70.20.140.*

*Treatment of prisoners for venereal disease: RCW 70.24.030.*

**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 imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1909 c 249 § 13; RRS § 2265.]

*Classification of crimes: RCW 9.01.020.*

**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 not more than one year, or by a fine of not more than one thousand dollars, or by both. [1909 c 249 § 15; RRS § 2267.]

**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 not more than ninety days, or by a fine of not more than two hundred and fifty dollars. [1909 c 249 § 14; Code 1881 § 785; RRS § 2266.]

**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.]

*Contempts: Chapters 3.28, 7.20, 9.23 RCW.*

*Punishment for contempt mitigates punishment for crime: RCW 7.20.120.*

**9.92.050 Commitment to state reformatory.** Whenever any male person, between the ages of sixteen and thirty years, is convicted of any felony the court may, in its discretion, order such person to be committed to and confined in the Washington state reformatory. [1955 c 246 § 1; 1909 c 249 § 25; RRS § 2277.]

*State reformatory: Chapter 72.12 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 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, and (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. 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 justice court may be placed under supervision of a probation officer employed for that purpose by the board of county commissioners of the county wherein the court is located. [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 § 228C.]

**Severability—1967 c 200:** See note following RCW 9.45.122.

*Counties may provide probation and parole services:* RCW 36.01.070.  
*Probation:* RCW 9.95.200–9.95.250.

**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.]

**9.92.064 Suspended sentence—Termination date—Establishment.** 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. [1971 ex.s. c 188 § 2.]

**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.]

**9.92.070 Payment of fine and costs in installments.** Hereafter whenever any judge of any superior court, justice of the peace or police judge shall sentence any person to pay any fine and costs, he may, in his 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. [1923 c 15 § 1; RRS § 2280–1.]

*Collection and disposition of fines and costs:* Chapter 10.82 RCW.

**9.92.080 Sentence on two or more convictions or counts.** From and after August 9, 1971:

(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 the department of social and health services, 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. [1971 ex.s. c 295 § 1; 1925 ex.s. c 109 § 2; 1909 c 249 § 33; RRS § 2285.]

**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 the state penitentiary 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 the state penitentiary for life. [1909 c 249 § 34; 1903 c 86 §§ 1, 2; RRS § 2286.]

**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 justice of the peace in a city in this state to a term of imprisonment in the 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 and to wear an ordinary ball and chain, while performing such labor. [Code 1881 § 2075; RRS § 10189.]

**9.92.140 County jail prisoners may be compelled to work.** When a person has been sentenced by a justice of the peace, 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. [Code 1881 § 2076; 1867 p 56 § 24; 1858 p 10 § 1; RRS § 10190.]

*Employment of prisoners: RCW 36.28.100.*

*Working out fine: Chapter 10.82 RCW.*

**9.92.150 Reduction for good behavior.** The sentencing judge of the superior court and the sentencing justice of peace of the justice court shall have authority and jurisdiction whereby the sentence of a prisoner, sentenced to imprisonment in their respective county jail, may be reduced five days for each month of confinement therein, for good behavior. [1937 c 99 § 1; RRS § 10191-1.]

### 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	Narcotics, alcoholic beverages, weapons—Possession, etc., by prisoner prohibited.
9.94.050	Officers and guards as peace officers.
9.94.060	Interference, trafficking, with prisoners—Arrest without warrant.

*Convict-made goods, restriction on sale of: RCW 19.20.060, Chapter 72.60 RCW.*

*Escape and rescue: Chapter 9.31 RCW.*

*State institutions: Title 72 RCW.*

*Treatment of prisoners for venereal diseases: RCW 70.24.030.*

**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 penal institution 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 the state penitentiary for not less than one year nor more than ten years, which shall be in addition to the sentence being served. [1955 c 241 § 2.]

**9.94.030 Holding person hostage—Interference with officer's duties.** Whenever any inmate of a state penal institution 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 duties, by force or violence, or the threat thereof, he shall be guilty of a felony and upon conviction shall be punished by imprisonment in the state penitentiary for not

less than one year nor more than ten years. [1957 c 112 § 1; 1955 c 241 § 3.]

*Interfering with public officer: RCW 9.18.090.*

*Kidnaping: Chapter 9.52 RCW.*

**9.94.040 Narcotics, alcoholic beverages, weapons— Possession, etc., by prisoner prohibited.** Every person serving a sentence in any penal institution of this state who, 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 of institution officials, officers or employees, possesses or carries upon his person or has under his control any narcotic drug, alcoholic beverage or any weapon, firearm or any instrument which, if used, could produce serious bodily injury to the person of another, is guilty of a felony punishable by imprisonment for not more than five years, which shall be in addition to the sentence being served. [1955 c 241 § 4.]

**9.94.050 Officers and guards as peace officers.** All officers and guards of state penal institutions, 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. [1955 c 241 § 5.]

**9.94.060 Interference, trafficking, with prisoners— Arrest without warrant.** Any person who, without authority, interferes with or in any way interrupts the work of prisoners of a state penal institution, and any person not authorized by law, who gives, or attempts to give, to any prisoner, opium, cocaine or other narcotics or any intoxicating liquors of any kind whatever, or firearms, weapons or explosives of any kind, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in a state penal institution for a term of not less than one year nor more than five years and shall be disqualified from holding any state office or position in the employ of this state. Any person who interferes with the discipline or good conduct of any prisoner of a state penal institution while such prisoner is employed on the grounds of any state penal institution, state farm, road camp or forestry camp, is guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for a term of not more than six months or by a fine of not more than two hundred dollars or by both such fine and imprisonment. Any peace officer or any officer or guard of any state penal institution may arrest without a warrant any person violating the provisions of this section. [1955 c 241 § 6.]

*Trafficking with prisoner: RCW 72.08.150.*

## Chapter 9.95

### PRISON TERMS, PAROLES AND PROBATION

#### Sections

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*State penitentiary: Chapter 72.08 RCW.*

*State reformatory: Chapter 72.12 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—Created.** There shall be a board of prison terms and paroles. [(i) 1935 c 114 § 1; RRS § 10249-1. (ii) 1947 c 47 § 1; Rem. Supp. 1947 § 10249-1a. Formerly RCW 43.67.010.]

**9.95.003 Board of prison terms and paroles—Appointment of members—Qualifications—Salaries—Employees.** The board of prison terms and paroles 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 successor is appointed and qualified: *Provided*, That the two additional members to be appointed to the board shall serve initial terms ending April 15, 1972 and 1974 respectively. The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board

shall be filled in the same manner in which the original appointments are made. 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 of prison terms and paroles 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 of prison terms and paroles shall each severally receive salaries, payable in monthly installments, as may be fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition thereto, their necessary expenses actually incurred in the discharge of their official duties.

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. [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.]

**Severability—1969 c 98:** "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 98 § 10.] This applies to RCW 9.95.003, 9.95.120 through 9.95.126, and 72.04A.090.

**Effective date—1969 c 98:** "This act shall take effect on July 1, 1969." [1969 c 98 § 11.] This applies to RCW 9.95.003, 9.95.120 through 9.95.126, and 72.04A.090.

**9.95.005 Board of prison terms and paroles—Meetings—Quarters at institutions.** The board of prison terms and paroles 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 terms of imprisonment are to be determined by it or whose applications for parole come before it. Other times and places of meeting may also be fixed by the board.

The superintendent of the different institutions shall provide suitable quarters for the board and assistants while in the discharge of their duties. [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.]

**9.95.007 Board of prison terms and paroles—May transact business in panels—Action by full board.** The board of prison terms and paroles 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 not be reheard by the full board. All actions of the full board shall be by concurrence of not less than three members. [1959 c 32 § 3. Formerly RCW 43.67.035.]

**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.*

**9.95.015 Finding of fact or special verdict establishing defendant armed with deadly weapon.** In every criminal case wherein conviction would require the board of prison terms and paroles to determine the duration of confinement 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. [1961 c 138 § 1.]

**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.]

**9.95.030 Facts to be furnished board of prison terms and paroles.** After the admission of such convicted person to the penitentiary or reformatory, 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. [1955 c 133 § 4. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

**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 the Washington state penitentiary or the Washington state reformatory, 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 he can give in regard to the career of the prisoner before the commission of the crime for which he was convicted and sentenced, stating to the best of his 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. [1929 c 158 § 1; RRS § 10254.]

**Reviser's note:** This section and RCW 9.95.032 antedate the 1935 act (1935 c 114) which 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 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 shall have been sentenced and committed. The superintendent shall make such statement available for use by the parole board. [1929 c 158 § 2; RRS § 10255.]

**Reviser's note:** The title of the act (1929 c 158) indicates that the above words "parole board" referred to the parole boards of the state penitentiary and the state reformatory. Those boards were created by the administrative code (1921 c 7 § 45; RRS § 10803) and abolished by the 1935 act relating to the board of prison terms and paroles (1935 c 114 § 9) which repealed RRS § 10803.

**9.95.040 Board to fix duration of confinement—**  
**Minimum terms prescribed for certain cases.** Within six months after the admission of a convicted person to the penitentiary, reformatory, or such other state penal institution as may hereafter be established, the board of prison terms and paroles shall fix the duration of his confinement. The term of imprisonment so fixed shall not exceed the maximum provided by law for the offense of which he 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 of prison terms and paroles with regard to fixing the duration of confinement in certain cases, notwithstanding any provisions of law specifying a lesser sentence, to wit:

(1) For a person not previously convicted of a felony but armed with a deadly weapon at the time of the commission of his 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 his 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, and 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 mandatory 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 his 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 he was an officer or stockholder, the duration of confinement shall be fixed at not less than five years.

Except when an inmate of the reformatory, penitentiary or such other penal institution as may hereafter be established, 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 four 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. [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.]

**9.95.052 Redetermination and refixing of minimum term of confinement.** At any time after the board of prison terms and paroles 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. [1972 ex.s. c 67 § 1.]

**9.95.055 Reduction of sentences during war emergency.** The board of prison terms and paroles 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 confined in the Washington state penitentiary or reformatory, 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. [1951 c 239 § 1.]

**9.95.060 When sentence begins to run.** When a convicted person appeals from his conviction and is at liberty on bond pending the determination of the appeal by the supreme court or the court of appeals, 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 to the department of institutions, 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 appeal from his 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. [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.]

**9.95.062 Appeal stays execution—Credit for time in jail pending appeal.** An appeal by a defendant in a criminal action shall stay the execution of the judgment of conviction.

In case the defendant has been convicted of a felony, and has been unable to furnish a bail bond pending the appeal, the time he has been imprisoned pending the

appeal shall be deducted from the term for which he was theretofore sentenced to the penitentiary, if the judgment against him be affirmed. [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.]

**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.]

**9.95.070 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.]

**9.95.080 Revocation and redetermination of minimum for infractions.** In case any convicted person undergoing sentence in the penitentiary, reformatory, or other state correctional institution, commits any infractions of the rules and regulations of the institution, the board of prison terms and paroles 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 he shall serve, not exceeding the maximum penalty provided by law for the crime for which he was convicted, or the maximum fixed by the court. Such revocation and redetermination shall not be had except upon a hearing before the board of prison terms and paroles. At such hearing the convicted person shall be present and entitled to be heard and may present evidence and witnesses in his behalf. [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.]

*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.]

**9.95.115 Parole of life term prisoners.** The board of prison terms and paroles is hereby granted authority to parole any person sentenced to the penitentiary or the reformatory, under a mandatory life sentence, who has been continuously confined therein for a period of twenty consecutive years less earned good time: *Provided*, The superintendent of the penitentiary or the reformatory, as the case may be, certifies to the board of prison terms and paroles that such person's conduct and work have been meritorious, and based thereon, recommends parole for such person: *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 71.12 RCW. [1951 c 238 § 1.]

**9.95.117 Parolees subject to supervision of division of probation and parole—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 director of the department of institutions, 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. [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.]

**Severability—1969 c 98:** See note following RCW 9.95.003.

**Effective date—1969 c 98:** See note following RCW 9.95.003.

*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 division of probation and parole of the department of institutions 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. [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, 72.04A.090 and the effective date and severability sections footnoted following RCW 9.95.003.

**Severability—1969 c 98:** See note following RCW 9.95.003.

**Effective date—1969 c 98:** See note following RCW 9.95.003.



**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.]

**Severability—1969 c 98:** See note following RCW 9.95.003.

**Effective date—1969 c 98:** See note following RCW 9.95.003.

**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.]

**Severability—1969 c 98:** See note following RCW 9.95.003.

**Effective date—1969 c 98:** See note following RCW 9.95.003.

**9.95.124 On-site parole revocation hearing—Who may attend—Rules governing procedure.** At all on-site parole revocation hearings the probation and parole officers of the department of institutions, having made the allegations of the violations of the conditions of parole, may be represented by the attorney general. Only such persons as are reasonably necessary to the conducting of such hearings shall be permitted to be present: *Provided*, That other persons may be admitted to such hearings at the discretion of the board and with the consent of the alleged parole violator. 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. [1969 c 98 § 6.]

**Severability—1969 c 98:** See note following RCW 9.95.003.

**Effective date—1969 c 98:** See note following RCW 9.95.003.

**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.]

**Severability—1969 c 98:** See note following RCW 9.95.003.

**Effective date—1969 c 98:** See note following RCW 9.95.003.

**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.]

**Severability—1969 c 98:** See note following RCW 9.95.003.

**Effective date—1969 c 98:** See note following RCW 9.95.003.

**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—Cooperation by officials and employees.** The board of prison terms and paroles shall cause a complete record to be kept of every prisoner 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.

The superintendent of the penitentiary and the reformatory 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 penal institutions of the state. [1955 c 133 § 15. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

*State bureau of criminal identification: Chapter 72.50 RCW.*

**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.]

**9.95.160 Governor's powers not affected—He may revoke 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.]

**9.95.170 Board to inform itself as to each convict—Department of institutions 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 institutions 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. [1967 c 134 § 13; 1935 c 114 § 3; RRS § 10249-3.]

**9.95.190 Application of RCW 9.95.010 through 9.95.180 to inmates previously committed.** The provisions of RCW 9.95.010 to 9.95.180, inclusive, as enacted by chapter 114, Laws of 1935, insofar as applicable, shall apply to all convicted persons serving time in the state penitentiary or reformatory on June 12, 1935, to the end that at all times the same provisions relating to sentences, imprisonments and paroles of prisoners shall apply to all inmates thereof.

Similarly the provisions of said sections, as amended by chapter 92, Laws of 1947, insofar as applicable, shall apply to all convicted persons serving time in the state penitentiary or reformatory on June 11, 1947, to the end that at all times the same provisions relating to sentences, imprisonments and paroles of prisoners shall apply to all inmates thereof. [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—Director of institutions to investigate.** 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 director of institutions or such officers as the director 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. [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.]

**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.] This applies to RCW 9.95.200–9.95.250.

*Suspending sentences:* RCW 9.92.060.

#### **9.95.210 Conditions may be imposed on probation.**

The court in granting probation, may suspend the imposing or the execution of the sentence and may direct that such suspension may continue for such period of time, not exceeding the maximum term of sentence, except as hereinafter set forth and upon such terms and conditions as it shall determine.

The court in the order granting probation and as a condition thereof, may in its discretion imprison the defendant in the county jail for a period not exceeding one year or may fine the defendant any sum not exceeding one thousand dollars plus the costs of the action, and may in connection with such probation impose both imprisonment in the county jail and fine and court costs. 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, and (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, 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 supervisor of the division of probation and parole of the department of institutions or such officer as the supervisor may designate and as a condition of said probation to follow implicitly the instructions of the supervisor of probation and parole. The supervisor of probation and parole with the approval of the director of institutions will promulgate rules and regulations for the conduct of such person during the term of his probation: *Provided*, That for defendants found guilty in justice court, like functions as the supervisor of probation and parole performs in regard to probation may be performed by probation officers employed for that purpose by the board of county commissioners of the county wherein the court is located. [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.]

*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.]

#### **9.95.230 Court revocation or termination of probation.**

The court shall have authority at any time during the course of 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. [1957 c 227 § 6. Prior: 1939 c 125 § 1, part; RRS § 10249–5d.]

#### **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.]

*Juvenile courts, probation officers:* RCW 13.04.040, 13.04.050.

**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 director of institutions shall be known as probation and parole officers. [1967 c 134 § 17; 1957 c 227 § 8. Prior: 1939 c 125 § 1, part; RRS § 10249-5f.]

*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 institutions 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 director of institutions through the division of probation and parole 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 institutions and the division of probation and parole and the officers and employees thereof 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. [1967 c 134 § 14; 1935 c 114 § 7; RRS § 10249-7.]

**9.95.265 Biennial report.** The board of prison terms and paroles shall transmit to the governor, for submission to the legislature, biennially, or as often as the governor may require it, a report of its work, in which shall be given the number of prisoners whose terms of imprisonment have been fixed by it and the number who have been released on parole, and such other information as may be relevant. [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.]

**9.95.267 Transfer of certain powers and duties of board to division of probation and parole.** 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.*

*Interstate parole and probation hearing procedures: Chapter 9.95B.*

**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.]

**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.]

**9.95.310 Assistance for parolees 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, 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. [1971 ex.s. c 31 § 1; 1961 c 217 § 2.]

**9.95.320 Assistance for parolees and discharged prisoners—Secretary or designee may provide subsistence—Terms and conditions.** The secretary of the department of social and health services or his designee may provide to any parolee, 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 the department of social and health services or his designee may require and shall be supplementary to any moneys which may be provided under public assistance or from any other source. [1971 ex.s. c 31 § 2; 1961 c 217 § 3.]

**9.95.330 Assistance for parolees and discharged prisoners—Department may accept gifts and make expenditures.** The department of social and health services 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 the department of social and health services 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 social and health services. [1971 ex.s. c 31 § 3; 1961 c 217 § 4.]

**9.95.340 Assistance for parolees 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 social and health services, or which may come into its hands, which belong to discharged prisoners, parolees or persons convicted of a felony and granted probation who absconded, or whose whereabouts are unknown, shall be deposited in the parolee and probationer revolving fund. Said funds shall be used to defray the expenses of clothing and other necessities and for transporting discharged prisoners, 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, parolees and persons convicted of a felony and granted probation for whose benefit they are made. Whenever any money belonging to discharged prisoners, parolees and persons convicted of a felony and granted probation 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 social and health services within five years of deposit into said fund and upon a clear showing of a legal right of such claimant to such money. [1971 ex.s. c 31 § 4; 1961 c 217 § 5.]

**9.95.350 Assistance for parolees 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 social and health services by or for the benefit of any discharged prisoner, parolee or persons convicted of a felony and granted probation shall be immediately transmitted to the department of social and health services 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 social and health services.

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 social and health services 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 department of social and health services that he is entitled thereto, the department of social and health services may make a finding to that effect and may make payment to the claimant in the amount to which he is entitled. [1971 ex.s. c 31 § 5; 1961 c 217 § 6.]

**9.95.360 Assistance for parolees and discharged prisoners—Parolee and probationer revolving fund—Composition—Disbursements—Deposits—Security by depository.** The department of social and health services shall create, maintain, and administer outside the state treasury a permanent revolving fund to be known as the "parolee and probationer 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 the department of social and health services or his designee. The parolee and probationer revolving fund shall be deposited by the department of social and health services in such banks or financial institutions as it may select which shall give to the department of social and health services 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. [1971 ex.s. c 31 § 6; 1961 c 217 § 7.]

**9.95.370 Assistance for parolees and discharged prisoners—Agreement by recipient to repay funds.** The secretary of the department of social and health services 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. [1971 ex.s. c 31 § 7; 1961 c 217 § 8.]

## Chapter 9.95A

### SPECIAL ADULT SUPERVISION PROGRAMS

#### Sections

9.95A.010	Legislative intent.
9.95A.020	State to share in costs.
9.95A.030	Definitions.
9.95A.040	Rules—Standards—Procedures.
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9.95A.060	Terms and conditions for receiving state funds—Calculations, etc.—Reimbursements—Alternatives.
9.95A.070	Additional reimbursement for program for misdemeanor offenders.
9.95A.080	Pro rata payments for reduction in commitments and placement in program.
9.95A.090	Minimum payments to counties during first twelve months.
9.95A.900	Effective date—1973 1st ex.s. c 123.

**9.95A.010 Legislative intent.** It is the intention of the legislature in enacting this chapter to increase the protection afforded the citizens of this state, to permit a more even administration of justice in the courts, to rehabilitate adult offenders, and to reduce the necessity for commitment of adults to either state or county institutions for convicted persons by developing, strengthening and improving both public and private resources available in the local communities and counties and the care, treatment and supervision of adults placed in "special adult supervision programs" by the courts of this state. [1973 1st ex.s. c 123 § 1.]

**9.95A.020 State to share in costs.** From any state moneys made available for such purpose, the state of Washington, through the department of social and health services, shall, in accordance with this chapter, share in the cost of supervising and providing services for persons processed in the courts as nondangerous adults who could otherwise be committed by the superior courts to the custody of the department of social and health services, but who are instead granted probation and placed in "special adult supervision programs". [1973 1st ex.s. c 123 § 2.]

**9.95A.030 Definitions.** As used in this chapter:

(1) "Secretary" means the secretary of the department of social and health services.

(2) "Department" means the department of social and health services.

(3) "Special adult supervision program" means a program (a) directly operated by the county or (b) provided for by the county by purchase, contract or agreement, or (c) a combination of subsections (a) and (b), which embodies a degree of supervision substantially above or better than the usual, individualized so as to deal with the individual and his family in the context of his total life, or which embodies the use of new techniques in addition to, or instead of, routine supervision techniques or those otherwise or ordinarily available in the applying county, and which meets the standards prescribed pursuant to this chapter. A person

may only be placed in a special adult supervision program pursuant to court order. The court is hereby authorized to make such order.

(4) "Deferred prosecution" means a special supervision program, for an individual, ordered for a specified period of time by the court prior to a guilty plea to, or a trial on, a felony charge, pursuant to either:

(a) A written agreement of the prosecuting attorney, defendant, and defense counsel, with concurrence by the court; or

(b) A motion by the prosecuting attorney or defendant, the court being satisfied based upon all appropriate evidence, that a deferred prosecution program for the indicated individual is in the best interests of society and of the individual.

A deferred prosecution program shall provide that at the end of the court ordered specified time, if the defendant has satisfied all the conditions of the program, the charge shall be dismissed; but if the defendant does not meet any of the conditions of the program at any time prior to completion of the specified period, the court may enter an order rescinding the deferred prosecution program and authorizing the prosecution to proceed.

The court is hereby authorized to make such orders as are described in this section.

(5) "County" means one county or two or more counties acting jointly or in combination by agreement.

(6) "Court" means a superior court of the state of Washington for a county or judicial district. [1973 1st ex.s. c 123 § 3.]

**9.95A.040 Rules—Standards—Procedures.** The department of social and health services shall adopt rules prescribing minimum standards for the operation of "special adult supervision programs", including those authorized in RCW 9.95A.070, and such other rules as may be necessary for the administration and implementation of the provisions of this chapter. Such standards shall be sufficiently flexible to foster the development of new and improved supervision or rehabilitative practices. The secretary shall seek advice from appropriate county and local officials as well as concerned and involved private citizens in developing standards and procedures for the content and operation of "special adult supervision programs", but the implementation of all such programs shall first be approved by the secretary. [1973 1st ex.s. c 123 § 4.]

**9.95A.050 Application for financial aid.** Any county may make application to the department in the manner and form prescribed by the department for financial aid for the cost of "special adult supervision programs". Any such application must include a comprehensive plan or plans developed for providing special adult supervision programs for appropriate persons, and a method of certifying that moneys received are spent only for such "special adult supervision programs". [1973 1st ex.s. c 123 § 5.]

**9.95A.060 Terms and conditions for receiving state funds—Calculations, etc.—Reimbursements—Alternatives.** No county shall be entitled to receive any state funds provided for the purposes of this chapter until its application is approved, and unless and until the standards prescribed by the department are complied with, and then only on such terms as are set forth in this section.

(1) A base commitment rate for each county and for the state as a whole shall be calculated by the department. The base commitment rate shall be determined by computing the ratio of the number of persons convicted of felonies and committed to state correctional institutions for convicted felons to the number of persons convicted of felonies, such ratio to be expressed as a rate per hundred persons convicted of felonies for each of the calendar years 1966 through 1970: *Provided*, That deferred prosecution, deferred and suspended sentences pursuant to chapters 9.95 RCW and 9.92 RCW, as well as other convictions of felonies shall, for purpose of these computations only, be counted as "convictions of felonies". The average of these rates for a county for the five year period, or the average of the last two years of the period, whichever is higher, shall be the base commitment rate, as certified by the secretary: *Provided, further*, That a county may elect as its base commitment rate the average of the base commitment rates of all counties in the state over the last two years of the period described in this subsection.

(2) An annual commitment rate shall be calculated by the department at the end of each year for each participating county and for the state as a whole, in a like manner as provided in subsection (1) of this section. In addition, the department shall at the same time determine the number of persons placed in special adult supervision programs in each participating county.

(3) The "commitment reduction number" is the amount obtained by subtracting (a) the product of the most recent annual commitment rate and the number of persons convicted of felonies in the county for the same year, from (b) the product of the base commitment rate and the number of persons convicted of felonies in the county for the same year employed in (a).

(4) Except as provided in this chapter, the amount that may be paid to a county pursuant to this chapter shall not exceed the actual cost of the operation of a special adult supervision program. Reimbursement shall be computed by multiplying the commitment reduction number by actual program cost or four thousand eight hundred dollars, whichever is less; and by adding thereto the product obtained by multiplying (a) the number of persons charged with or convicted of felonies in excess of the commitment reduction number who have been placed in a special adult supervision program, if any, by (b) actual program cost or three thousand dollars, whichever is less: *Provided*, That reimbursement shall not be authorized when a county exceeds its base commitment rate.

Notwithstanding the limitations set forth in this subsection, there shall be paid to the county on account of each person placed in a deferred prosecution special adult supervision program, one hundred fifteen percent

of the amount paid on account of each person placed in a special adult supervision program, but not in a deferred prosecution program.

(5) The secretary shall reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in reducing the annual commitment rate from its base commitment rate, and placing appropriate persons in special adult supervision programs. Whenever a claim made by a county pursuant to this chapter, covering a prior year, is found to be in error, an adjustment may be made on a current claim without the necessity of applying the adjustment to the allocation for the prior year.

(6) In the event a participating county earns in a payment period less than one-half of the sum paid in the previous payment period because of extremely unusual circumstances claimed by the county and verified by the secretary, the secretary may pay to the county a sum not to exceed actual program expenditures: *Provided*, That in subsequent periods the county will be paid only the amount earned.

(7) If the amount received by a county in reimbursement of its expenditures in a calendar year is less than the maximum amount computed under subsection (4) of this section, the difference may be paid to the county as reimbursement of program costs during the next two succeeding years upon receipt of valid claims for reimbursement of program expenses.

(8) Funds received by participating counties pursuant to this chapter shall not be used to replace local funds for existing programs for adults on probation based on either felony or misdemeanor offenses. Such funds may also not be used to develop or build county institutional programs or facilities, except such as qualify pursuant to RCW 9.95A.040.

(9) Any county averaging less than twenty felony commitments annually during either the two year or five year period used to determine the base commitment rate as defined in subsection (1) of this section may:

(a) Apply for subsidies under subsections (1) through (7) of this section; or

(b) As an alternative, elect to receive from the state the salary of one full-time probation officer and related employee benefits; or

(c) Elect to receive from the state the salary and related employee benefits of one full-time additional probation officer, and in addition, reimbursement for certain supporting services other than capital outlay and equipment, the total cost of which will not exceed a maximum limit established by the secretary; or

(d) Elect to receive from the state reimbursement for certain supporting services other than capital outlay and equipment, the total cost of which will not exceed a maximum limit established by the secretary.

(10) In the event a county chooses one of the alternative proposals set forth in subparagraphs (b), (c) or (d) of subsection (9) of this section, it will be eligible for reimbursement only so long as the officer and supporting services are wholly used in the performance of services to provide supervision of persons eligible for state commitment and in special adult supervision programs,

and are paid in accordance with a salary schedule adopted by rule of the department, and:

(a) If its base commitment rate is below the state average, its annual commitment rate does not exceed the base commitment rate for the entire state; or

(b) If its base commitment rate is above the state average, its annual commitment rate does not in the year exceed by four its own base commitment rate.

(11) Where any county does not have a probation officer, but obtains such services by agreement with another county or counties, or, where two or more counties by agreement mutually provide special adult supervision program services for such counties, then under such circumstances the secretary may make the computations and payments under this chapter as though the counties served with such services were one geographical unit.

(12) Notwithstanding the limitations imposed by this section, the secretary may make additional reimbursement of not to exceed ten percent of earnings pursuant to RCW 9.95A.010 through 9.95A.060 to counties operating and providing special adult supervision program services mutually, jointly, or in combination, in accordance with rules and standards adopted by the secretary. [1973 1st ex.s. c 123 § 6.]

**9.95A.070 Additional reimbursement for program for misdemeanor offenders.** In the event a participating county elects to broaden its special adult supervision program to provide services and care for misdemeanor offenders, the county, either itself or acting jointly with another county or city, may receive from any state moneys made available for such purpose an additional reimbursement of program costs not to exceed thirty percent of its earnings pursuant to RCW 9.95A.010 through 9.95A.060: *Provided*, That to receive such additional reimbursement, the county, or combination of counties or county and city, must provide a like sum for the purpose of equally matching the state's payment for misdemeanor offender special supervision programs. [1973 1st ex.s. c 123 § 7.]

**9.95A.080 Pro rata payments for reduction in commitments and placement in program.** The secretary may make pro rata payments to eligible counties for periods of less than one year, but for periods of not less than six months, upon satisfactory demonstration of a reduction in commitments and placement of persons in special adult supervision programs in accordance with the provisions of this chapter and the regulations of the department of social and health services. [1973 1st ex.s. c 123 § 8.]

**9.95A.090 Minimum payments to counties during first twelve months.** Notwithstanding any other provision of this chapter, for the first twelve month period of a county's participation, the county shall be paid no less than the product obtained by multiplying (a) the number of persons charged with or convicted of felonies who have been placed in a special adult supervision program, by (b) the actual program cost or three



thousand dollars, whichever is less. [1973 1st ex.s. c 123 § 9.]

**9.95A.900 Effective date—1973 1st ex.s. c 123.**  
The effective date of this act shall be January 1, 1974. [1973 1st ex.s. c 123 § 11.]

**Chapter 9.95B**  
**INTERSTATE PAROLE AND PROBATION**  
**HEARING PROCEDURES**

Sections

- 9.95B.010 Parole or probation violations—Hearing requirements—Purpose—Report to sending state—Custody.  
9.95B.020 Qualifications of hearing officers.  
9.95B.030 Hearing—Notice, content—Procedure.  
9.95B.040 Hearings by other states—Effect on this state.  
9.95B.900 Effective date—1973 c 21.

*Interstate compact for out-of-state supervision of parolees or probationers: RCW 9.95.270.*

**9.95B.010 Parole or probation violations—Hearing requirements—Purpose—Report to sending state—Custody.** Where supervision of a parolee or probationer is being administered by this state pursuant to RCW 9.95.270, the interstate compact for the out-of-state supervision of parolees and probationers, the appropriate interstate compact administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing at or near the site of the alleged violation shall be held in accordance with this chapter within a reasonable time, unless such hearing is waived by the parolee or probationer. The purpose of such hearing shall be to determine whether there is probable cause to believe that the parolee or probationer has committed a violation of a condition of parole or probation, and if so, whether or not there is reason to believe that the violation or violations are of such a nature that revocation of parole or probation should be considered. The appropriate officer or officers of this state shall, as soon as practicable following termination of any such hearing, report, through the interstate compact administrator's office, to the sending state, furnish a copy of the summary and digest of the hearing, and may, in addition, make recommendations, with reasons, regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed ten days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration. [1973 c 21 § 2.]

**9.95B.020 Qualifications of hearing officers.** Any hearing pursuant to this chapter may be before the administrator of the interstate compact for the out-of-state supervision of parolees and probationers, a deputy

of such administrator, or any other person or persons authorized pursuant to the laws of this state to hold preliminary hearings or hear cases involving alleged parole or probation violation, except that no hearing officer shall be the person or direct supervisor of the person making the allegation of violation. [1973 c 21 § 3.]

**9.95B.030 Hearing—Notice, content—Procedure.** With respect to any hearing pursuant to this chapter, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation of a condition of parole or probation, and if so, whether or not there is reason to believe that the violation or violations are of such a nature that revocation of parole or probation should be considered.

(2) Shall be permitted to consult with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations or given evidence against him, unless the hearing officer determines, on a reasonable basis, that such confrontation would present a substantial present or subsequent danger of harm to such person or persons in which case a written general summary of the evidence, without disclosure of the identity of the witness, shall be provided to the parolee or probationer who shall have the opportunity to present evidence relevant to or controverting any information contained in the summary.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made, and preserved for no less than ninety days. [1973 c 21 § 4.]

**9.95B.040 Hearings by other states—Effect on this state.** In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the out-of-state supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation, which hearing shall be substantially similar to the hearing required by RCW 9.95B.030. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this chapter, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers of this state. Should any recommendations be contained in or accompany the record, such recommendations shall be considered by the appropriate officer or officers of this state in making disposition of the matter. [1973 c 21 § 5.]

**9.95B.900 Effective date—1973 c 21.** This act shall take effect on July 1, 1973. [1973 c 21 § 6.]

**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.*

*Governor, records to be kept: RCW 43.06.020.*

*Governor, remission of fines and forfeitures: State Constitution Art. 3 § 11.*

*Report of board of prison terms and paroles: 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: *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 sentence expires earlier thereto. Such discharge 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. [1961 c 187 § 1.]

**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.

*Restoration of civil rights: Chapter 9.96 RCW.*

**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 34.04 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.]

**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 superintendent 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 DETAINERS**

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 998 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 DETAINERS**

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 detainers 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 detainers 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 detainers 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 detainers 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 detainers. [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 detainers. [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 detainers, 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 10

## CRIMINAL PROCEDURE

### Chapters

- 10.01 General provisions.
- 10.04 Justice court procedure—Generally.
- 10.07 Justice court forms.
- 10.10 Criminal appeals from justice courts.
- 10.13 Proceedings to keep the peace.
- 10.16 Preliminary hearings.
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- 10.22 Compromise of misdemeanors.
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*Criminal justice training commission—Education and training boards: Chapter 43.101 RCW.*

*Criminal rules for superior court: See Criminal Rules for Superior Court (CrR).*

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

*Mental illness—Financial responsibility: Chapter 71.02 RCW.*

*Oaths and mode of administering: State Constitution Art. 1 § 6.*

*Victims of crimes, compensation: Chapter 7.68 RCW.*

### Chapter 10.01 GENERAL PROVISIONS

#### Sections

- 10.01.010 Who amenable to criminal statutes.
- 10.01.020 Limitation of actions.
- 10.01.030 Pleadings—Forms abolished.
- 10.01.040 Statutes—Repeal or amendment—Saving clause presumed.
- 10.01.050 Convictions—Necessary before punishment.

- 10.01.060 Conviction—Requisites—Waiver of jury trial.
- 10.01.070 Corporations—Amenable to criminal process—How.
- 10.01.080 Corporations—Appearance by—Presence in court presumed.
- 10.01.090 Corporations—Judgment against.
- 10.01.100 Corporations—Penalties—Fines in lieu of other punishments.
- 10.01.110 Counsel—Right to—Fees.
- 10.01.112 Indigent defendants, habeas corpus petitioners and juveniles—State to pay costs and fees incident to review by supreme court or court of appeals.
- 10.01.120 Pardons—Reprieves—Commutations.
- 10.01.130 Witnesses' fees.
- 10.01.140 Mileage allowance—Jurors—Witnesses.

*Chronic alcoholics: Chapter 71.12 RCW.*

*Double jeopardy: State Constitution Art. 1 § 9.*

*Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.*

*Habeas corpus: State Constitution Art. 1 § 13.*

*Indians, jurisdiction in criminal and civil causes: Chapter 37.12 RCW.*

*"Insane" defined: RCW 71.02.010–71.02.020.*

*Intoxication and drunkards: Chapter 71.08 RCW.*

*Lakeland village, Rainier school, superintendent exempt from jury duty: RCW 72.33.100.*

*Members of state militia exempt from jury duty: RCW 38.40.090.*

*Psychopathic delinquents, procedures, hospitalization, etc.: Chapter 71.06 RCW.*

*Public defender: Chapter 36.26 RCW.*

*Right to bail: State Constitution Art. 1 § 20.*

*Right to 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.*

**10.01.010 Who amenable to criminal statutes.** Every person, whether an inhabitant of this state, or of any other state, territory, or country, 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. [1891 c 28 § 3; RRS § 2010.]

**10.01.020 Limitation of actions.** Prosecutions for the offenses of murder and arson, where death ensues, may be commenced at any period after the commission of the offense; for offenses the punishment of which may be imprisonment in the penitentiary, committed by any public officer in connection with the duties of his office or constituting a breach of his public duty or a violation of his oath of office, within ten years after their commission; for all other offenses the punishment of which may be imprisonment in the penitentiary, within three years after their commission; and for all other offenses, within one year after their commission: *Provided*, That any length of time during which the party charged was

not usually and publicly resident within this state shall not be reckoned within the one, three and ten years respectively: *And further provided*, That where an indictment has been found, or an information filed, within the time limited for the commencement of a criminal action, if the indictment or information be set aside, the time of limitation shall be computed from the setting aside of such indictment or information. [1937 c 12 § 1; 1891 c 28 § 2; Code 1881 § 779; 1854 p 77 § 10; RRS § 2005.]

*Adultery, one year limitation: RCW 9.79.110.*

**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 him 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 justice of the peace or municipal judge, a like summons, signed by such justice of the peace or municipal judge, shall be issued, which, together with a copy of said complaint, shall be delivered to the sheriff at once and by him forthwith served as herein provided. [1911 c 29 § 1; RRS § 2011-1.]

**10.01.080 Corporations—Appearance by—Presence in court presumed.** Upon such service being made such corporation shall appear at the time designated, by one of its officers or by counsel; and upon such appearance, and thereafter, the same course shall be pursued, as nearly as may be, as upon the appearance of an individual to indictment, information or complaint and warrant charging him with the same offense. Upon failure of the corporation to make such appearance said court shall cause to be entered a plea of "not guilty," and upon appearance made or plea entered the corporation shall be deemed forthwith continuously present in court until the case shall be finally disposed of. [1911 c 29 § 2; RRS § 2011-2.]

*Rules of court: This section superseded by CrR 3.4. See comment after CrR 3.4.*

**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 justice of the peace or municipal judge 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. [1911 c 29 § 3; RRS § 2011-3.]

**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.]

**10.01.110 Counsel—Right to—Fees.** Whenever a defendant shall be arraigned or first appear before a court, magistrate or justice of the peace upon the charge that he has committed any felony, and the defendant has requested the court to appoint counsel to assist in his defense, and shall by his own oath or such other proof as may be required satisfy the court that he is unable, by reason of poverty, to procure counsel, the court shall appoint counsel, not exceeding two, for such defendant. Counsel so appointed shall be paid a reasonable amount as attorney's fees together with reimbursement of actual expenses necessarily incurred upon the court's order by the county in which such proceeding is had: *Provided*, That this section shall also apply to such other proceedings and at such other time as may be constitutionally required. [1965 c 133 § 1; 1941 c 151 § 1; 1909 c 249 § 53; Rem. Supp. 1941 § 2305.]

**Rules of court:** *This section superseded by CrR 3.1, JCrR 2.11. See comment after CrR 3.1, JCrR 2.11.*

**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.] This applies to RCW 2.32.240, 10.01.110 and 10.01.112.

**Counsel assigned to indigents:** RCW 10.40.030.

**Defendant's right to counsel, compulsory process for witnesses:** RCW 10.46.050.

**Rights of the accused:** State Constitution Art. 1 § 22 (Amendment 10).

**Waiver of appeal costs for indigents:** **Rules of court:** Cf. ROA I-47, CAROA 47.

**10.01.112 Indigent defendants, habeas corpus petitioners and juveniles—State to pay costs and fees incident to review by supreme court or court of appeals.** When an individual criminal defendant, a juvenile in any case determining such juvenile to be a delinquent or incorrigible child under RCW 13.04.010, or petitioner for a writ of habeas corpus 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. [1972 ex.s. c 111 § 2; 1970 ex.s. c 31 § 2; 1965 c 133 § 2.]

**Transcript of testimony—Fee—Forma pauperis:** RCW 2.32.240.

**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. See comment after CrR 6.12.

**Witness fees:** Chapters 2.40, 12.16 RCW, RCW 10.52.070.

**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.]

## Chapter 10.04

### JUSTICE COURT PROCEDURE—GENERALLY

#### Sections

10.04.010	Arrest—Issuance of warrant for.
10.04.020	Arrest—Offense committed in view of justice.
10.04.030	Hearing—Judgment.
10.04.040	Cash bail in lieu of recognizance.
10.04.050	Jury—If demanded.
10.04.060	Continuances.
10.04.070	Plea of guilty.
10.04.080	Evidence necessary.
10.04.090	Evidence—Witnesses—Summons.
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 justice court fees, fines, penalties and forfeitures.
10.04.120	Stay of execution.

**Rules of court:** See *Criminal Rules for Justice Court (JCrR)*.

**10.04.010 Arrest—Issuance of warrant for.** Any justice shall, on complaint on oath in writing before him, charging any person with the commission of any crime or misdemeanor, of which he has jurisdiction, issue a warrant for the arrest of such person, and cause him to be brought forthwith before him for trial. [Code 1881 § 1888; 1873 p 382 § 185; 1854 p 260 § 172; RRS § 1925.]

**Rules of court:** *This section superseded by JCrR 2.02. See comment after JCrR 2.02.*

**10.04.020 Arrest—Offense committed in view of justice.** When any offense is committed in view of any justice he may, by verbal direction to any constable, or if no constable be present, to any citizen, cause such constable or citizen to arrest such offender, and keep him 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. [1881 § 1888; Code 1881 § 1889, part; 1873 p 382 § 186; 1854 p 260 § 173; RRS § 1926, part.]

*Contempt, justice courts: Chapter 3.28 RCW.*

**10.04.030 Hearing—Judgment.** On the return of any warrant issued by him, it shall be the duty of the justice to docket the cause, and unless continuance be granted, forthwith to hear and determine the cause, and either acquit, convict and punish, or hold to bail the offender, if the offense be bailable and prove to be one which should be tried in the superior court, or in default of bail, commit him to jail, as the facts and law may justify. [1881 § 1889; Code 1881 § 1889, part; 1873 p 382 § 186; 1854 p 260 § 174; RRS § 1926, part.]

*Rules of court: This section superseded by JCrR 2.02, 2.03, 2.09. See comment after JCrR 2.02, 2.03, 2.09.*

**10.04.040 Cash bail in lieu of recognizance.** Justices of the peace or committing magistrates may accept money as bail from persons charged with bailable 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. [1919 c 76 § 1; RRS § 1957 1/2.]

*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 justice of the peace, 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 justice. 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. [1891 c 11 § 1; Code 1881 § 1890; 1875 p 51 § 2; 1873 p 382 § 188; 1854 p 260 § 174, part; RRS § 1927.]

*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.*

**10.04.060 Continuances.** Continuance may be granted, either on application of the defendant or the prosecuting witness, under the same rules as in civil cases; the cost of such continuance shall abide the

event of the prosecution in all cases, and the justice shall recognize the defendant and the witnesses to appear from time to time, in the same manner as is provided in other criminal examinations before him. [1891 c 11 § 5; Code 1881 § 1895; 1873 p 383 § 193; 1854 p 261 § 176, part; RRS § 1932.]

**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.]

**10.04.080 Evidence necessary.** No justice shall assess a fine, or enter a judgment thereon, until a witness or witnesses have been examined to state the circumstances of the transaction. [1891 c 11 § 4; Code 1881 § 1893, part; 1873 p 383 § 191; 1854 p 260 § 174, part; RRS § 1931.]

**10.04.090 Evidence—Witnesses—Summons.** In all cases arising under this chapter, if the offense charged involve injury to a particular person who is within the county, it shall be the duty of the justice of the peace to summon the injured person, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment [warrant] if necessary. [1891 c 11 § 3; Code 1881 § 1894; 1873 p 383 § 192; 1854 p 260 §§ 174, 175; RRS § 1930.]

**10.04.100 Verdict of guilty—Proceedings upon.** Such justice or jury, if they find the prisoner guilty, shall assess his punishment; or if, in their opinion, the punishment they are authorized to assess is not adequate to the offense, they may so find, and in such case the justice 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. [1891 c 11 § 2; Code 1881 § 1891; 1873 p 382 § 189; 1854 p 260 § 174; RRS § 1928.]

**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 justice court fees, fines, penalties and forfeitures.** In all cases of conviction, unless otherwise provided in this chapter, the justice 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 justice 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. [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.]

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 justice, to enter into recognizance before him for the payment of the fine and costs; the entry of such recognizance shall be made on the docket of the justice, 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 justice shall proceed as in like cases in the superior court. [Code 1881 § 1897; 1873 p 383 § 195; 1854 p 261 § 176; RRS § 1934.]

**Chapter 10.07  
JUSTICE COURT FORMS**

Sections

- 10.07.010 General statement.
- 10.07.020 Certificate of conviction.
- 10.07.030 Commitment upon finding jurisdiction lacking.
- 10.07.040 Commitment upon sentence.
- 10.07.050 Execution.
- 10.07.060 Search warrant.
- 10.07.070 Warrant of arrest.
- 10.07.080 Warrant to keep the peace.

**10.07.010 General statement.** The following or equivalent forms may be used by justices of the peace in criminal proceedings. [1891 c 11 § 7, part; Code 1881 § 1902, part; 1873 p 385 § 200, part; 1860 p 281 § 181, part; 1854 p 262 § 181, part; RRS § 1935, part.]

**10.07.020 Certificate of conviction.**

FORM OF CERTIFICATE OF CONVICTION.

THE STATE OF WASHINGTON, COUNTY OF \_\_\_\_\_, ss.

At a justice's court held at my office in said county before me, one of the justices of the peace in and for said county, for the trial of C. D., for the offense hereinafter stated, the said C. D. was convicted of having on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_, in said county, committed [here insert the offense], and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of \_\_\_\_\_ dollars [or be imprisoned, as the case may be], and the said fine has been paid to me.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_.

J. P., Justice of the Peace.

[1891 c 11 § 7, part; Code 1881 § 1902, part; 1873 p 385 § 200, part; 1860 p 281 § 181, part; 1854 p 262 § 181, part; RRS § 1935, part.]

**10.07.030 Commitment upon finding jurisdiction lacking.**

FORM OF COMMITMENT

WHERE JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION IN THE CASE.

THE STATE OF WASHINGTON, \_\_\_\_\_ COUNTY, ss.

To any constable and the keeper of the county jail of said county: Whereas, C. D., of \_\_\_\_\_, etc., has been brought this day before the undersigned, one of the justices of the peace in and for said county, charged, on the oath of A. B., with having, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_, in said county, committed the offense of [here state the offense charged in the warrant], and in the progress of the trial of said charge, it appearing to the said justice that the said C. D. has been guilty of the offense of [here state the new offense found on the trial] committed at the time and place aforesaid; and whereas, the said C. D. has failed to give bail in the sum of \_\_\_\_\_ dollars, for his appearance to answer at the next term of the superior court, as required by me, therefore, in the name of the State of Washington, etc. [as in the last form], to receive the said C. D. into your custody in the said jail, and him there safely keep until he be discharged by due course of law.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_.

J. P., Justice of the Peace.

[1891 c 11 § 7, part; Code 1881 § 1902, part; 1873 p 385 § 200, part; 1860 p 281 § 181, part; 1854 p 262 § 181, part; RRS § 1935, part.]

**Reviser's note:** The language relating to the next "term" of court originally appeared in the territorial law from which this section is derived. Since the adoption of the state Constitution the courts are always open except on nonjudicial days. See state Constitution Art. 4 §§ 2, 4, 6, (Amendment 28), and later statutes RCW 2.04.010, 2.04.030, 2.04.040, 2.08.010, 2.08.030 and 2.08.040.

**10.07.040 Commitment upon sentence.**

FORM OF COMMITMENT UPON SENTENCE.

THE STATE OF WASHINGTON, COUNTY OF \_\_\_\_\_, ss.

To any constable and the keeper of the county jail of said county: Whereas, at a justice's court held at my office in said county for the trial of C. D. for the offense hereinafter stated, the said C. D. was convicted of having on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_, in said county, committed [here state the offense], and upon conviction the said court did adjudge and determine that the said C. D. should be imprisoned in the county jail of said county for \_\_\_\_\_ days, therefore, you, the said constable, are commanded, in the name of the State of Washington, forthwith to convey and deliver the said C. D. to the said keeper; and you, the said keeper, are hereby commanded to receive the said C. D. into your custody in said jail, and him there safely keep until the expiration of said \_\_\_\_\_ days, or until he shall thence be discharged by due course of law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_.

J. P., Justice of the Peace.

[1891 c 11 § 7, part; Code 1881 § 1902, part; 1873 p 385 § 200, part; 1860 p 281 § 181, part; 1854 p 262 § 181, part; RRS § 1935, part.]

**10.07.050 Execution.**

## FORM OF AN EXECUTION.

THE STATE OF WASHINGTON, COUNTY OF \_\_\_\_\_, ss.

*To the sheriff or any constable of said county:* Whereas, at a justice's court held at my office in said county for the trial of C. D., for the offense hereinafter stated, the said C. D. was convicted of having on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_-, in said county, committed [here state the offense], and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of \_\_\_\_\_ dollars, and \_\_\_\_\_ dollars costs; and, whereas, the said fine and costs have not been paid, these are, therefore, in the name of the State of Washington, to command you to levy on the goods and chattels, etc. [as in execution in civil cases].

[1891 c 11 § 7, part; Code 1881 § 1902, part; 1873 p 385 § 200, part; 1860 p 281 § 181, part; 1854 p 262 § 181, part; RRS § 1935, part.]

**10.07.060 Search warrant.**

## FORM OF SEARCH WARRANT.

THE STATE OF WASHINGTON, \_\_\_\_\_ COUNTY, ss.

*To the sheriff or any constable of said county:* Whereas, A. B. has this day made complaint on oath to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels, to wit: [here describe them], the property of the said A. B., have been within \_\_\_\_\_ days past, or were on the \_\_\_\_\_ day of \_\_\_\_\_, by some person or persons unknown, stolen, taken, and carried away out of the possession of the said A. B., in the county aforesaid; and, also, that the said A. B. verily believes that the said goods or a part thereof are concealed in or about the house of C. D., in said county [describe the premises to be searched]; therefore, in the name of the State of Washington, you are commanded that, with the necessary and proper assistance, you enter into the said house [describe the premises to be searched], and then diligently search for the said goods and chattels; and if the same or any part thereof be found on such search, bring the same, and also the same C. D., forthwith before me, to be disposed of according to law.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_-

J. P., Justice of the Peace.

[1891 c 11 § 7, part; Code 1881 § 1902, part; 1873 p 385 § 200, part; 1860 p 281 § 181, part; 1854 p 262 § 181, part; RRS § 1935, part.]

**10.07.070 Warrant of arrest.**

## FORM OF WARRANT.

THE STATE OF WASHINGTON, \_\_\_\_\_ COUNTY, ss.

*To the sheriff or any constable of said county:* Whereas, A. B. has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_-, at \_\_\_\_\_, in said county [here insert the substance of the complaint, whatever it may be]; therefore, in the name of the State of Washington, you are commanded forthwith to apprehend the said C. D. and bring him before me, to be dealt with according to law.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_-

J. P., Justice of the Peace.

[1891 c 11 § 7, part; Code 1881 § 1902, part; 1873 p 385 § 200, part; 1860 p 281 § 181, part; 1854 p 262 § 181, part; RRS § 1935, part.]

**10.07.080 Warrant to keep the peace.**

## FORM OF WARRANT TO KEEP THE PEACE.

THE STATE OF WASHINGTON, COUNTY OF \_\_\_\_\_, ss.

*To the sheriff or any constable of said county:* Whereas, A. B. has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that he has just cause to fear and does fear C. D., late of said county, will [here state the threatened injury or violence, as sworn to]; therefore, in the name of the State of Washington, you are commanded to apprehend the said C. D., and bring him forthwith before me, to show cause why he should not give surety to keep the peace and be of good behavior toward all people of this state, and the said A. B. especially, and further to be dealt with according to law.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_-

J. P., Justice of the Peace.

[1891 c 11 § 7, part; Code 1881 § 1902, part; 1873 p 385 § 200, part; 1860 p 281 § 181, part; 1854 p 262 § 181, part; RRS § 1935, part.]

**Chapter 10.10****CRIMINAL APPEALS FROM JUSTICE COURTS**

## Sections

10.10.010	Appeals—Time of—Notice—Bond.
10.10.040	Witnesses—Appearances—Transcript—Subpoena.
10.10.060	Appeal—Costs—Default.

**Rules of court:** Court rules governing criminal appeals from justice court, see JCrR 6.01, 6.02 and 6.03.

**10.10.010 Appeals—Time of—Notice—Bond.**

Every person convicted before a justice of the peace of any offense may appeal from the judgment, within ten days thereafter, to the superior court. The appeal shall be taken by orally giving notice thereof at the time the

judgment is rendered, or by serving a written notice thereof upon the justice at any time after the judgment, and within the time allowed for taking the appeal; when the notice is given orally, the justice shall enter the same in his docket. The appellant shall be committed to the jail of the county until he shall recognize or give a bond to the state, in such reasonable sum, with such sureties as said justice may require, with condition to appear at the court appealed to, and there prosecute his appeal, and to abide the sentence of the court thereon, if not revised by a higher court. [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.]

**10.10.040 Witnesses—Appearances—Transcript—Subpoena.** Upon an appeal being taken in a criminal action the justice shall require the witnesses to give recognizances for their appearance in the superior court, or, if they are not present, indorse their names on the copy of proceeding. He shall on such appeal make and certify a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance and an abstract bill of the costs, to the clerk of the court appealed to, who shall issue a subpoena for the witnesses if they are not under recognizance. [1891 c 29 § 8; RRS § 1921. Prior: Code 1881 § 1899; 1873 p 384 § 197; 1854 p 261 § 178. Formerly RCW 10.10.040, 10.10.050 and 10.10.070.]

**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 10.13**

**PROCEEDINGS TO KEEP THE PEACE**

Sections

10.13.010	Authority of justice.
10.13.020	Complaint—Justice to reduce to writing.
10.13.030	Arrest of defendant.
10.13.040	Hearing—Witnesses—Testimony reduced to writing.
10.13.050	Discharge of defendant—Frivolous complaints.
10.13.060	Security required—When.
10.13.070	Commitment to jail.
10.13.075	Giving of security—Discharge from jail.
10.13.080	Recognizances filed in superior court.
10.13.090	Forfeiture under recognizance—Remission.
10.13.100	Surrender of principal—Release of surety.
10.13.110	Costs—Taxation—Collection.

10.13.120	Appeal—Time—Notice.
10.13.130	Appeal—Procedure in appellate court.
10.13.140	Appeal—Failure to prosecute.
10.13.150	Recognizances without process—Superior court—Justice court.

*Conviction, recognizance to keep peace: RCW 10.64.070.*

**10.13.010 Authority of justice.** Justices of the peace shall have power to cause all laws made for the preservation of the public peace to be kept; and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, in the manner herein provided. [Code 1881 § 1903; 1873 p 390 § 201; 1854 p 104 § 11; RRS § 1936.]

**10.13.020 Complaint—Justice to reduce to writing.** Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offense against the property or person of another, the magistrate shall examine the complaint, and any witness who may be produced on oath, and reduce such complaints to writing, and the same shall be subscribed by the complainant. [Code 1881 § 1904; 1873 p 390 § 202; 1854 p 104 § 12; RRS § 1937.]

**10.13.030 Arrest of defendant.** If, upon the examination, it shall appear that there is just cause to fear that such offense may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of and bring him before such magistrate or some other magistrate, or court having jurisdiction of the cause. [Code 1881 § 1906; 1873 p 390 § 204; 1854 p 104 § 13; RRS § 1939.]

**10.13.040 Hearing—Witnesses—Testimony reduced to writing.** It shall be the duty of every magistrate examining a person charged with an offense, or with an intention to commit an offense, to examine all the witnesses he shall deem material, and reduce their testimony to writing, a copy of which, whether the accused is discharged, committed, or held to bail, or shall take an appeal, he shall transmit to the clerk of the court having jurisdiction of the offense. [1891 c 11 § 8; Code 1881 § 1905; 1873 p 390 § 203; RRS § 1938.]

**10.13.050 Discharge of defendant—Frivolous complaints.** If, upon examination, it shall appear that there is not just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt. [Code 1881 § 1909; 1873 p 391 § 207; 1854 p 104 § 16; RRS § 1942.]

**10.13.060 Security required—When.** The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, hear and examine the complaint. And if it shall

appear that there is just cause to fear that any such offense will be committed by the party complained of he shall be required to enter into recognizance with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of the state, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding one year, but he shall not be ordered to recognize for his appearance at the superior court unless he is charged with some offense for which he ought to be held to answer at said court. [Code 1881 § 1907; 1873 p 391 § 205; 1854 p 104 § 14; RRS § 1940.]

*Recognizance to keep the peace as incidence of conviction of crime:*  
RCW 10.64.070, 10.64.075.

**10.13.070 Commitment to jail.** If the person so ordered to recognize, shall fail to enter into such recognizance, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment with the sum and time for which security was required. [Code 1881 § 1908; 1873 p 391 § 206; 1854 p 104 § 15; RRS § 1944. FORMER PART OF SECTION: Code 1881 § 1915; 1873 p 392 § 213; 1854 p 105 § 22; RRS § 1944, now codified as RCW 10.13.075.]

**10.13.075 Giving of security—Discharge from jail.** Any person committed for not finding sureties or refusing to recognize as required by the magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required. [Code 1881 § 1915; 1873 p 392 § 213; 1854 p 105 § 22; RRS § 1944. Formerly RCW 10.13.070, part.]

**10.13.080 Recognizances filed in superior court.** Every recognizance taken pursuant to the foregoing provisions shall be transmitted to the superior court for the county within ten days, and shall be there filed of record by the clerk. [1891 c 11 § 9; Code 1881 § 1916; 1873 p 392 § 214; 1854 p 105 § 23; RRS § 1945.]

**10.13.090 Forfeiture under recognizance—Remission.** Whenever upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable. [Code 1881 § 1918; 1873 p 393 § 216; 1854 p 106 § 25; RRS § 1947.]

**10.13.100 Surrender of principal—Release of surety.** Any surety in recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance, and the person so surrendered may

recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged. [Code 1881 § 1919; 1873 p 393 § 217; 1854 p 106 § 26; RRS § 1948.]

**10.13.110 Costs—Taxation—Collection.** When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give good security for the peace, or for his good behavior, the magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged. [Code 1881 § 1910; 1873 p 391 § 208; 1854 p 105 § 17; RRS § 1943.]

**10.13.120 Appeal—Time—Notice.** An appeal may be taken from the order of a magistrate requiring a person to give security to keep the peace or for good behavior. Such appeal shall be taken in the same manner and subject to the same conditions as appeals from justices' courts in criminal actions, and the magistrate may require recognizances of the appellant and the witness as in appeals in such criminal actions. [1891 c 29 § 9; RRS § 1922. Prior: Code 1881 §§ 1911, 1912; 1863 p 385 §§ 191, 192; 1854 p 105 §§ 18, 19.]

**10.13.130 Appeal—Procedure in appellate court.** The court before which such appeal is prosecuted, may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable. [Code 1881 § 1913; 1854 p 105 § 20; RRS § 1923.]

**10.13.140 Appeal—Failure to prosecute.** If any party appealing from such order of a magistrate shall fail to prosecute his appeal his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmance of the judgment or order of the magistrate, and also shall stand as security for costs which shall be ordered by the court appealed to to be paid by the appellant. [1891 c 29 § 10; Code 1881 § 1914; 1854 p 105 § 21; RRS § 1924.]

**10.13.150 Recognizances without process—Superior court—Justice court.** Every person who shall, in the presence of any magistrate, or before any judge of a court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such judge or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or other proof, to recognize for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal may be committed as before directed. [1891 c 11 § 10; Code 1881 § 1917; 1873 p 392 § 215; 1854 p 105 § 24; RRS § 1946.]



**Chapter 10.16**  
**PRELIMINARY HEARINGS**

## Sections

- 10.16.010 Complaint—Arrest—Witnesses.  
 10.16.030 Recognizance—With or without examination.  
 10.16.040 Hearing—Adjournments.  
 10.16.050 Hearing—Association of other magistrates.  
 10.16.060 Hearing—Testimony reduced to writing.  
 10.16.070 Bailable offense—Recognizance conditions.  
 10.16.080 Discharge of defendant—F frivolous complaints.  
 10.16.090 Certified transcript of proceedings filed in superior court.  
 10.16.100 Abstract of costs forwarded with transcript.  
 10.16.110 Statement of prosecuting attorney if no information filed—Court action.  
 10.16.130 Order for trial before justice.  
 10.16.135 Compromise of misdemeanors by magistrates.  
 10.16.140 Witnesses—Recognizances—Superior court appearances.  
 10.16.145 Witnesses—Recognizances with sureties.  
 10.16.150 Recognizances for minors.  
 10.16.160 Witnesses—Failure to furnish recognizance—Commitment—Deposition—Discharge.  
 10.16.190 Action on forfeiture of recognizance.
- Fugitives—Fresh pursuit—Examination: RCW 10.88.040, 10.88.050, 10.89.020.*
- Magistrates: Chapter 2.20 RCW.*
- Municipal judges as magistrates: RCW 35.20.020, 35.20.250.*

**10.16.010 Complaint—Arrest—Witnesses.** Upon complaint being made to any justice of the peace, or judge of the superior court, in open court, or in vacation, that a criminal offense has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant, and if it shall appear that any offense has been committed of which the superior court has exclusive jurisdiction, the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the person issuing the warrant, unless he shall be absent or unable to attend thereto, then before some other magistrate of the county, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination. [Code 1881 § 1921; 1873 p 392 § 219; 1854 p 106 § 27; RRS § 1949. Formerly RCW 10.16.010 and 10.16.020.]

**Reviser's note:** The language relating to "vacations" of court appeared in the territorial law from which this section is derived. Since the adoption of the state Constitution the courts are always open except on nonjudicial days. See state Constitution Art. 4 §§ 2, 4, 6, (Amendment 28), and later statutes RCW 2.04.010, 2.04.030, 2.04.040, 2.08.010, 2.08.030 and 2.08.040.

**Rules of court:** This section superseded by JCrR 2.02. See comment after JCrR 2.02.

**10.16.030 Recognizance—With or without examination.** The magistrate before whom such accused person shall be brought, when the offense is bailable, may, at the request of such person, with or without examination, allow him to enter into recognizance with sufficient sureties, to be approved by the magistrate, conditioned for his appearance in the superior court having jurisdiction of the offense. [1891 c 11 § 11; Code

1881 § 1923; 1873 p 394 § 221; 1854 p 107 § 29; RRS § 1951.]

**Rules of court:** This section superseded by JCrR 2.09. See comment after JCrR 2.09.

**10.16.040 Hearing—Adjournments.** If the defendant shall not enter into recognizance with sureties, the magistrate shall proceed to hear and examine the complaint, and may adjourn the examination from time to time, not exceeding in all ten days from the time such defendant shall have been brought before him, and in case of such adjournment, the magistrate may, if the offense be bailable, take a recognizance with sufficient sureties for the appearance of the defendant at such further examination; and if he fail to enter into such recognizance, he shall be ordered into custody until the time appointed for such examination. [Code 1881 § 1924; 1873 p 394 § 222; 1854 p 107 § 30; RRS § 1952.]

**Rules of court:** This section superseded by JCrR 2.09. See comment after JCrR 2.09.

**10.16.050 Hearing—Association of other magistrates.** Any magistrate to whom complaint is made, or before whom any defendant is brought, may associate with himself one or more magistrates of the same county, and they may, together, execute the powers and duties before mentioned; but no fees shall be taxed for such associates. [Code 1881 § 1928; 1873 p 395 § 227; 1854 p 108 § 35; RRS § 1958.]

**10.16.060 Hearing—Testimony reduced to writing.** The testimony of the witness examined, shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses. [Code 1881 § 1933; 1873 p 396 § 232; 1854 p 109 § 40; RRS § 1953.]

**10.16.070 Bailable offense—Recognizance conditions.** If it appear that a bailable offense has been committed, the magistrate shall order the defendant to enter into recognizance, with sufficient sureties, for his appearance in the superior court to answer the charge, and if he shall not do so, or the offense be not bailable, he shall commit him to jail. The justice of the peace who committed the person, or the judge of the superior court to which the party is held to answer, may admit to bail in the amount required and approve the sureties. The recognizance shall be conditioned in effect that the defendant will appear in the superior court to answer said charge whenever the same shall be prosecuted, and at all times, until discharged according to law, render himself amenable to the orders and process of the superior court, and, if convicted, render himself in execution of the judgment. [1891 c 11 § 13; Code 1881 § 1927; 1873 p 395 § 225; 1854 p 108 § 33; RRS § 1957. Formerly RCW 10.16.070, 10.19.030 and 10.19.040, part.]

**Rules of court:** This section superseded by JCrR 2.09. See comment after JCrR 2.09.

*Cash bail in lieu of recognizance: RCW 10.04.040.*

*Justification and approval of sureties: RCW 10.19.040.*

**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.]

**10.16.090 Certified transcript of proceedings filed in superior court.** It shall be the duty of all magistrates within this state, before whom any person or persons shall be committed or held to bail to answer to any crime, to return their proceedings, duly certified, including a copy of all recognizances taken by them, to the clerk of the superior court within ten days after the final hearing and commitment, or holding to bail, as aforesaid; and any justice of the peace who shall fail or neglect to make such return shall not be entitled to receive any fees or costs in such case. [1891 c 11 § 16; RRS § 1963. Prior: Code 1881 § 1934; 1873 p 396 § 233; 1854 p 109 § 41.]

*Rules of court: This section modified if not superseded by JCrR 2.03. See comment after JCrR 2.03.*

**10.16.100 Abstract of costs forwarded with transcript.** In all cases where any magistrate shall order a defendant to recognize for his appearance before a justice of the peace, or the superior court, he 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. [Code 1881 § 1937; 1873 p 397 § 236; 1854 p 109 § 44; RRS § 1966.]

**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.]

[Title 10—p 10]

**10.16.130 Order for trial before justice.** If it shall appear that an offense has been committed of which a justice of the peace has jurisdiction, and one which would be sufficiently punished by a fine not exceeding one hundred dollars, if the magistrate having the complaint is a justice of the peace, he shall cause the complaint to be ordered [altered] and proceed as in like cases before a justice of the peace; or, if any other magistrate, he shall certify the papers, with a statement of the offense appearing to be proved, to the nearest justice of the peace, and shall, by order, require the defendant and the witnesses to enter into recognizances with sufficient sureties to be approved by the magistrate, for their appearance before such justice at the time and place stated in the order; and such justice shall proceed to the trial of the action as if originally commenced before him. [1891 c 11 § 12; Code 1881 § 1926; 1873 p 395 § 224; 1854 p 107 § 32; RRS § 1955.]

*Jurisdiction of justices: State Constitution Art. 4 § 10 (Amendment 28).*

*Venue in criminal actions: RCW 3.20.131.*

**10.16.135 Compromise of misdemeanors by magistrates.** When any person shall be committed to prison, or shall be under examination or recognizance to answer any charge for a misdemeanor for which the party injured may have a remedy by civil action, except where the offense was committed upon a sheriff or other officer, justice, or violently, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, or is conducting the examination, and acknowledged in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all costs which may have accrued, discharge the recognizance, or supersede the commitment by an order under his hand, and may also discharge all recognizance and supersede the commitment of all witnesses in the case. [Code 1881 § 1935; 1873 p 397 § 234; 1854 p 109 § 42; RRS § 1964. Formerly RCW 10.22-.010, part.]

*Compromise of misdemeanors: Chapter 10.22 RCW.*

**10.16.140 Witnesses—Recognizances—Superior court appearances.** Where the person arrested is held to bail, or committed to jail, or forfeits his recognizance, the magistrate shall recognize the witnesses for the prosecution to be and appear in the superior court to which the party is recognized, bailed, or committed, whenever their attendance shall be required. [1891 c 11 § 14; Code 1881 § 1929; 1873 p 396 § 228; 1854 p 108 § 36; RRS § 1959. FORMER PART OF SECTION: Code 1881 § 1930; 1854 p 108 § 37; RRS § 1960, now codified as RCW 10.16.145.]

*Rules of court: This section superseded by CrR 6.13. See comment after CrR 6.13.*

**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, he shall immediately take the deposition of such witness and discharge him from custody upon his own recognizance. The testimony of the witness shall be reduced to writing by a justice or some competent person under his direction, and he shall take only the exact words of the witness; 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; he may make any objections to the admission of any part of the testimony, and all objections shall be noted by the justice; but the justice 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 he 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 justice, 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 justice, and such judge shall suppress so much of said deposition as he 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. [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.

**10.16.190 Action on forfeiture of recognizance.** When any person under recognizance in any criminal prosecution, either to appear and answer before a justice, or to testify in any court, shall fail to perform the condition of any recognizance, his default shall be recorded; and it shall be the duty of the prosecuting attorney to proceed at once, by action against the person bound by recognizance, or such of them as he may elect. [Code 1881 § 1936; 1873 p 397 § 235; 1863 p 390 § 216; 1859 p 141 § 185; 1854 p 109 § 43; RRS § 1965. Formerly RCW 10.19.110, part.]

*Rules of court:* This section superseded by CrR 3.2. See comment after CrR 3.2.

*Recognizance before justice of the peace or magistrate—Forfeiture:* RCW 10.19.110.

**Chapter 10.19  
BAIL AND APPEARANCE BONDS**

Sections

10.19.010	Bail, when allowable.
10.19.020	Amount of bail—How fixed.
10.19.025	Commitment or recognizance of defendant held to answer to information or indictment.
10.19.040	Officers authorized to take recognizance and approve bail.
10.19.050	Bail must justify.
10.19.060	Certification and filing of recognizances.
10.19.065	Taking and entering recognizances.
10.19.070	Cash bail.
10.19.080	Forfeiture of bail—When entered.
10.19.090	Forfeiture 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 justice of the peace or magistrate—Forfeiture—Action.
10.19.120	Action on recognizance not barred—Want of form or formality.

*Bail, arresting officer's duties, amount of:* RCW 10.31.030.

*Bail pending appeal to supreme court:* RCW 10.73.040.

*Bail where trial conducted in defendant's absence:* RCW 10.46.130.

*Exoneration of bail upon dismissal of charge:* RCW 10.64.090.

*Fugitives, bail:* Chapter 10.88 RCW.

*Recognizance for stay of execution:* RCW 10.82.020, 10.82.025.

*Recognizance 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.

*Recognizances relative to proceedings to keep the peace:* Chapter 10.13 RCW.

**10.19.010 Bail, when allowable.** Every person charged with an offense, except that of murder in the first degree where the proof is evident or the presumption great, may be bailed by sufficient sureties, and bail shall justify and have the same rights as in civil cases, except as otherwise provided by law. The amount of bail 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. [1909 c 249 § 58; RRS § 2310. Prior: Code 1881 § 778; 1873 p 181 § 8; 1869 p 199 § 8; 1859 p 105 § 8; 1854 p 76 § 8.]

**Rules of court:** *This section superseded by CrR 3.2. See comment after CrR 3.2.*

*Corporate surety—Insurance: Chapter 48.28 RCW.*

**10.19.020 Amount of bail—How fixed.** The court must, at the time of directing the clerk to issue the warrant, fix the amount in which persons charged by indictment are to be held to bail, and the clerk must indorse the amount on the warrant. If no order fixing the amount of bail has been made, the sheriff may present the warrant to the judge of the court, and such judge must thereon indorse the amount of the bail to be required; or if there is no such judge in the county, the clerk may fix the amount of bail. [1891 c 28 § 42; Code 1881 § 1028; 1873 p 229 § 208; 1854 p 113 § 72; RRS § 2079. FORMER PART OF SECTION: 1890 p 101 § 5; RRS § 2052, now codified as RCW 10.19.025.]

**Rules of court:** *This section superseded by CrR 3.2. See comment after CrR 3.2.*

**10.19.025 Commitment or recognizance of defendant held to answer to information or indictment.** Any person who may according to law be committed to jail, or become recognized, or held to bail with sureties for his appearance in court to answer to any indictment, may in like manner so be committed to jail, or become recognized and held to bail for his appearance to answer to any information or indictment, as the case may be. [1890 p 101 § 5; RRS § 2052. Formerly codified in RCW 10.19.020.]

**Rules of court:** *This section superseded by CrR 3.2. See comment after CrR 3.2.*

**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.]

*Admittance to bail and approval of sureties: RCW 10.16.070.*

**10.19.050 Bail must justify.** Bail shall, when required, justify as in civil cases. [Code 1881 § 1169; 1854 p 129 § 178; RRS § 1956.]

**Rules of court:** *This section superseded by CrR 3.2. See comment after CrR 3.2.*

**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.]

**10.19.070 Cash bail.** The defendant may, in the place of giving bail, deposit with the clerk of the court to which he is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody. [Code 1881 § 1036; 1873 p 230 § 216; 1854 p 114 § 80; RRS § 2089.]

**Rules of court:** *This section superseded by CrR 3.2. See comment after CrR 3.2.*

*Cash bail before justices of the peace or committing magistrates: RCW 10.04.040.*

**10.19.080 Forfeiture of bail—When entered.** If without sufficient excuse the defendant neglect to appear for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, according to the condition of his recognizance, the court must direct the default to be entered upon its minutes and the recognizance of bail, or money deposited as bail, as the case may be, is thereupon forfeited. [Code 1881 § 1037; 1873 p 230 § 217; 1854 p 114 § 81; RRS § 2090.]

**Rules of court:** *This section superseded by CrR 3.2. See comment after CrR 3.2.*

*Bench warrant for arrest of defendant upon failure to appear for judgment: RCW 10.64.035.*

**10.19.090 Forfeiture 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. [Code 1881 § 1137; 1873 p 230 § 217; 1867 p 103 § 1; RRS § 2231.]

**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 justice of the peace or magistrate—Forfeiture—Action.** All recognizances taken and forfeited before any justice of the peace 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 he may elect to proceed against. [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.]

*Action on forfeiture of recognizance: RCW 10.16.190.*

**10.19.120 Action on recognizance not barred—Want 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 justice 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. [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.]

## 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.

*Compromise of misdemeanors by magistrates: RCW 10.16.135.*

**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; or,

(3) With an intent to commit a felony. [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.]

*Compromise of misdemeanors by magistrates: RCW 10.16.135.*

## Chapter 10.25 JURISDICTION AND VENUE

### Sections

- 10.25.010 Criminal actions—Where commenced.
- 10.25.020 Offenses committed in two or more counties.
- 10.25.030 Offenses committed on county boundaries.
- 10.25.040 When stolen property is taken into another county.
- 10.25.050 Homicide in one county—Death in another.
- 10.25.060 Accessory after the fact.
- 10.25.070 Change of venue—Procedure.
- 10.25.080 Change of venue order—Transcript.
- 10.25.090 Change of venue—Consent of parties.
- 10.25.100 Change of venue—Bonds for appearance of witnesses and defendant.
- 10.25.110 Venue corrected after trial commenced.
- 10.25.130 Costs when case transferred to another county.

*Kidnapping, venue: RCW 9.52.040.*

**10.25.010 Criminal actions—Where commenced.** Except as otherwise specially provided by statute, all criminal actions shall be commenced and tried in the county where the offense was committed. [1891 c 28 § 4; Code 1881 § 780; 1879 p 75 § 10; RRS § 2012.]

*Rules of court: This section superseded by CrR 5.1. See comment after CrR 5.1.*

**10.25.020 Offenses committed in two or more counties.** When a public offense has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county. [Code 1881 § 959; 1854 p 99 § 129; RRS § 2013.]

*Rules of court: This section superseded by CrR 5.1. See comment after CrR 5.1.*

*Venue of crime committed on vessel and doubt exists as to proper county: RCW 88.16.150.*

**10.25.030 Offenses committed on county boundaries.** Offenses committed on the boundary line of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment or information to have been committed in either of them, and may be prosecuted and punished in either county. [1891 c 28 § 5; Code 1881 § 960; 1854 p 99 § 130; RRS § 2014.]

*Rules of court: This section superseded by CrR 5.1. See comment after CrR 5.1.*

**10.25.040 When stolen property is taken into another county.** When property taken in one county by burglary, robbery, larceny or embezzlement, has been brought into another county, the jurisdiction is in either county. [Code 1881 § 961; 1854 p 99 § 131; RRS § 2015.]

*Rules of court: This section superseded by CrR 5.1. See comment after CrR 5.1.*

**10.25.050 Homicide in one county—Death in another.** If any mortal wound is given, or poison administered in one county, and death, by means thereof, ensue in another, the jurisdiction is in either. [Code 1881 § 962; 1854 p 99 § 132; RRS § 2016.]

*Rules of court: This section superseded by CrR 5.1. See comment after CrR 5.1.*

**10.25.060 Accessory after the fact.** An accessory after the fact to a felony may be tried either in the county in which he shall have become an accessory, or in the county in which the felony shall have been committed. [1891 c 28 § 6; Code 1881 § 958; RRS § 2017.]

*Rules of court: This section superseded by CrR 5.1. See comment after CrR 5.1.*

**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.]

**10.25.080 Change of venue order—Transcript.** When the affidavit is founded on prejudice of the judge, the court may, in its discretion, grant a change of venue to some other county, or may continue the cause until such time as it can be tried by another judge in the same county; if the affidavit is founded upon excitement or prejudice in the county against the defendant, the court may, in its discretion, grant a change of venue to the most convenient county. The clerk must, upon

the granting of a change of the place of trial, make a transcript of the proceedings and order of court; and, having sealed up the same with the original papers, deliver them to the sheriff, who must without delay, deposit them in the clerk's office of the proper county and make his return accordingly. [1891 c 28 § 8; Code 1881 § 1073; 1854 p 117 § 99; RRS § 2019.]

*Rules of court: This section superseded by CrR 5.2. See comment after CrR 5.2.*

**10.25.090 Change of venue—Consent of parties.** The court may at its discretion at any time order a change of venue or place of trial to any county in the state, upon the written consent or agreement of the prosecuting attorney and the defendant. [Code 1881 § 1075; 1873 p 235 § 237; RRS § 2020.]

*Rules of court: This section superseded by CrR 5.2. See comment after CrR 5.2.*

**10.25.100 Change of venue—Bonds for appearance of witnesses and defendant.** When a change of venue is ordered, if the offense be bailable, the court shall recognize the defendant, and in all cases the witnesses, to appear at the court to which the change of venue was granted. [1891 c 28 § 9; Code 1881 § 1076; 1854 p 117 § 100; RRS § 2021.]

*Rules of court: This section superseded by CrR 5.2. See comment after CrR 5.2.*

**10.25.110 Venue corrected after trial commenced.** When it appears, at any time before verdict or judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment or information to be corrected, and direct that all the papers and proceedings be certified to the superior court of the proper county, and recognize the defendant and witnesses to appear at such court on a day specified in the order, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced. [1891 c 28 § 72; Code 1881 § 1094; 1873 p 238 § 255; 1854 p 120 § 119; RRS § 2164.]

*Rules of court: This section superseded by CrR 5.1. See comment after CrR 5.1.*

**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.]

## 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 Foreman—Oath—Instructions—Reporter—Secretary—Interpreter—Guard—Quorum—Legal advisers—Attorney general's duties—Special prosecutor—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 not less than twelve nor more than seventeen 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. [1971 ex.s. c 67 § 2.]

**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.** The court shall select the members of the grand jury from either the petit jury panel, or from a grand jury panel of one hundred individuals drawn by lot in the manner provided for petit jury panels under chapter 2.36 RCW, or from both. [1971 ex.s. c 67 § 4.]

**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 Foreman—Oath—Instructions—Reporter—Secretary—Interpreter—Guard—Quorum—Legal advisers—Attorney general's duties—Special prosecutor—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 10.31 WARRANTS AND ARRESTS

#### Sections

10.31.010	When warrant to issue.
10.31.020	Service—By whom.
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	Officer may arrest on reasonable belief crimes involving physical harm, taking of property or use of cannabis being committed.

*Rules of court: Warrant upon indictment or information—CrR 2.2. Fugitives, arrest of: RCW 10.88.030.*

*Search and seizure: Chapter 10.79 RCW.*

**10.31.010 When warrant to issue.** When an indictment is found or an information filed the court may direct the clerk to issue a warrant for the arrest of the defendant, returnable forthwith; if no order is made the clerk must issue a warrant within ten days after the indictment is returned into court or the information filed. [1891 c 28 § 41; Code 1881 § 1026; 1873 p 228 § 206; 1854 p 113 § 70; RRS § 2077.]

*Rules of court: This section superseded by CrR 2.2. See comment after CrR 2.2.*

**10.31.020 Service—By whom.** All criminal process issuing out of the superior court shall be directed to the sheriff of the county in which the court is held, and be by him executed according to law. [1929 c 39 § 1; Code 1881 § 1027, part; 1873 p 228 § 207; 1860 p 146 § 214; 1854 p 113 § 71; RRS § 2080.]

*Rules of court: This section superseded by CrR 2.2. See comment after CrR 2.2.*

*Officer may arrest defendant in any county: RCW 10.34.010.*

**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 9.48.010.  
*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 Officer may arrest on reasonable belief crimes involving physical harm, taking of property or use of cannabis being committed.** Any police officer having information to support a reasonable belief 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 shall have the authority to arrest said person: *Provided*, That nothing herein shall extend or otherwise affect the powers of arrest prescribed in chapter 46 RCW. [1969 ex.s. c 198 § 1.]

*Uniform narcotic drug act: Chapter 69.33 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 and rescue: Chapter 9.31 RCW.*

*Extradition and fresh pursuit: Chapter 10.88 RCW.*

*Return of parole violators from without state: RCW 9.95.280–9.95.300.*

**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 must be by information or indictment—  
Exceptions.
- 10.37.020 Indictment or information—Time for filing.
- 10.37.025 First pleading—Information or indictment.
- 10.37.026 Prosecutions may be by information.
- 10.37.030 Filing—Informations—Lists of witnesses.
- 10.37.033 Disclosure of alibi may be required—Bill of particulars—Witnesses.
- 10.37.035 Verification of informations.
- 10.37.040 Indictment—Form.
- 10.37.050 Indictment or information—Sufficiency.
- 10.37.052 Indictment or information—Requisites.
- 10.37.054 Indictment or information—Certainty.
- 10.37.056 Indictment or information—Certain defects or imperfections deemed immaterial.
- 10.37.060 Indictment or information—Separation into counts—Consolidation.
- 10.37.070 Animals—Description of.
- 10.37.080 Forgery—Description of instrument.
- 10.37.090 Injury to person or intention concerning.
- 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—Subornation 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.
- 10.37.180 Time of offense—Description.
- 10.37.190 Words and phrases—How used.

**Rules of court:** *Rights of dependents—CrR 3.1–3.5.*

*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 must be 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 justice of the peace, or before a court martial. [1927 c 103 § 1; Code 1881 § 764; RRS § 2023. Formerly RCW 10.37.010, part.]

**10.37.020 Indictment or information—Time for filing.** Whenever a person has been held to answer to any criminal charge, if an indictment be not found or information filed against him within thirty days, the court shall order the prosecution to be dismissed; unless good cause to the contrary be shown. [1909 c 249 § 59; Code 1881 § 771; RRS § 2311.]

**Rules of court:** *This section superseded by CrR 2.1. See comment after CrR 2.1.*

*Dismissal as bar to other prosecution: RCW 10.43.010.*

**10.37.025 First pleading—Information or indictment.** The first pleading on the part of the state is the indictment or information. [1891 c 28 § 19; Code 1881 § 1003; 1873 p 224 § 186; 1869 p 240 § 181; RRS § 2054. Formerly RCW 10.37.010, part.]

**Rules of court:** *This section superseded by CrR 2.1. See comment after CrR 2.1.*

**10.37.026 Prosecutions may be by information.** All public offenses may be prosecuted in the superior courts by information. [1909 c 87 § 1; 1891 c 117 § 1; 1890 p 100 § 1; RRS 2024. Formerly RCW 10.37.010, part.]

**Rules of court:** *This section superseded by CrR 2.1. See comment after CrR 2.1.*

**10.37.030 Filing—Informations—Lists of witnesses.** All informations shall be filed in the court having jurisdiction of the offense specified therein by the prosecuting attorney of the proper county as informant; he shall subscribe his name thereto, and at the time the case is set for trial the prosecuting attorney shall file with the clerk a list of the witnesses which he intends to use at the trial and serve a copy of the same upon the defendant, and within five days thereafter the defendant shall file with the clerk and serve upon the prosecuting attorney a list of the witnesses which the defendant intends to use at the trial. Either party may add such additional names at any time before trial as the court may by order permit, and the said court shall possess and may exercise the same powers and jurisdiction to hear, try, and determine all such prosecutions upon information, to issue writs and process, and do all other acts therein, as it possesses and may exercise in cases of like prosecution upon indictments. [1925 ex.s. c 150 § 2; 1890 p 101 § 2; RRS § 2050. Formerly RCW 10.37.030, part and 10.52.010. FORMER PART OF SECTION: 1891 c 28 § 18; RRS § 2051, now codified as RCW 10.37.035.]

**Rules of court:** *This section superseded by CrR 4.7. See comment after CrR 4.7.*

**10.37.033 Disclosure of alibi may be required—Bill of particulars—Witnesses.** In all cases where an information has been filed against a defendant or an indictment returned, the prosecuting attorney may, not less than eight days before the case is set to be tried, serve

upon such defendant or his counsel and file a demand which shall require that if such defendant intends to offer, for any purpose whatever, testimony of any person which may tend to establish the defendant's presence elsewhere than at the scene of the crime at the time of its commission, the defendant must within four days thereafter serve upon such prosecuting attorney and file a bill of particulars which shall set forth in detail the place or places where the defendant claims to have been, together with the names, post office addresses, residences, and places of employment of the witnesses upon whom the defendant intends to rely to establish his presence elsewhere than at the scene of the crime at the time of its commission. Unless the defendant shall pursuant to such demand, serve and file such bill of particulars, the court, in the event that such testimony is sought to be interposed by the defendant upon the trial for any purpose whatever, or in the event that a witness not mentioned in such bill of particulars is called by the defendant to give such testimony, may exclude such testimony, or the testimony of such witness. In the event that the court shall allow such testimony, or the testimony of such witness, it must, upon motion of the prosecuting attorney, grant an adjournment not to exceed one week. [1970 ex.s. c 49 § 7.]

*Rules of court: This section superseded by CrR 4.7. See comment after CrR 4.7.*

**Severability—1970 ex.s. c 49:** See note following RCW 9.48.010.

**10.37.035 Verification of informations.** All informations shall be verified by the oath of the prosecuting attorney, complainant or some other person. [1891 c 28 § 18; RRS § 2051. Formerly RCW 10.37.030, part.]

*Rules of court: This section superseded by CrR 2.1. See comment after CrR 2.1.*

**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 9.54 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 9.44 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 9.54 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.]

*Comic books: Chapter 19.18 RCW.*

*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 9.72 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.]

**10.37.180 Time of offense—Description.** The precise time at which the crime was committed need not be stated in the indictment or information, but it may be alleged to have been committed at any time before the finding of the indictment or the filing of the information, and within the time in which an action may be commenced therefor, except where the time is a material ingredient in the crime. [1891 c 28 § 25; Code 1881 § 1009; 1873 p 225 § 192; 1869 p 241 § 187; RRS § 2060.]

*Rules of court: This section superseded by CrR 2.1. See comment after CrR 2.1.*

**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

10.40.010	Time of.
10.40.020	Appearance by counsel only.

10.40.030	Counsel assigned to indigents.
10.40.040	Accused to declare his true name.
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.
10.40.080	Motion to set aside information.
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.
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10.40.130	Resubmission.
10.40.140	Overruling demurrer—Pleading over.
10.40.150	Pleas permitted.
10.40.160	Pleas—Form of entry.
10.40.170	Plea of guilty.
10.40.175	Substitution for plea of guilty.
10.40.180	Plea of not guilty.
10.40.190	Refusal to answer.

*Rules of court: Arraignment—CrR 4.1.*

**10.40.010 Time of.** When the indictment or information has been filed the defendant, if he has been arrested, or as soon thereafter as he may be, shall be arraigned thereon before the court. [1891 c 28 § 46; RRS § 2093.]

*Rules of court: This section superseded by CrR 4.1. See comment after CrR 4.1.*

**10.40.020 Appearance by counsel only.** If the indictment or information be for a misdemeanor punishable by fine only, the defendant may appear upon arraignment by counsel. [1891 c 28 § 47; Code 1881 § 1066; 1873 p 232 § 228; 1854 p 116 § 92; RRS § 2094.]

*Rules of court: This section superseded by CrR 3.3. See comment after CrR 3.3.*

*Personal presence of defendant at trial: RCW 10.46.120, 10.46.130.*

*Rendition of judgment, presence of defendant: RCW 10.64.020.*

**10.40.030 Counsel assigned to indigents.** If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and he shall be asked if he desire the aid of counsel, and if it appear that he is unable to employ counsel by reason of poverty, counsel shall be assigned to him by the court. [Code 1881 § 1063; 1873 p 232 § 225; 1860 p 149 § 232; 1855 p 116 § 89; 1854 p 116 § 89; RRS § 2095.]

*Rules of court: This section superseded by CrR 3.1 and 4.1. See comment after CrR 3.1 and 4.1.*

*Counsel—Right to—Fees: RCW 10.01.110; CrR 3.1.*

*Defendant's right to counsel, compulsory process for witnesses: RCW 10.46.050; CrR 3.1.*

*Rights of the accused: State Constitution Art. 1 § 22 (Amendment 10); CrR 3.1–3.5.*

*Waiver of appeal costs for indigents: Rules of court: Cf. ROA I–47; CAROA 47.*

**10.40.040 Accused to declare his true name.** When the defendant is arraigned he shall be interrogated; if the name by which he is indicted [or informed against] be not his true name, he shall then declare his true name or be proceeded against by the name in the indictment or information. [1891 c 28 § 48; Code 1881 §

1064; 1873 p 232 § 226; 1869 p 248 § 21; 1854 p 116 § 90; RRS § 2096.]

*Rules of court:* This section superseded by CrR 4.1. See comment after 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 it is not indorsed "a true bill," and the indorsement signed by the foreman of the grand jury as prescribed by RCW 10.28.150;

(2) When it has not been presented and marked "filed" as prescribed by RCW 10.28.200;

(3) 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.

(4) That the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law. [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.]

**10.40.080 Motion to set aside information.** A motion to set aside an information can be made by the defendant on one or more of the following grounds, and must be sustained:

(1) When it is not signed by the prosecuting attorney.

(2) When it is not verified.

(3) When it has not been marked "filed" by the clerk. [1957 c 10 § 2; 1891 c 28 § 51; RRS § 2101.]

*Rules of court:* This section superseded by CrR 2.1. See comment after CrR 2.1.

**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.]

**10.40.130 Resubmission.** If the court direct that the case be resubmitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information. [1891 c 28 § 53; Code 1881 § 1049; RRS § 2103.]

*Rules of court:* This section superseded by CrR 3.2. See comment after CrR 3.2.

**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.]



**10.40.150 Pleas permitted.** There are but three pleas to the indictment or information. A plea of—

- (1) Guilty;
- (2) Not guilty;

(3) A former judgment of conviction or acquittal of the offense charged, which may be pleaded with or without the plea of not guilty. [1891 c 28 § 57; Code 1881 § 1054; RRS § 2108.]

*Rules of court:* This section superseded by CrR 4.2. See comment after CrR 4.2.

*Pleading insanity or mental irresponsibility:* RCW 10.76.020.

**10.40.160 Pleas—Form of entry.** The plea may be entered on the record substantially in the following form:

(1) A plea of guilty: The defendant pleads that he is guilty of the offense charged in the indictment (or information as the case may be);

(2) A plea of not guilty: The defendant pleads that he is not guilty of the offense charged in the indictment (or information as the case may be);

(3) A plea of former conviction or acquittal: The defendant pleads that he has formerly been convicted (or acquitted as the case may be) of the offense charged in the indictment (or information as the case may be), by the judgment of the court of (naming it), rendered on the ----- day of ----- A. D. 19-- (naming the time). [1891 c 28 § 58; Code 1881 § 1055; RRS § 2109.]

*Rules of court:* This section superseded by CrR 4.2. See comment after CrR 4.2.

**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.]

*Appearance by counsel in misdemeanors:* RCW 10.40.020.

**10.40.175 Substitution for plea of guilty.** At any time before judgment, the court may permit the plea of guilty to be withdrawn, and other plea or pleas substituted. [Code 1881 § 1057; RRS § 2111. Formerly RCW 10.40.170, part.]

*Rules of court:* This section superseded by CrR 4.2. See comment after CrR 4.2.

**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.]

## Chapter 10.43 FORMER ACQUITTAL OR CONVICTION

### Sections

10.43.010	Dismissal, when a bar.
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.

**10.43.010 Dismissal, when a bar.** An order dismissing a prosecution under the provisions of RCW 10.37-.020, 10.46.010, and 10.46.090 shall bar another prosecution for a misdemeanor or gross misdemeanor where the prosecution dismissed charged the same misdemeanor or gross misdemeanor; but in no other case shall such order of dismissal bar another prosecution. [1909 c 249 § 63; Code 1881 § 777; RRS § 2315.]

*Rules of court:* This section superseded by CrR 3.3. See comment after CrR 3.3.

**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.]

*Mistake in charge, holding defendant:* RCW 10.46.170.

*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

10.46.010	Trial within sixty days.
10.46.020	Trial docket.
10.46.030	Defendants in capital cases—Copy of indictment—List of jurors—Subpoenas.
10.46.040	Defendants charged with felony—Copy of indictment.
10.46.050	Defendant's right to counsel, compulsory process for witnesses.
10.46.060	True name inserted in proceedings.
10.46.070	Conduct of trial—Generally.
10.46.080	Continuances.
10.46.090	Nolle prosequi.
10.46.100	Separate trials.
10.46.110	Discharging defendant to give evidence.
10.46.120	Personal presence of defendant.
10.46.130	Trials permissible in defendant's absence.
10.46.170	Mistake in charge—Holding defendant.
10.46.180	Mistake in charge or venue—Discharge of jury.
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:* See *Criminal Rules For Superior Court (CrR)*.

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

**10.46.010 Trial within sixty days.** If a defendant indicted or informed against for an offense, whose trial has not been postponed upon his own application, be not brought to trial within sixty days after the indictment is found or the information filed, the court shall order it to be dismissed, unless good cause to the contrary is shown. [1909 c 249 § 60; Code 1881 § 772; RRS § 2312.]

**Rules of court:** This section superseded by CrR 3.3. See comment after CrR 3.3.

*Dismissal as bar to other prosecution:* RCW 10.43.010.

*Time limit for decision:* State Constitution Art. 4 § 20.

**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.]

**10.46.030 Defendants in capital cases—Copy of indictment—List of jurors—Subpoenas.** As soon as may be after the finding of an indictment or the filing of an information for a capital crime, the party charged shall be served with a copy thereof by the sheriff or his deputy, at least twenty-four hours before trial, and shall, on demand upon the clerk by himself or counsel, have a list of the petit jurors returned delivered to him at least twenty-four hours before trial, and shall also have process to summon such witnesses as are necessary to his defense, at the expense of the county. [1891 c 28 § 44; Code 1881 § 1038; 1873 p 230 § 218; 1854 p 114 § 82; RRS § 2091.]

**Rules of court:** This section superseded, in part, by CrR 4.1; superseded, in part, by CrR 4.5; superseded, in part, by CrR 4.7; superseded, in part, by CrR 4.8. See comment after CrR 4.1, 4.5, 4.7, 4.8.

**10.46.040 Defendants charged with felony—Copy of indictment.** Every person indicted or informed against for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance or in custody to answer for such offense, he or his attorney shall be furnished with a copy of the indictment or information and of all indorsements thereof without paying any fees therefor. [1891 c 28 § 45; Code 1881 § 1039; 1873 p 230 § 219; 1854 p 115 § 83; RRS § 2092.]

**Rules of court:** This section superseded by CrR 4.1. See comment after CrR 4.1.

**10.46.050 Defendant's right to counsel, compulsory process for witnesses.** Every person charged with the commission of a crime shall have the right upon the trial of such charge to be heard in person or by counsel, and to produce witnesses and proofs in his favor and to have compulsory process to compel the attendance of all witnesses who may be necessary for his proper defense. [1909 c 249 § 55; RRS § 2307. Prior: 1891 c 28 § 90; Code 1881 § 766; 1877 p 205 § 2.]

**Reviser's note:** Caption for 1909 c 249 § 55 reads as follows: "Sec. 55. Right to Subpoena."

**Rules of court:** This section superseded by CrR 3.1 and 4.8. See comment after CrR 3.1 and 4.8.

*Counsel assigned to indigents:* RCW 10.40.030.

*Counsel—Right to—Fees:* RCW 10.01.110; CrR 3.1.

*Right to subpoena:* State Constitution Art. 1 § 22.

**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 10.40.040, 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 prior to CrR 6.1.  
*Issues of fact tried by jury:* RCW 10.49.020.

**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.]

**10.46.090 Nolle prosequi.** The court may, either upon its own motion or upon application of the prosecuting attorney, and in furtherance of justice, order any criminal prosecution to be dismissed; but in such case the reason of the dismissal must be set forth in the order, which must be entered upon the record. No prosecuting attorney shall hereafter discontinue or abandon a prosecution except as provided in this section. [1909 c 249 § 62; Code 1881 § 775; RRS § 2314.]

*Rules of court:* This section superseded by CrR 8.3. See comment after CrR 8.3.  
*Dismissal as bar to other prosecution:* RCW 10.43.010.

**10.46.100 Separate trials.** When two or more defendants are indicted or informed against jointly, any defendant requesting it may, in the discretion of the trial judge be tried separately. [1919 c 16 § 1; 1891 c 28 § 71; Code 1881 § 1091; 1873 p 237 § 252; 1854 p 120 § 116; RRS § 2161.]

*Rules of court:* This section superseded by CrR 4.4. See comment after CrR 4.4.

**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.

**10.46.120 Personal presence of defendant.** No person prosecuted for an offense punishable by death, or by confinement in the penitentiary or in the county jail, shall be tried unless personally present during the trial.

[Code 1881 § 1086; 1873 p 237 § 247; 1854 p 119 § 109; RRS § 2145.]

*Rules of court:* This section superseded by CrR 3.4. See comment after CrR 3.4.

*Appearance upon arraignment by counsel only:* RCW 10.40.020.

*Personal appearance of party in appeal to supreme court:* **Rules of court:** Appeal—ROA 1-5.

*Rendition of judgment, presence of defendant:* RCW 10.64.020.

**10.46.130 Trials permissible in defendant's absence.** No person prosecuted for an offense punishable by a fine only, shall be tried without being personally present, unless some responsible person, approved by the court, undertakes to be bail for stay of execution and payment of the fine and costs that may be assessed against the defendant. Such undertaking must be in writing, and is as effective as if entered into after judgment. [Code 1881 § 1087; 1873 p 237 § 248; 1854 p 119 § 110; RRS § 2146.]

*Rules of court:* This section superseded by CrR 3.4. See comment after CrR 3.4.

**10.46.170 Mistake in charge—Holding defendant.** When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant shall not be discharged if there appear to be good cause to detain him in custody; but the court must recognize him to answer the offense shown, and if necessary, recognize the witnesses to appear and testify. [Code 1881 § 1093; 1873 p 238 § 254; 1854 p 120 § 118; RRS § 2163.]

*Rules of court:* This section superseded by CrR 2.1, 3.2. See comment after CrR 2.1, 3.2.

*No jeopardy from dismissal for variance or other defects:* RCW 10.43.050.

*Ownership of property—Proof of:* RCW 10.58.060.

**10.46.180 Mistake in charge or venue—Discharge of jury.** When a jury has been impaneled in either case contemplated in RCW 10.25.110 and 10.46.170, such jury may be discharged without prejudice to the prosecution. [1891 c 28 § 73; Code 1881 § 1095; 1873 p 238 § 256; 1854 p 120 § 120; RRS § 2165.]

*Rules of court:* This section superseded by CrR 5.2. See comment after CrR 5.2.

**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, six 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. [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 4.44.100, 4.44.110, 36.18.020.

*Jury in justice court:* RCW 10.04.050.

*Trial juries: 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, justice of the peace 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, justice of the peace 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. [Code 1881 § 2103; 1869 p 418 § 1; RRS § 2225.]

**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 state auditor and one to the county auditor of the county in which said felony was committed. [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 state auditor shall examine and audit said bill and allow the same or so much

thereof as may be allowable against the state, and shall credit the amount so allowed to the county from whence the bill came as so much state tax paid. The state auditor shall immediately notify the state treasurer and county auditor, each of whom shall credit and charge accordingly. [1883 p 35 § 1; Code 1881 § 2107; 1873 p 250 § 316; RRS § 2229.]

## Chapter 10.49 TRIAL JURIES

### Sections

- 10.49.010 Waiver of jury on plea of guilty—Exception.
- 10.49.020 Jury—Number—How selected.
- 10.49.030 Challenge to the panel.
- 10.49.040 Challenges for cause.
- 10.49.050 Challenge for cause—Capital case—Conscientious scruples.
- 10.49.060 Peremptory challenges.
- 10.49.070 Alternate jurors.
- 10.49.100 Oath to jury.
- 10.49.110 Custody of jury.

*Juries in justice court criminal trials: See Criminal Rules for Justice Court—JCrR 4.07.*

*Juries in superior court criminal trials: See Criminal Rules for Superior Court—CrR 6.1–6.16.*

*Jury fee: RCW 10.46.190.*

*Jury in justice court: RCW 10.04.050; JCrR 4.07.*

*Mileage allowances, jurors: RCW 2.36.150, 10.01.140.*

*Verdicts: Chapter 10.61 RCW.*

**10.49.010 Waiver of jury on plea of guilty—Exception.** If, on the arraignment of any person, he shall plead guilty, if the offense charged be not murder, the court shall, in their discretion, hear testimony, and determine the amount and kind of punishment to be inflicted; but if the defendant plead guilty to a charge of murder, a jury shall be impaneled to hear testimony, and determine the degree of murder and the punishment therefor. [Code 1881 § 1062; 1873 p 231 § 223; 1854 p 115 § 87; RRS § 2116.]

*Rules of court: Cf. CrR 6.1.*

**10.49.020 Jury—Number—How selected.** Except as otherwise specially provided, issues of fact joined upon an indictment or information shall be tried by a jury of twelve persons, and the law relating to the drawing, retaining, and selecting jurors, and trials by jury, in civil cases shall apply to criminal cases. [1891 c 28 § 66; Code 1881 § 1078; 1873 p 236 § 239; 1854 p 118 § 101; RRS § 2137. Formerly RCW 10.46.070, part and 10.49.020.]

*Rules of court: This section superseded by CrR 6.1. See comment after CrR 6.1.*

*Issues of law for court: RCW 10.46.070.*

*Juries: Chapters 2.36, 4.44 RCW.*

**10.49.030 Challenge to the panel.** Challenges to the panel shall only be allowed for a material departure from the forms prescribed by law, for the drawing and return of the jury, and shall be in writing, sworn to and proved to the satisfaction of the court. [Code 1881 § 1081; 1873 p 236 § 242; 1854 p 118 § 104; RRS § 2140.]

*Rules of court: This section superseded by CrR 6.4. See comment after CrR 6.4.*

**10.49.040 Challenges for cause.** Challenges for cause shall be allowed for such cause as the court may, in its discretion, deem sufficient, having reference to the causes of challenge prescribed in civil cases, as far as they may be applicable, and to the substantial rights of the defendant. [Code 1881 § 1082; 1873 p 236 § 243; 1854 p 119 § 105; RRS § 2141.]

*Rules of court: This section superseded by CrR 6.4. See comment after CrR 6.4.*

*Challenges for cause in civil cases: RCW 4.44.150 through 4.44.190.*

**10.49.050 Challenge for cause—Capital case—Conscientious scruples.** No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death shall be compelled or allowed to serve as a juror on the trial of any indictment or information for such an offense. [1891 c 28 § 67; Code 1881 § 1083; 1873 p 234 § 244; 1854 p 119 § 106; RRS § 2142.]

*Rules of court: This section superseded by CrR 6.4. See comment after CrR 6.4.*

**10.49.060 Peremptory challenges.** In prosecution for capital offenses, the defendant and the state may challenge peremptorily twelve jurors each; in prosecution for offenses punishable by imprisonment in the penitentiary, six jurors each; in all other prosecutions, three jurors each. When several defendants are on trial together, each defendant shall be entitled to the number of challenges provided above. [1969 ex.s. c 41 § 1; 1923 c 25 § 1; Code 1881 § 1079; 1854 p 118 § 102; RRS § 2138.]

*Rules of court: This section superseded by CrR 6.4. See comment after CrR 6.4.*

**10.49.070 Alternate jurors.** Whenever, in the opinion of a judge of a superior court about to try a defendant against whom has been filed any indictment or information for a felony, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn the court may direct the calling of one or two additional jurors, in its discretion, to be known as "alternate jurors." Such jurors must be drawn from the same source, and in the same manner, and of the same qualifications as the jurors already sworn, to be subject to the same examination and challenge: *Provided*, That the prosecution shall be entitled to one, and the defendant to two peremptory challenges to such alternate jurors. Such alternate jurors shall be seated near, with equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and must attend at all times upon the trial of the cause in company with the other jurors; and for a failure so to do are liable to be punished for contempt. They shall obey the orders of and be bound by the admonition of the court upon each adjournment of the court; but if the regular jurors are ordered to be

kept in the custody of the sheriff during the trial of the case, such alternate jurors shall also be kept in confinement with the other jurors; and except, as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If, before the final submission of the case, a juror die, or become ill, so as to be unable to perform his duty, the court may order him to be discharged and draw the name of an alternate, who shall then take his place in the jury box and be subject to the same rules and regulations as though he had been elected as one of the original jurors. [1917 c 37 § 1; RRS § 2137-1. Formerly RCW 10.49.070, 10.49.080 and 10.49.090.]

*Rules of court: This section superseded by CrR 6.5. See comment after CrR 6.5.*

**10.49.100 Oath to jury.** The jury shall be sworn or affirmed well and truly to try the issue between the state and the defendant, according to the evidence, and in capital cases to well and truly try, and true deliverance make between the state and the prisoner at the bar whom they shall have in charge, according to the evidence. [1891 c 28 § 68; Code 1881 § 1084; 1873 p 236 § 245; 1854 p 119 § 107; RRS § 2143.]

*Rules of court: This section superseded by CrR 6.6. See comment after CrR 6.6.*

**10.49.110 Custody of jury.** Juries in criminal cases shall not be allowed to separate, except by consent of the defendant and the prosecuting attorney, but shall be kept together, without meat or drink, unless otherwise ordered by the court, to be furnished at the expense of the county. [Code 1881 § 1089; 1873 p 237 § 250; 1854 p 119 § 114; RRS § 2159.]

*Rules of court: This section superseded by CrR 6.7. See comment after CrR 6.7.*

*Care of jury while deliberating: RCW 4.44.300.*

*Separation of jury: RCW 2.36.140.*

## Chapter 10.52 WITNESSES—GENERALLY

### Sections

10.52.020	Competency—Generally.
10.52.030	Convict as witness.
10.52.040	Compelling witness to attend and testify—Accused as witness—Admonitory instruction.
10.52.060	Confrontation of witnesses.
10.52.090	Incriminating testimony not to be used.

*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 in justice court criminal trials: See Criminal Rules for Justice Court—JCrR 3.10, 3.11.*

*Witnesses in superior court criminal trials: See Criminal Rules for Superior Court—CrR 6.12, 6.13.*

**10.52.020 Competency—Generally.** Witnesses competent to testify in civil cases shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests, shall be protected from testifying as to confessions, or information received from

any defendant, by virtue of their profession and character; Indians shall be competent witnesses as hereinbefore provided, or in any prosecutions in which an Indian may be a defendant. [Code 1881 § 1069; 1873 p 233 § 231; 1854 p 117 § 95; RRS § 2147.]

*Witnesses—Competency: Chapter 5.60 RCW; CrR 6.12.*

**10.52.030 Convict as witness.** Every person convicted of a crime shall be a competent witness in any civil or criminal proceeding, but his conviction may be proved for the purpose of affecting the weight of his testimony, either by the record thereof, or a copy of such record duly authenticated by the legal custodian thereof, or by other competent evidence, or by his cross-examination, upon which he shall answer any proper question relevant to that inquiry, and the party cross-examining shall not be concluded by his answer thereto. [1909 c 249 § 38; RRS § 2290.]

*Conviction of crime—Effect: RCW 5.60.040.*

*Testimony of prisoner, how obtained: RCW 5.56.090, 5.56.100.*

**10.52.040 Compelling witness to attend and testify—Accused as witness—Admonitory instruction.** 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: *And provided further*, That it shall be the duty of the court to instruct the jury that no inference of guilt shall arise against the accused if the accused shall fail or refuse to testify as a witness in his or her own behalf. [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: This section superseded, in part, by CrR 6.13. See comment after CrR 6.13, Cf. CrR 6.14. Last proviso of section abrogated by CrR 6.15(b).*

*Rights of accused persons: State Constitution Art. 1 §§ 9, 22.*

**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.*

**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: "this act", see note following RCW 9.01.010.*

*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.*

*Witness not excused from giving testimony tending to incriminate himself in crimes concerning*  
*abortion: RCW 9.02.040.*  
*anarchy: RCW 9.05.050.*  
*bribery: RCW 9.18.080.*  
*duelling: RCW 9.30.050.*  
*gambling: RCW 9.47.130.*

## 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.*

*Evidence material to homicide, search and seizure: RCW 10.79.015.*

*Seized property, safekeeping for use as evidence: RCW 10.79.030.*

**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.]

*Confessions, oppression under color of office: RCW 9.33.020(5).*

**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.*

*Ownership of animals, how pleaded—Variance: RCW 10.37.075.*

**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.
10.61.030	Verdict when several are accused.
10.61.035	Conviction or acquittal—Several defendants.
10.61.040	Rendition of verdict.
10.61.050	Form of verdict—Court to fix fine and punishment.
10.61.060	Reconsideration of verdict.

*Rules of court: Verdicts—CrR 6.16.*

*Defendant to be informed of verdict: RCW 10.64.040.*

*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]

**10.61.030 Verdict when several are accused.** On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly. [1891 c 28 § 77; Code 1881 § 1099; 1873 p 239 § 260; 1854 p 120 § 124; RRS § 2169. FORMER PART OF SECTION: 1891 c 28 § 37; Code 1881 § 1022; 1869 p 243 § 200; RRS § 2073, now codified as RCW 10.61.035.]

*Rules of court:* This section superseded by CrR 6.16. See comment after CrR 6.16.

**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.

**10.61.040 Rendition of verdict.** When the jury have agreed upon their verdict they must be conducted into court by the officer having them in charge. Their names must then be called, and if all appear their verdict must be rendered in open court; and if all do not appear the rest must be discharged without giving a verdict, and the cause must be tried again. [1891 c 28 § 80; Code 1881 § 1102; 1873 p 239 § 263; 1854 p 121 § 127; RRS § 2171.]

*Rules of court:* This section superseded by CrR 6.16. See comment after CrR 6.16.

**10.61.050 Form of verdict—Court to fix fine and punishment.** When the defendant is found guilty, the court, and not the jury, shall fix the amount of fine and the punishment to be inflicted. The verdict of the jury may be substantially in the following form:

"We, the jury, in the case of the state of Washington, plaintiff, against \_\_\_\_\_, defendant, find the defendant (guilty or not guilty, as the case may be.) (Signed,) A B, foreman." [Code 1881 § 1103; 1873 p 239 § 264; 1865 p 101 § 1; 1854 p 121 § 128; RRS § 2172. Formerly RCW 10.61.050 and 10.64.050.]

*Rules of court:* This section superseded by CrR 6.16. See comment after CrR 6.16.

*Verdict in crime of kidnaping:* RCW 9.52.010.

*Verdict in crime of murder:* RCW 9.48.030.

*Verdict involving insanity or mental irresponsibility:* RCW 10.76.030, 10.76.040.

**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

10.64.010	Pronouncing judgment.
10.64.015	Judgment to include costs—Exception.
10.64.020	Presence of defendant—When necessary.
10.64.030	Defendant not present—Arrest.
10.64.035	Defendant discharged on bail—Absence—Forfeiture—Arrest.
10.64.040	Defendant to be informed of verdict.
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.
10.64.090	Discharge of defendant and bail upon dismissal.
10.64.100	Final record—What to contain.

*Rules of court:* Judgments and sentencing—CrR 7.1–7.4.

*Excessive bail or fines, cruel punishment prohibited:* State Constitution Art. I § 14.

**10.64.010 Pronouncing judgment.** After verdict of guilty, or finding of the court against the defendant, if the judgment be not arrested, or a new trial granted, the court must pronounce judgment. [Code 1881 § 1114; 1873 p 241 § 272; 1854 p 123 § 136; RRS § 2190. FORMER PART OF SECTION: Code 1881 § 1104; 1873 p 241 § 272; 1854 p 121 § 129; RRS § 2187, now codified as RCW 10.64.015.]

*Rules of court:* This section superseded by CrR 7.1. See comment after CrR 7.1.

**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.]

**10.64.020 Presence of defendant—When necessary.** For the purpose of judgment, if the conviction be for an offense punishable by imprisonment, the defendant must be personally present; if for a fine only, he must be personally present, or some responsible person must undertake for him to secure the payment of the judgment and costs; judgment may then be rendered in his absence. [Code 1881 § 1115; 1873 p 241 § 273; 1854 p 123 § 137; RRS § 2196.]

*Rules of court:* This section superseded by CrR 3.4. See comment after CrR 3.4.

*Appearance upon arraignment by counsel only:* RCW 10.40.020.

*Presence of defendant at trial:* RCW 10.46.120, 10.46.130.

**10.64.030 Defendant not present—Arrest.** If in any case the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in this state, as a warrant of arrest in other cases. [Code 1881 § 1116; 1873 p 241 § 274; 1854 p 123 § 138; RRS § 2197. FORMER PART OF SECTION: Code 1881 § 1118; 1873 p 242 § 276; 1854 p 123 § 140; RRS § 2199, now codified as RCW 10.64.035.]

*Rules of court:* This section superseded by CrR 3.4. See comment after CrR 3.4.

**10.64.035 Defendant discharged on bail—Absence—Forfeiture—Arrest.** If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest. [Code 1881 § 1118; 1873 p 242 § 276; 1854 p 123 § 140; RRS § 2199. Formerly RCW 10.64.030, part.]

*Rules of court:* This section superseded by CrR 3.2. See comment after CrR 3.2.

*Forfeiture of bail:* RCW 10.19.080.

**10.64.040 Defendant to be informed of verdict.** When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him. [Code 1881 § 1117; 1873 p 242 § 275; 1854 p 123 § 139; RRS § 2198.]

*Rules of court:* This section superseded by CrR 7.1. See comment after CrR 7.1.

**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.]

*Prison terms, paroles and probation:* Chapter 9.95 RCW.

[Title 10—p 34]

**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.]

*Proceedings to keep the peace:* Chapter 10.13 RCW.

**10.64.075 Breach of recognizance conditions.** In case of the breach of the conditions of any such recognizance, 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.]

**10.64.090 Discharge of defendant and bail upon dismissal.** Whenever the court shall direct any criminal prosecution to be dismissed, the defendant shall, if in custody, be discharged therefrom, or if admitted to bail, his bail shall be exonerated, and if money has been deposited instead of bail it shall be refunded to the person depositing the same. [1909 c 249 § 61; Code 1881 § 774; RRS § 2313.]

*Rules of court:* This section superseded by CrR 8.8. See comment after CrR 8.8.

*Discharge on acquittal for insanity:* RCW 10.76.040.

**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.]

## Chapter 10.67 NEW TRIALS

### Sections

- 10.67.010 Time for making—Grounds.  
10.67.030 New trial—When application must be supported by affidavit.

*Rules of court:* Chapter 10.67 RCW probably superseded by CrR 7.6. See comment after CrR 7.6.

**10.67.010 Time for making—Grounds.** An application, or motion, for a new trial must be made within two days after a verdict of guilty is returned, and may be granted for the following causes, where it affirmatively appears that a substantial right of the defendant was affected, whereby he, or she, was illegally or unjustly convicted;

(1) When the jury has received any evidence, paper [,] document, or book not allowed by the court;

(2) Misconduct of the jury;

(3) Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence, and produced at the trial;

(4) Accident or surprise;

(5) Error of law occurring at the trial and excepted to by the defendant;

(6) When the verdict is contrary to law and evidence; but not more than two new trials shall be granted for these causes alone. [1925 ex.s. c 150 § 5; 1891 c 28 § 81; Code 1881 § 1105; 1873 p 240 § 266; 1854 p 121 § 130; RRS § 2181. Formerly RCW 10.67.010 and 10.67.020.]

*Rules of court: Chapter 10.67 RCW probably superseded by CrR 7.6. See comment after CrR 7.6.*

**10.67.030 New trial—When application must be supported by affidavit.** When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of RCW 10.67.010, the facts on which it is based shall be set out in an affidavit. [Code 1881 § 1106; 1873 p 240 § 267; 1854 p 122 § 131; RRS § 2182.]

*Rules of court: Chapter 10.67 RCW probably superseded by CrR 7.6. See comment after CrR 7.6.*

## Chapter 10.70 COMMITMENTS AND EXECUTIONS

### Sections

10.70.010	Commitment until fine and costs are paid.
10.70.020	Mittimus upon sentence to imprisonment.
10.70.040	Death sentence—Sheriff to hold prisoner.
10.70.050	Death warrant—Form.
10.70.060	Death sentence—Mittimus to sheriff.
10.70.070	Mittimus on death sentence—Return by sheriff.
10.70.080	Death penalty—Custody of prisoner and execution.
10.70.090	Death penalty—How executed.
10.70.100	Death warrant—Record by superintendent of prison.
10.70.110	Death warrant—Return to clerk.
10.70.120	Proceedings on failure to execute on day named.
10.70.130	Returns on death warrant and mittimus—Filing by clerk.
10.70.140	Aliens committed—Notice to immigration authority.
10.70.150	Aliens committed—Copies of clerk's records.

**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.*

**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.]

**10.70.040 Death sentence—Sheriff to hold prisoner.** Pending the issuance of the death warrant the sheriff shall hold the condemned person in safe custody. [1901 ex.s. c 9 § 8; RRS § 2219.]

**10.70.050 Death warrant—Form.** When judgment of death is rendered following conviction and no appeal is taken, or the judgment has been affirmed on appeal, a death warrant shall be issued by the clerk of the trial court, which said warrant shall be signed by a judge of said court and attested by the clerk thereof under the seal of the court. Said warrant shall be directed to the superintendent of the state penitentiary of the state of Washington, and shall state the conviction of the person named therein and the judgment of the court, and appoint a day in which the judgment shall be executed by the superintendent of the state penitentiary, which shall not be less than thirty nor more than ninety days from the date of final judgment. [1901 ex.s. c 9 § 1; Code 1881 § 1130; 1873 p 244 § 288; 1860 p 152 § 291; 1854 p 125 § 152; RRS § 2210.]

**10.70.060 Death sentence—Mittimus to sheriff.** At the time of the issuance of said death warrant an order shall be issued by the clerk of the court, which shall be signed by the judge and attested by the clerk under the seal of the court. Said order shall direct the sheriff to hold the person condemned to death, who shall be named therein, in safe custody and forthwith deliver said person, together with the death warrant, into the hands of the superintendent of the state penitentiary. [1901 ex.s. c 9 § 2; RRS § 2213. Prior: 1873 p 244 § 288.]

**10.70.070 Mittimus on death sentence—Return by sheriff.** The sheriff to whom the above named order is issued and delivered shall immediately execute such order and return the same into court within twenty days after he has delivered the death warrant and the person named therein into the hands of the superintendent of the state penitentiary, with his return thereon showing all proceedings had by him thereunder. [1901 ex.s. c 9 § 6; RRS § 2217.]

**10.70.080 Death penalty—Custody of prisoner and execution.** Upon delivery to him of said death warrant and of the person therein named, the superintendent of the state penitentiary shall take the person condemned to be executed and keep said person in safe custody within said state penitentiary until the day appointed in the warrant for the execution, upon which appointed

day he shall carry out the mandate contained in said warrant by executing said condemned person within the walls of the state penitentiary in the manner provided by law. And between the date of receiving such condemned person and the date fixed in such warrant for his execution, such superintendent shall not suffer or permit any person to visit, converse or communicate with such condemned person excepting the attendants in the state penitentiary, legal, spiritual and medical advisers, and the members of the immediate family of the condemned person, which visits and communications shall be under and subject to the rules and regulations of the state penitentiary. [1901 ex.s. c 9 § 3; RRS § 2214.]

**10.70.090 Death penalty—How executed.** The punishment of death prescribed by law must be inflicted by hanging by the neck. [Code 1881 § 1131; 1873 p 244 § 289; 1854 p 125 § 153; RRS § 2212.]

**10.70.100 Death warrant—Record by superintendent of prison.** The superintendent of the state penitentiary shall keep in his office as part of the public records a book in which shall be entered a copy of the death warrant and his return made thereon, together with a complete statement of his acts in pursuance of said warrant. [1901 ex.s. c 9 § 4; RRS § 2215.]

**10.70.110 Death warrant—Return to clerk.** Within twenty days after said execution the superintendent of the state penitentiary shall return said death warrant to the clerk of the court from which same was issued with his return thereon showing all proceedings had by him thereunder. [1901 ex.s. c 9 § 5; RRS § 2216.]

**10.70.120 Proceedings on failure to execute on day named.** Whenever the time appointed for the execution of a prisoner shall have passed, from any cause, the court by whom the time was fixed, or the judge or judges thereof, shall cause the prisoner to be brought immediately before the said court, judge or judges, and proceed to appoint a day for the carrying into effect of the sentence of death. [Code 1881 § 1133; 1873 p 245 § 291; 1854 p 125 § 155; RRS § 2222.]

**10.70.130 Returns on death warrant and mittimus—Filing by clerk.** The clerk of the court from which the death warrant and the order to the sheriff were issued shall, upon receipt of the returns from the superintendent of the state penitentiary and from the sheriff hereinbefore directed, file same with the records in the case and subjoin to the record of conviction and sentence a brief abstract of such returns. [1901 ex.s. c 9 § 7; Code 1881 § 1132; 1854 p 125 § 154; RRS § 2218.]

**10.70.140 Aliens committed—Notice to immigration authority.** Whenever any person shall be committed to the state penitentiary, the state reformatory, 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 he is a citizen, and the date on which and the port at which he last entered the United States. [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.

*Appeals to court of appeals in criminal cases: CAROA 46, 47, 48.*

*Appeals to supreme court in criminal cases: ROA I-46, I-47, I-48.*

*Effect of appeal by defendant: RCW 9.95.061, 9.95.062.*

**10.73.010 Appeal by defendant.** Appeal by defendant, see Title 4 RCW (civil procedure) and rules of court.

*Bond for costs not required: Rules of court: Appeal—ROA I-22; CAROA 22.*

**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:** "section ten of this act" refers to 1893 c 61 § 10, which section was repealed by 1957 c 7 § 10.

## Chapter 10.77 CRIMINALLY INSANE—PROCEDURES

Sections	
10.77.010	Definitions.
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.
10.77.030	Evidence of insanity—Admissibility—Evidence required to establish as a defense.
10.77.040	Instructions to jury on special verdict.
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.
10.77.090	Stay of proceedings on grounds of incompetency—Commitment—Findings—Extensions of commitment period—Alternative procedures.
10.77.100	Experts or professional persons as witnesses.
10.77.110	Acquittal of defendant—Discharge, hospitalization, conditional release.
10.77.120	Confinement of committed person—Custody—Hearings—Discharge.
10.77.130	Statement of facts or bill of exceptions as part of record.
10.77.140	Periodic examinations—Reports—Notice to court.
10.77.150	Conditional release—Application—Procedure.
10.77.160	Conditional release—Reports as to adherence to terms and conditions of release.
10.77.170	Payments to conditionally released persons.
10.77.180	Conditional release—Periodic review of case.
10.77.190	Conditional release—Modification of terms—Procedure.
10.77.200	Final discharge—Procedure.
10.77.210	Right to adequate care and treatment—Records and reports to be kept—Availability.
10.77.220	Incarceration in correctional institution or facility prohibited.
10.77.230	Appeals.
10.77.240	Existing rights not affected.
10.77.250	Responsibility for costs—Reimbursement.
10.77.900	Savings—Construction—1973 1st ex.s. c 117.
10.77.910	Severability—1973 1st ex.s. c 117.
10.77.920	Chapter successor to chapter 10.76 RCW.
10.77.930	Effective date—1973 1st ex.s. c 117.

*Mentally ill, commitment: Chapter 71.02 RCW.*

### 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 himself or his family.

(3) "Secretary" means the secretary of the department of social and health services or his 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 to assist in his 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". [1974 1st 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 1st 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 1st 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 1st 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 1st 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 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. 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 he 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 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 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, an opinion as to his competency;
- (d) If the defendant has indicated his 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. [1974 1st 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 1st ex.s. c 198 § 7; 1973 1st ex.s. c 117 § 8.]

**10.77.090 Stay of proceedings on grounds of incompetency—Commitment—Findings—Extensions of commitment period—Alternative procedures.** (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 him be stayed, except as provided in subsection (5) of this section, and 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 has regained the competency necessary to understand the proceedings against him and assist in his own defense, but in any event, for no longer than a period of ninety days. 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.

(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, his 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. 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 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 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 him to understand the proceedings against him and to assist in his own defense, or does not disable him from so understanding and assisting in his own defense. [1974 1st 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 1st ex.s. c 198 § 9; 1973 1st ex.s. c 117 § 10.]

**10.77.110 Acquittal of defendant—Discharge, hospitalization, conditional release.** If a defendant is acquitted by reason of insanity, and it is found that he is not a substantial danger to other persons, or 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 his final discharge. If it is found that the defendant is a substantial danger to himself or others and in need of control by the court or other persons or institutions, the court shall order his hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter. If it is found that the defendant is not a substantial danger to other persons, or does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, but that he is in need of control by the court or other persons or institutions, the court shall direct his conditional release. [1974 1st 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 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 his 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 of the person committed to him as criminally 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. 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 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 he is absent from the facility, he 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 him 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. [1974 1st ex.s. c 198 § 11; 1973 1st ex.s. c 117 § 12.]

**10.77.130 Statement of facts or bill of exceptions as part of record.** Either party to the cause may have the evidence and all of the matters not of record in the cause made a part of the record by the certification of a statement of facts or bill of exceptions as in other cases. If an appeal should not be taken, such statement of facts or bill of exceptions shall remain on file in the office of the clerk of the court where the cause was tried, and if an appeal be taken, the statement of facts or bill of exceptions shall be returned from the court of appeals or the supreme court to the court where the cause was tried when the court of appeals or the supreme court shall have rendered its final judgment in the cause. [1973 1st ex.s. c 117 § 13.]

**10.77.140 Periodic examinations—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 mental condition made by one or more experts or professional persons at least once every six months. Said person may retain, or if he is indigent and so requests, the court may appoint a qualified expert or professional person to examine him, and such expert or professional person shall have access to all hospital records concerning the person. 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. [1974 1st 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) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial. [1974 1st 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.]

**10.77.170 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 1st 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, and because of that failure he has become a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, 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, and is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security. 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. [1974 1st ex.s. c 198 § 15; 1973 1st ex.s. c 117 § 19.]

**10.77.200 Final discharge—Procedure.** (1) Upon application by the criminally insane 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 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 he so requests, the court shall appoint a qualified expert or professional person to examine him. 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, 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.

(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. [1974 1st ex.s. c 198 § 16; 1973 1st ex.s. c 117 § 20.]

**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. All records and reports made pursuant to this chapter, shall be made available only upon request, to the committed person, to his attorney, to his personal physician, to the prosecuting attorney, to the court or other expert or professional persons who, upon proper showing, demonstrate a need for access to such records. [1973 1st ex.s. c 117 § 21.]

**10.77.220 Incarceration in correctional institution or facility prohibited.** 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. [1974 1st ex.s. c 198 § 17; 1973 1st ex.s. c 117 § 22.]

**10.77.230 Appeals.** Either party may appeal to the court of appeals the judgment of any hearing held pursuant to the provisions of this chapter. [1974 1st ex.s. c 198 § 18; 1973 1st ex.s. c 117 § 23.]

**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.** Notwithstanding any provision of the Revised Code of Washington to the contrary, 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 71.02.380. [1973 1st ex.s. c 117 § 25.]

**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.]

## Chapter 10.79 SEARCHES AND SEIZURES

### Sections

10.79.010	Issuance of warrant for stolen property, etc.
10.79.015	Other grounds for issuance of search warrant.
10.79.020	To whom directed—Contents.
10.79.030	Execution of warrant—Disposition of property.
10.79.040	Search without warrant unlawful.
10.79.045	Search without warrant unlawful—Penalty.
10.79.050	Restoration of stolen property to owner—Duties of officers.

**Rules of court:** Search and seizure—CrR 2.3; JCrR 2.10.

Alcoholic beverage control—Search and seizure: Chapter 66.32 RCW.

Narcotics, search and seizure: RCW 69.33.430.

Seizures and disposition of gambling devices: RCW 9.47.110.

**10.79.010 Issuance of warrant for stolen property, etc.** When complaint shall have been made on oath, to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretenses, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue a warrant for such property. [Code 1881 § 967; 1873 p 216 § 153; 1854 p 100 § 1; RRS § 2237. FORMER PART OF SECTION: 1949 c 86 § 1; Code 1881 § 968; 1873 p 216 § 154; 1854 p 100 § 2; Rem. Supp. 1949 § 2238, now codified as RCW 10.79.015.]

**Rules of court:** This section superseded by CrR 2.3. See comment after CrR 2.3.

**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.

(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. [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.]

**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.]

**10.79.030 Execution of warrant—Disposition of property.** When any officer in the execution of a search warrant shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by RCW 10.79.010 through 10.79.030, all the property and things so seized, shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant shall be returned to the owner thereof if such may be legally done or shall be destroyed under direction of the court or magistrate. [1949 c 86 § 2; Code 1881 § 970; 1873 p 217 § 156; 1854 p 101 § 4; Rem. Supp. 1949 § 2240.]

*Rules of court:* This section superseded by CrR 2.3. See comment after CrR 2.3.

**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.]

## 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 fines, fees, penalties and forfeitures.

*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.

*Indictment or failure to indict, costs:* RCW 10.28.160, 10.28.190, 10.28.195.

*Jury fee disposition:* RCW 10.46.190.

*Payment of fine and costs in installments:* RCW 9.92.070.

**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:* "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 ten dollars for every day the defendant performs labor as provided in RCW 10.82.040, and eight dollars for every day the defendant does not perform such labor while imprisoned. [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.*

**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 fines, fees, penalties and forfeitures.** Except as otherwise provided by law, all sums of money derived from fines imposed for violation of orders of injunction, mandamus and other like writs, or for contempt of court, and the net proceeds of all fines collected within the several counties of the state for breach of the penal laws, and all funds arising from the sale of lost goods and estrays, and from penalties and forfeitures, 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, and shall be by him transmitted to the state treasurer, for deposit in the general fund: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice 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. [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.]

## Chapter 10.85 REWARDS

Sections	
10.85.010	Rewards to prosecuting witness and officer in burglary, robbery and larceny cases.
10.85.020	Offenses against transportation—Standing reward.
10.85.025	Offenses against transportation—Reward upon proof of conviction.
10.85.030	Rewards by county commissioners.
10.85.040	Rewards by county commissioners—Conflicting claims.
10.85.050	Payment of rewards offered by commissioners.

*Reward for escaped convicts: RCW 72.08.170.*

**10.85.010 Rewards to prosecuting witness and officer in burglary, robbery and larceny cases.** Upon any conviction of burglary, robbery or larceny, the court may order a suitable recompense to the prosecutor [prosecuting witness], and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance, for their time and trouble, to be paid by the county treasurer. [Code 1881 § 852; 1873 p 192 § 58; 1854 p 84 § 52; RRS § 2130.]

**10.85.020 Offenses against transportation—Standing reward.** The governor shall offer a standing reward of two hundred dollars for the arrest of each person who shall place any obstruction on any railroad track or who shall misplace any switch, rail, or ties on any such road, whereby the life of any person passing over said road may be endangered; and for the arrest of each person engaged in the robbing or attempting to rob any person upon, or having in charge, in whole or in part, any stagecoach, wagon, railroad train, or other conveyance engaged in carrying passengers, or any private conveyance within this state, the reward to be paid to the person making such arrest out of any money in the treasury not otherwise appropriated immediately upon the conviction of the person so arrested, but no reward shall be paid except after such conviction. [Code 1881 § 1290; 1877 p 283 § 1; RRS § 2247. FORMER PART OF SECTION: Code 1881 § 1291; 1877 p 284 § 2; RRS § 2248, now codified as RCW 10.85.025.]

*Interfering with railroad with intent to commit robbery, etc.: RCW 9.75.020.*

**10.85.025 Offenses against transportation—Reward upon proof of conviction.** The governor of the state shall prepare a voucher for the treasurer for the amount of the reward upon presentation to him of a certificate of the clerk of the court where the conviction was had of such conviction and the finding of the court that the satisfactory proof was made that the person claiming the reward is entitled thereto, under RCW 10.85.020 and the treasurer shall issue a warrant for such amount. [1973 c 106 § 9; Code 1881 § 1291; 1877 p 284 § 2; RRS § 2248. Formerly RCW 10.85.020, part.]

**10.85.030 Rewards by county commissioners.** The county commissioners in the several counties of the state, when in their opinion the public good requires it, are hereby authorized to offer and pay a suitable reward, not to exceed five hundred dollars in any one case, to any person or persons who, in consequence of such offer apprehends, brings back and secures any person or persons, convicted of or charged with any criminal offense, if the offense be a felony. [1886 p 124 § 1; RRS § 2249.]

**10.85.040 Rewards by county commissioners—Conflicting claims.** When more than one claimant applies for the payment of any reward, offered by any board of county commissioners, such commissioners shall determine, in their respective counties, 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. [1886 p 124 § 3; RRS § 2251.]

**10.85.050 Payment of rewards offered by commissioners.** Whenever any such reward has been offered by any board of county commissioners in Washington state, for the apprehension of any person or persons, convicted of or charged with any criminal offense, if the offense be a felony, the person or persons who shall first apprehend, bring back and secure such person or persons so charged, shall be entitled to such reward, and the board of county commissioners who have offered such reward, are authorized to draw a warrant or warrants on the county treasurer for the amount of such reward, who shall pay the amount of said warrant or warrants, out of any money in the county treasury not otherwise appropriated. [1886 p 124 § 2; RRS § 2250.]

### Chapter 10.88 UNIFORM CRIMINAL EXTRADITION ACT

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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.
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10.88.900	Construction—1971 ex.s. c 46.
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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 without 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, to the 1971 amendment of RCW 26.21.050 and to the repeal of RCW 10.88.010–10.88.060.

**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.** 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. [1971 ex.s. c 46 § 14.]

**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.
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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 court", or a "justice of the peace of this state". [1971 ex.s. c 17 § 5.]

**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.]