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Washington State
Supreme Court

SUPREME COURT OF THE STATE OF WASHINGTON

David M. Vines
Appellant

No. 100014-6

vs

City of Black Diamond,
Jamey Kiblinger,
Ryan Keller,
Michael Henrich,
Brian Lynch
Respondents

APPELLANT'S
MOTION TO
ALLOW EVIDENCE

Come now David M. Vines, Appellant, with the full report
of Appellant's arrest 12/21/018 along with Washington State law:
RCW 7.80.005; 9A.16.020(6); 9A.36.04(4); 10.31.030; 10.31.100(c)
And the Court's order to dismiss without prejudice.

STATEMENT OF RELIEF SOUGHT

To allow the full and complete police report of incident, along with Washington State law, along with Order to Dismiss without prejudice in support of Appellant.

FACTS RELEVANT TO THE MOTION

On December 21, 2018, a mentally incompetent relative, with a criminal record, entered Appellant's home, threatened Appellant, frightened the children, and would not leave. After being physically thrown out RCW 9A.16.020(6) the relative complained to the police. The police arrested the Appellant (home owner) twelve hours later RCW 10.31.100(c)

GROUND FOR RELIEF AND ARGUMENT

The appellant requests that this case be sent to trial, in whole, and judged by a twelve member jury for the following reasons:

1. The police had no warrant 4th Amendment

2. The police did not act under color of law RCW 10.31.030
3. The arrest was not needed since a notice to appear in court would have been sufficient RCW 7.80.005
4. Appellant denies victim lived in his home. Furthermore, brother-in-law does not fall under RCW 9A.36.041(4)
5. Victim was mentally ill, acting dangerous to the household RCW 9A.16.020(6)
6. Motion and Order to Dismiss without prejudice from Black Diamond Municipal Court on file.

ARGUMENT

A man should be able to protect his household and family against any relative who refuses to leave when told to. Then intentionally gets in home owner's face and threaten him. I am sure the relative was quite upset when he went to the police after being evicted.

Had the Black Diamond police investigated Clyde V. Erickson's erroneous complaint and criminal history, they would not have arrested the Appellant. The police don't even know if the Appellant was home at the time the alleged assault took place. This appears to be a Derelict of duty and now the police are trying to cover it up. Had the police been doing their job lawfully, the Appellant would not have had to file so many lawsuits nor defend the Fourth Amendment.....of which Respondent repeatedly failed to address or discuss at any time.

Date *Sept 20, 2021*

Respectfully submitted

David M. Vines

David M. Vines

I swear the foregoing is true and correct and that I mailed a copy to respondent's attorney:

Patrick McMahon
P.O. Box 2965
Wenatchee, WA 98807-2965



Black Diamond Police Department

Officers Report for Incident 180001279

Nature: Assault DV
Location: BLACK

Address: 32600 5th AVE
Black Diamond WA 98010

Offense Codes: ASIM
Received By: 1528-Henrich **How Received:** D **Agency:** BDPD
Responding Officers: 1528-Henrich
Responsible Officer: 1528-Henrich **Disposition:** CAA 12/25/18
When Reported: 08:48:24 12/21/18 **Occurred Between:** 08:30:00 12/21/18 and 08:45:00 12/21/18

Assigned To: **Detail:** **Date Assigned:** **/**/**
Status: **Status Date:** **/**/** **Due Date:** **/**/**

Complainant: 1042
Last: Erickson **First:** Clyde **Mid:** V
DOB: 08/13/61 **Dr Lic:** [REDACTED] **Address:** 32517 2nd AVE
Race: W **Sex:** M **Phone:** (360)886-2531 **City:** Black Diamond, WA 98010

Offense Codes

Reported: **Observed:** ASIM Assault, Simple
Additional Offense: ASIM Assault, Simple

Circumstances

DAY Day (6 a.m. - 6 p.m.)

Responding Officers: **Unit :**
1528-Henrich

Responsible Officer: 1528-Henrich **Agency:** BDPD
Received By: 1528-Henrich **Last Radio Log:** 08:48:24 12/21/18
How Received: D Dispatch **Clearance:** DV Domestic Violence
When Reported: 08:48:24 12/21/18 **Disposition:** CAA Date: 12/25/18
Judicial Status: **Occurred between:** 08:30:00 12/21/18
Misc Entry: No **and:** 08:45:00 12/21/18

Modus Operandi: **Description :** **Method :**

Involvements

Date	Type	Description	
12/21/18	Arrest	Booking#: 2506	Arrest/Offense
12/21/18	Name	Erickson, Clyde V	Complainant
12/21/18	Name	Vines, David Marco	Suspect
01/09/19	Property	BRO BB Gun Daisy 840 0	Property
03/29/19	Evidence	BB GUN	Evidence Incident

Synopsis

On 12/21/18, officers were contacted at the Black Diamond Police Station for an assault that occurred in the 32600 block of 5th Ave. Officers located the suspect and he was arrested for Assault-4th Degree.

Narrative/SupplementalBlack Diamond Police Department
Investigation Narrative

I am commissioned by the City of Black Diamond to enforce the laws of the State of Washington and the City of Black Diamond. This investigation occurred within the City Limits of Black Diamond, Washington on the times and dates listed below.

On 12/21/18 I was working uniformed patrol for the City of Black Diamond. At about 0840 hours Erickson, Clyde V DOB 8/13/1961 came into the police station to report an assault.

Erickson informed me he went to his sister's house, Vines, June A DOB /30/1952 at 32600 5th Ave. Erickson was let in by other family members and offered a cup of coffee. Vines, David M DOB 7/2/1946, came into the room and began accusing Erickson of damaging his tires, other property, and stealing property. Erickson denied the accusations. Erickson stated David attacked him, punching him multiple times on the left side of his head. Erickson stated David punched him with his right hand in a closed fist. I could see a red mark on the left side of Erickson's face. Erickson stated they then fell to the ground where they wrestled before June came into the room and pulled David off Erickson. Erickson stated the assault occurred at about 0830 hours. I obtained a recorded statement from Erickson. David is Erickson's brother-in-law. June is Erickson's sister and is married to David.

I requested KCSO respond to assist. Two KCSO deputies arrived. We went to David's residence at 32600 5th Ave where I contacted June. June stated David was gone but would be returning later. June stated an "altercation" occurred but would not provide me specific details about what occurred. June was very vague when talking about what occurred. David's truck was gone but his car was at the house. David has two vehicles that only he drives.

At about 1505 hours I returned to the residence, David's truck was back but his car was gone. I again contacted June who informed me David had gone to play music for a group and would return between 1600 and 1700 hours.

I completed a PC Cert and forwarded it to swing and graveyard shifts.

I neglected to take any photos of Erickson. After I realized my error I attempted to locate Erickson but was told he had returned to Tacoma.

I uploaded the victim interview to the S drive.

I certify under penalty of perjury under the laws of the state of Washington that all statements made herein are true and accurate and that I am entering my authorized user ID and password to authenticate it.

Narrative/Supplemental

Black Diamond Police Department Investigation Narrative

I am commissioned by the City of Black Diamond to enforce the laws of the State of Washington and the City of Black Diamond. This investigation occurred within the City Limits of Black Diamond, Washington on the times and dates listed below.

On 12-21-2018, I Officer Ryan Keller was working uniformed patrol in a fully marked patrol vehicle in the City of Black Diamond. At the beginning of my shift I received an email regarding an assault that had taken place between Erickson and Vine. Per Officer Henrich's certification of probable cause regarding the incident, there was probable cause to arrest Vine for assault 4th degree(DV) for against Erickson.

At approximately 2028 hours, Sgt. Brian Lynch and I attempted to contact Vine at his residence at 32600 5th AVE. We made contact with Vine at the front door of his house. I asked him to step out of the house, which he did. I told him to place his hands behind his back which he did. I secured him in handcuffs, checking them for fit and double locking them. Vine asked why he was being arrested and he was advised it was for assaulting Erickson. Sgt. Lynch asked if he wanted to make a statement regarding the incident and he stated that he did not.

I searched Vine and found nothing of note. It is of note that Vine had \$226.00 in his possession at the time of the arrest which was counted in his presence and the amount was agreed upon. Sgt. Lynch read Vine his miranda warnings and he stated that he did not want to talk to us.

Vine advised me that he takes blood pressure medication. I Contacted his wife at the residence and she provided me with his medication.

At approximately 2048 hours/miles 48.3 I began transport of Vine to Enumclaw Jail for booking. We arrived at approximately 2059 hours/miles 56.0. I moved Vine to the booking area and issued him criminal Citation# 8Z1144055 for Assault 4th degree (DV). He was booked on \$100,000.00 bail.

I returned to the city and sent the necessary booking emails.

I certify under penalty of perjury under the laws of the state of Washington that all statements made herein are true and accurate and that I am entering my authorized user ID and password to authenticate it.

Narrative/Supplemental

Black Diamond Police Department
Investigation Narrative

I am commissioned by the City of Black Diamond to enforce the laws of the State of Washington and the City of Black Diamond. This investigation occurred within the City Limits of Black Diamond, Washington on the times and dates listed below.

On 01/04/18, I (Officer Hershaw) was working uniformed patrol in a marked patrol vehicle. At approximately 1410 hours I was in the patrol room at the Black Diamond Police Department when I heard a males voice at the front counter who sounded agitated. I contacted the individual who was identified as Vines, Markum D. DOB 01-02-67. Vines was very animated and was speaking loudly about wanting his dad to pay for what he did. Eventually it was determined this was in reference to a previous case that took place on 12-21-18.

Sgt. Lynch escorted Vines to the courtroom while I grabbed the materials to obtain a statement. At approximately 1415 hours I took an audio recorded statement from Vines. In that statement he said he saw his dad slap his uncle Clyde and tackle him to the ground.

I uploaded the recorded statement onto the S Drive.

END REPORT

I certify under penalty of perjury under the laws of the state of Washington that all statements made herein are true and accurate and that I am entering my authorized user ID and password to authenticate it.

Narrative/Supplemental

Black Diamond Police Department
Investigation Narrative

I am commissioned by the City of Black Diamond to enforce the laws of the State of Washington and the City of Black Diamond. This investigation occurred within the City Limits of Black Diamond, Washington on the times and dates listed below.

On January 9, 2019, I (Sgt. Lynch) was contacted in the lobby of the police station by June A. Vines DOB: 06-30-1952. Vines wanted to hand over a Daisy model 840 BB gun. She told me that the court told her to bring it in because of her husband's arrest. I contacted the Black Diamond Court regarding the BB gun. I was told that there was no firearms surrender documents issued today at court, however, David Vines had a condition of release to not be in possession of firearms.

I took the BB gun for safekeeping and entered it into evidence as B11. The BB gun can be picked up by the owners after the court case has been adjudicated.

I certify under penalty of perjury under the laws of the state of Washington that all statements made herein are true and accurate and that I am entering my authorized user ID and password to authenticate it.

Narrative/Supplemental

Black Diamond Police Department
Investigation Narrative

I am commissioned by the City of Black Diamond to enforce the laws of the State of Washington and the City of Black Diamond. This investigation occurred within the City Limits of Black Diamond, Washington on the times and dates listed below.

On March 19, 2019, I (Sgt. Lynch) was working uniformed patrol in a fully marked patrol vehicle in the City of Black Diamond. When I logged into service at the start of my shift I found an email sent by Commander Colagiovanni regarding the need to locate Clyde Erickson to serve him a subpoena for an up-coming trial for this case.

At approximately 1645 hours I was driving on 3rd Avenue at Lawson Street when I noticed Clyde in the parking lot of the Black Gold Coffee. I contacted Clyde and printed out the subpoena from my in-car computer. I gave him the subpoena and explained to him why he was needed. He wanted to go to the court to tell them about his transportation issues. I told him to proceed to the BD Muni Court office so he would speak to the court clerk.

I notified Commander Colagiovanni that I had located Clyde and served him with the subpoena. No further involvement in this case.

I certify under penalty of perjury under the laws of the state of Washington that all statements made herein are true and accurate and that I am entering my authorized user ID and password to authenticate it.

Arrest Information:

Booking Number: 2506	Name Number: 1876	
Name: Vines, David Marco	Address: 32600 5th AVE	
Phone: (360)886-2788	Black Diamond, WA 98010	
DOB: 07/02/46	Dr Lic: [REDACTED]	
Location: ----	Tmp Location: ----	
Booking Date: 12/21/18		
Arrest Number: 1	Time/Date: 20:28:00 12/21/18	Agency: BDPD
Age at Arrest: 72	Location: 32600 5th AVE	Officer: 1532-Keller
Arrest Type: TAKE	Area: BLACK	Reference:
Disposition:		

Offense Number: 3047	BFRO:	Sentenced: No
Statute: 9A.36.041 DV		NCIC: 1399
Offense: ASIM Assault, Simple		Crime Class: GM
Offense Reference:	Offense Type: S	Offense Area: BLACK
Related Incident: 180001279	Law Jurisdiction: RCW	

Entry Code: CRIM
Court Code: BDMC

Off Judicial Status:
Offense Disposition:

Disposition Date: **:~::~~ **/~::~~
Sentencing Judge:
Sent. Time/Date: **:~::~~ **/~::~~
Comments:

Offense Location: 32600 5th AVE
Offense Time/Date: 20:28:00 12/21/18
Billing Agency:
Billing Beg Tm/Dt: **:~::~~ **/~::~~

End Time/Date: **:~::~~ **/~::~~
Alcohol/Drug Invl:
Sent. Components:

Property

Property Number: 4645	Owner Applied Nmbr:
Item: BB Gun	
Brand: Daisy	Model: 840
Year: 0	Quantity: 1
Meas:	Serial Nmbr: None
Total Value: \$0.00	Color: BRO
Owner: Vines David Marco 1876	
Agency: BDPD Black Diamond Police Dept	Tag Number:
Accum Amt Recov: \$0.00	Officer: 1517-Lynch
UCR: OTH Other	UCR Status:
Local Status: SFK	Storage Location: Evidence
Crime Lab Number:	Status Date: 01/09/19
Date Released: **/**/**	Date Recov/Rcvd: 01/09/19
Released By:	Amt Recovered: \$0.00
Released To:	Custody: **:**:** **/**/**
Reason:	
Comments:	

Name Involvements:

Complainant : 1042

Last: Erickson

DOB: 08/13/61

Race: W

Sex: M

First: Clyde

Dr Lic: [REDACTED]

Phone: (360)886-2531

Mid: V

Address: 32517 2nd AVE

City: Black Diamond, WA 98010

Suspect : 1876

Last: Vines

DOB: 07/02/46

Race: W

Sex: M

First: David

Dr Lic: [REDACTED]

Phone: (360)886-2788

Mid: Marco

Address: 32600 5th AVE

City: Black Diamond, WA 98010

FILED

Black Diamond
Municipal Court

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IN THE MUNICIPAL COURT OF THE CITY OF BLACK DIAMOND
KING COUNTY, STATE OF WASHINGTON

CITY OF BLACK DIAMOND,

Plaintiff,

vs.

DAVID M. VINES,

Defendant.

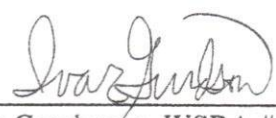
No. 8z1144055

**MOTION AND ORDER TO DISMISS
WITHOUT PREJUDICE**

I. MOTION

The City of Black Diamond, by and through the undersigned, submits this Motion and Order to Dismiss without Prejudice the above-captioned case. Dismissal is appropriate because the City is unable to proceed to trial after recent efforts to contact the victim have been unsuccessful.

DATED this 19th day of March 2019.



Ivar Gunderson, WSBA # 49602
Prosecutor for Black Diamond

II. ORDER

THIS MATTER, having come on the motion of the Plaintiff, is hereby Dismissed without Prejudice.

SO ORDERED this 19th day of March 2019.



Judge Krista White Swain

COPY

(b) A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(4) If a collaborative law communication is subject to an exception under subsection (2) or (3) of this section, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(5) Disclosure or admission of evidence excepted from the privilege under subsection (2) or (3) of this section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(6) The privileges under RCW 7.77.150 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made. [2013 c 119 § 18.]

7.77.180 Authority of tribunal in case of noncompliance. (1) If an agreement fails to meet the requirements of RCW 7.77.030, or a lawyer fails to comply with RCW 7.77.120 or 7.77.130, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

(a) Signed a record indicating an intention to enter into a collaborative law participation agreement; and

(b) Reasonably believed they were participating in a collaborative law process.

(2) If a tribunal makes the findings specified in subsection (1) of this section, and the interests of justice require, the tribunal may:

(a) Enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(b) Apply the disqualification provisions of RCW 7.77.040, 7.77.050, 7.77.080, and 7.77.090; and

(c) Apply a privilege under RCW 7.77.150. [2013 c 119 § 19.]

7.77.900 Short title. This chapter may be known and cited as the "uniform collaborative law act." [2013 c 119 § 1.]

7.77.901 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2013 c 119 § 20.]

7.77.902 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2013 c 119 § 21.]

[Title 7 RCW—page 118]

Chapter 7.80 RCW CIVIL INFRACTIONS

Sections

7.80.005	Legislative finding—1987 c 456.
7.80.010	Jurisdiction of courts.
7.80.020	Issuance of process.
7.80.030	Training of judicial officers.
7.80.040	"Enforcement officer" defined.
7.80.050	Notice of infraction—Issuance, service, filing.
7.80.060	Person receiving notice—Identification and detention.
7.80.070	Notice—Determination final unless contested—Form.
7.80.080	Response to notice—Contesting determination—Mitigating circumstances—Hearing—Failure to respond or appear.
7.80.090	Hearings—Rules of procedure—Counsel.
7.80.100	Hearings—Contesting determination that infraction committed—Appeal.
7.80.110	Hearings—Explanation of mitigating circumstances.
7.80.120	Monetary penalties—Restitution.
7.80.130	Order of court—Civil nature—Modification of penalty—Community restitution.
7.80.140	Costs and attorney fees.
7.80.150	Notices—Record of—Cancellation prohibited, penalty—Audit.
7.80.160	Failure to exercise notice options—Failure to satisfy penalty.
7.80.900	Decriminalization of certain municipal ordinances.
7.80.901	Effective date—1987 c 456 §§ 9-31.

7.80.005 Legislative finding—1987 c 456. The legislature finds that many minor offenses that are established as misdemeanors are obsolete or can be more appropriately punished by the imposition of civil fines. The legislature finds that some misdemeanors should be decriminalized to allow resources of the legal system, such as judges, prosecutors, juries, and jails, to be used to punish serious criminal behavior, since acts characterized as criminal behavior have a tremendous fiscal impact on the legal system.

The establishment of a system of civil infractions is a more expeditious and less expensive method of disposing of minor offenses and will decrease the cost and workload of the courts of limited jurisdiction. [1987 c 456 § 6.]

7.80.010 Jurisdiction of courts. (1) All violations of state law, local law, ordinance, regulation, or resolution designated as civil infractions may be heard and determined by a district court, except as otherwise provided in this section.

(2) Any municipal court has the authority to hear and determine pursuant to this chapter civil infractions that are established by municipal ordinance or by local law or resolution of a transit agency authorized to issue civil infractions, and that are committed within the jurisdiction of the municipality.

(3) Any city or town with a municipal court under chapter 3.50 RCW may contract with the county to have civil infractions that are established by city or town ordinance and that are committed within the city or town adjudicated by a district court.

(4) District court commissioners have the authority to hear and determine civil infractions pursuant to this chapter.

(5) Nothing in this chapter prevents any city, town, or county from hearing and determining civil infractions pursuant to its own system established by ordinance. [2009 c 279 § 2; 1987 c 456 § 9.]

7.80.020 Issuance of process. Notwithstanding any other provision of law governing service of process in civil cases, a court of limited jurisdiction having jurisdiction over

within the scope of his or her employment and on behalf of the corporation; or

(c) The conduct constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his or her employment and in behalf of the corporation and (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.

(3) A person is criminally liable for conduct constituting an offense which he or she performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his or her own name or behalf.

(4) Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows he or she has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent.

(5) Every corporation, whether foreign or domestic, which shall violate any provision of RCW 9A.28.040, shall forfeit every right and franchise to do business in this state. The attorney general shall begin and conduct all actions and proceedings necessary to enforce the provisions of this subsection. [2011 c 336 § 352; 1975 1st ex.s. c 260 § 9A.08.030.]

Chapter 9A.12 RCW INSANITY

Sections

9A.12.010 Insanity.

9A.12.010 Insanity. To establish the defense of insanity, it must be shown that:

(1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(a) He or she was unable to perceive the nature and quality of the act with which he or she is charged; or

(b) He or she was unable to tell right from wrong with reference to the particular act charged.

(2) The defense of insanity must be established by a preponderance of the evidence. [2011 c 336 § 353; 1975 1st ex.s. c 260 § 9A.12.010.]

Chapter 9A.16 RCW DEFENSES

Sections

9A.16.010 Definitions.
9A.16.020 Use of force—When lawful.
9A.16.030 Homicide—When excusable.
9A.16.040 Justifiable homicide or use of deadly force by public officer, peace officer, person aiding—Good faith standard.
9A.16.045 Justifiable homicide or use of deadly force by peace officer—Reimbursement of defendant for costs—Special verdict.
9A.16.050 Homicide—By other person—When justifiable.
9A.16.060 Duress.
9A.16.070 Entrapment.

[Title 9A RCW—page 6]

9A.16.080 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.
9A.16.090 Intoxication.
9A.16.100 Use of force on children—Policy—Actions presumed unreasonable.
9A.16.110 Defending against violent crime—Reimbursement.
9A.16.120 Outdoor music festival, campground—Detention.
9A.16.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

9A.16.010 Definitions. In this chapter, unless a different meaning is plainly required:

(1) "Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

(2) "Deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. [1986 c 209 § 1; 1975 1st ex.s. c 260 § 9A.16.010.]

9A.16.020 Use of force—When lawful. The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;

(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

(4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

(5) Whenever used by a carrier of passengers or the carrier's authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to the offender's personal safety;

(6) Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority for the restraint or custody of the person. [1986 c 149 § 2; 1979 ex.s. c 244 § 7; 1977 ex.s. c 80 § 13; 1975 1st ex.s. c 260 § 9A.16.020.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

(2018 Ed.)

while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions; or

(k) Assaults a person located in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This section shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the assault.

(2) Assault in the third degree is a class C felony. [2013 c 256 § 1. Prior: 2011 c 336 § 359; 2011 c 238 § 1; 2005 c 458 § 1; 1999 c 328 § 1; 1998 c 94 § 1; 1997 c 172 § 1; 1996 c 266 § 1; 1990 c 236 § 1; 1989 c 169 § 1; 1988 c 158 § 3; 1986 c 257 § 6.]

Additional notes found at www.leg.wa.gov

9A.36.041 Assault in the fourth degree. (1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

(2018 Ed.)

(2) Assault in the fourth degree is a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Assault in the fourth degree, where domestic violence was pleaded and proven after July 23, 2017, is a class C felony if the person has two or more prior adult convictions within ten years for any of the following offenses where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017:

(a) Repetitive domestic violence offense as defined in RCW 9.94A.030;

(b) Crime of harassment as defined by RCW 9A.46.060;

(c) Assault in the third degree;

(d) Assault in the second degree;

(e) Assault in the first degree; or

(f) An out-of-state comparable offense.

(4) For purposes of subsection (3) of this section, family or household members means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, and persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship. [2017 c 272 § 1; 1987 c 188 § 2; 1986 c 257 § 7.]

Finding—2017 c 272: "(1) The legislature finds that Washington state has a serious problem with domestic violence offender recidivism and lethality. The Washington state institute for public policy studied domestic violence offenders finding not just high rates of domestic violence recidivism but among the highest rates of general criminal and violent recidivism. The Washington state coalition against domestic violence has issued fatality reviews of domestic violence homicides in Washington under chapter 43.235 RCW for over fifteen years. These fatality reviews demonstrate the significant impact of domestic violence on our communities as well as the barriers and high rates of lethality faced by victims. The legislature further notes there have been several high profile domestic violence homicides with multiple prior domestic violence incidents not accounted for in the legal response. Many jurisdictions nationally have encountered the same challenges as Washington and now utilize risk assessment as a best practice to assist in the response to domestic violence.

The Washington domestic violence risk assessment work group is established to study how and when risk assessment can best be used to improve the response to domestic violence offenders and victims and find effective strategies to reduce domestic violence homicides, serious injuries, and recidivism that are a result of domestic violence incidents in Washington state.

(2)(a) The Washington state gender and justice commission, in collaboration with the Washington state coalition against domestic violence and the Washington State University criminal justice program, shall coordinate the work group and provide staff support.

(b) The work group must include a representative from each of the following organizations:

(i) The Washington state gender and justice commission;

(ii) The department of corrections;

(iii) The department of social and health services;

(iv) The Washington association of sheriffs and police chiefs;

(v) The superior court judges' association;

(vi) The district and municipal court judges' association;

(vii) The Washington state association of counties;

(viii) The Washington association of prosecuting attorneys;

(ix) The Washington defender association;

(x) The Washington association of criminal defense lawyers;

(xi) The Washington state association of cities;

(xii) The Washington state coalition against domestic violence;

(xiii) The Washington state office of civil legal aid; and

(xiv) The family law section of the Washington state bar association.

(c) The work group must additionally include representation from:

(i) Treatment providers;

(ii) City law enforcement;

(2018 Ed.)

(8) Have authority to hold in contempt of court any person who shall disclose the name or testimony of a witness examined before a statewide special inquiry judge except when required by a court to disclose the testimony given before such statewide special inquiry judge in a subsequent criminal proceeding. [2010 c 8 § 1027; 1980 c 146 § 5.]

10.29.060 Disclosures by witness—Penalty. Any witness who shall disclose the fact that he or she has been called as a witness before a statewide special inquiry judge or who shall disclose the nature of the testimony given shall be guilty of a misdemeanor. [1980 c 146 § 6.]

10.29.070 Rules. The supreme court shall develop and adopt rules to govern the procedures of a statewide special inquiry judge proceeding including rules assuring the confidentiality of all proceedings, testimony, and the identity of persons called as witnesses. The adoption of such rules shall be subject to the approval of such rules by the senate and house judiciary committees. [1980 c 146 § 7.]

10.29.100 Vacancy in office. Whenever a statewide special inquiry judge or special prosecutor appointed under this chapter dies or in any other way is rendered incapable of continuing the duties of his or her office, a successor shall be appointed to serve for the remainder of the judge's or prosecutor's term in the manner provided for by *RCW 10.29.030 and 10.29.080 for the appointment of statewide special inquiry judges and special prosecutors. [1980 c 146 § 10.]

*Reviser's note: RCW 10.29.030 and 10.29.080 were repealed by 2009 c 560 § 24.

10.29.110 Duties of special prosecutor or designee. The special prosecutor or his or her designee shall:

- (1) Attend all proceedings of the statewide special inquiry judge;
- (2) Have the authority to issue subpoenas for witnesses statewide;
- (3) Examine witnesses, present evidence, draft reports as directed by the statewide special inquiry judge, and draft and file informations under RCW 10.29.120. [2010 c 8 § 1028; 1980 c 146 § 11.]

10.29.120 Advising county prosecuting attorney—Filing and prosecution of informations—Expenses of prosecutions. (1) The special prosecutor shall advise the county prosecuting attorney in any affected county of the nature of the statewide special inquiry judge investigation and of any informations arising from such proceedings unless such disclosures will create a substantial likelihood of a conflict of interest for the county prosecuting attorney.

(2) The special prosecutor may file and prosecute an information in the county where proper venue lies, after having advised the county prosecuting attorney as provided in this section and determined that such prosecuting attorney does not intend to do so, or pursuant to an agreement between them that the special prosecutor shall do so.

(3) Informations filed and prosecuted pursuant to this chapter shall meet the requirements of chapter 10.37 RCW.

(4) The expenses of prosecutions initiated and maintained by the special prosecutor shall be paid as part of the

(2016 Ed.)

statewide special inquiry judge program as provided in *RCW 10.29.090. [1980 c 146 § 12.]

*Reviser's note: RCW 10.29.090 was repealed by 2009 c 560 § 24.

10.29.130 Disqualification of judge from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify, or provide evidence at such inquiry in response to an order, summons, or subpoena. [1980 c 146 § 13.]

Chapter 10.31 RCW WARRANTS AND ARRESTS

Sections

10.31.030	Service—How—Warrant not in possession, procedure—Bail.
10.31.040	Officer may break and enter.
10.31.050	Officer may use force.
10.31.060	Arrest by telegraph or teletype.
10.31.100	Arrest without warrant.
10.31.110	Arrest—Individuals with mental disorders.
10.31.120	Chemical dependency arrests—Treatment—Pilot program.

Rules of court: Warrant upon indictment or information—CrR 2.2.

Search and seizure: Chapter 10.79 RCW.

10.31.030 Service—How—Warrant not in possession, procedure—Bail. The officer making an arrest must inform the defendant that he or she acts under authority of a warrant, and must also show the warrant: PROVIDED, That if the officer does not have the warrant in his or her possession at the time of arrest he or she 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. [2010 c 8 § 1029; 1970 ex.s. c 49 § 3; 1891 c 28 § 43; Code 1881 § 1030; 1873 p 229 § 210; 1854 p 114 § 74; RRS § 2083.]

Bail: Chapter 10.19 RCW.

Additional notes found at www.leg.wa.gov

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 or her office and purpose, he or she be refused admittance. [2010 c 8 § 1030; 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 or she either flee or forcibly resist, the officer may use all necessary means to effect the arrest. [2010 c 8 § 1031; 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 or her 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 police officer, and on the receipt of the telegraphic or teletype copy thereof by any such officer, he or she 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 or her 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 or her 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. [2010 c 8 § 1032; 1971 c 81 § 48; 1967 c 91 § 1; Code 1881 § 2357; 1865 p 75 § 16; RRS § 2081. Formerly RCW 10.31.060 through 10.31.090.]

10.31.100 Arrest without warrant. A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of an officer, except as provided in subsections (1) through (12) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis; or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds

of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is eighteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (A) The intent to protect victims of domestic violence under RCW 10.99.010; (B) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (C) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.

(3) A police officer shall, at the request of a parent or guardian, arrest the sixteen or seventeen year old child of that parent or guardian if the officer has probable cause to believe that the child has assaulted a family or household member as defined in RCW 10.99.020 in the preceding four hours. Nothing in this subsection removes a police officer's existing authority provided in this section to make an arrest.

(4) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol or THC in their system;

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