OFFICE OF THE ADMINISTRATOR FOR THE COURTS

MARY CAMPBELL MCQUEEN
Administrator

SUMMARY

OF SELECTED

2000 LEGISLATION

OF INTEREST TO THE COURTS

April 2000

OFFICE OF THE ADMINISTRATOR FOR THE COURTS

MEMORANDUM

To: Judicial Community

From: Mary McQueen

Subject: **Summary of Selected 2000 Legislation of Interest to the Courts**

We are pleased to present the final ***Summary of Selected 2000 Legislation of Interest to the Courts*** and hope it will be useful to implement bills that impact your court.

The bill summaries are produced by Legislative committee staff. Following each bill summary is a section that outlines implementation plans to be undertaken by the Office of the Administrator for the Courts (OAC) and/or the courts. The effective date of the bill (June 8, 2000, in most cases) is noted at the end of the bill summary. The Governor's veto letter follows the bill summary on bills with partial vetoes (this year, however, there were no bills in this summary that had partial vetoes.)

The OAC "bill tracker" who is most familiar with a bill is listed at the end of each summary. Please contact the tracker if you have questions about a particular bill, or you may call Janet McLane at (360) 705-5305 for general legislative inquiries.

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HB 2328

C 9 L 00

Synopsis as Enacted

Short Title: Decreasing filing fees for petition for unlawful harassment.

Effective: June 8, 2000

Legislative Background: A person who is being unlawfully harassed may petition the court for an anti-harassment order against the harasser.

District courts have jurisdiction over anti-harassment order petitions. Superior courts have concurrent jurisdiction to receive transfer of anti-harassment order petitions where the district court finds there are good reasons for the transfer. If the alleged harasser is under the age of 18, the district court must transfer the case to superior court.

The district court filing fee for a petition for an anti-harassment order is $31 plus an optional county surcharge of up to $10. If the petition is filed in superior court, the filing fee is $110.

The district and superior court filing fees are subject to division with the public safety and education account and the county or regional law library fund. The county treasurer must transmit $12 of the superior court filing fee and $6 of the district court filing fee to the law library fund. In addition, 46 percent of the superior court filing fee and 32 percent of the district court filing fee are remitted to the state public safety and education account fund.

Legislative Summary: The superior court filing fee for a petition for unlawful harassment is reduced from $110 to $41.

Court Levels Affected: Superior

OAC Comments: The bill changes the fee for superior courts only. According to testimony presented to the Legislature, the intent is to make the superior court fee match more closely to the district court fee. Washington Association of County Clerks predicts that the lower fee will result in fewer fee waivers and that this may actually increase the amount of fees collected.

Court Action: Superior court clerks will need to change their fee schedules.

Planned OAC Action: Change JIS to account for the change in fee.

Bill Tracker: Rick Neidhardt

HB 2329

C 41 L 00

Synopsis as Enacted

Short Title: Changing descriptions in judgments involving real property.

Effective Date: June 8, 2000

Legislative Background: When a judgment is entered in a court case, the clerk of the court is responsible for processing certain paperwork associated with the judgment. Included in these responsibilities is entering the judgment in the court execution docket, which allows a record to be kept of the parties' compliance with the requirements of the judgment. Each judgment for the payment of money must have a summary page that succinctly summarizes information about the judgment creditor and debtor, the amount of the judgment and any interest owed, and the total of costs and attorney fees owed.

In 1999, a bill was passed requiring that a judgment summary include specific information about real estate that is affected by the judgment. If the judgment involves an award of any interest in real property, the summary page must include both an abbreviated legal description of the property and the assessor's tax parcel or account number.

Legislative Summary: The description of real property on a judgment summary may be either an abbreviated legal description of the property or the assessor's tax parcel or account number.

Court Levels Affected: Superior

OAC Comments: The Legislature relaxed the requirements it established in 1999 for real property descriptions in judgment cover sheets. The previous requirements were causing judgment summaries to be too long for their intended purpose.

Court Action: Revise any court-generated judgment summary forms, as necessary. Educate court staff.

Planned OAC Action: The Pattern Forms Committee, staffed by OAC, will review the judgment pattern form for domestic relations decrees, which includes a judgment summary section.

Bill Tracker: Rick Neidhardt

EHB 2340

C 43 L 00

Synopsis as Enacted

Short Title: Providing for removal of offenders from the drug offender sentencing alternative (DOSA Program) who are subject to a deportation order.

Effective Date: June 8, 2000

Legislative Background: The Drug Offender Sentencing Alternative (DOSA) allows a court to waive imposition of a drug offender's sentence within the standard sentencing range. An offender with any prior or current convictions for a sex or violent felony offense is prohibited from participating in the program. Under the DOSA program the court imposes a sentence that includes confinement in a state facility for one-half of the midpoint of the standard sentencing range. While in confinement, the offender must complete a substance abuse assessment and receive substance abuse treatment and counseling.

Following incarceration, the offender must spend the remainder of the midpoint of the standard sentencing range on community custody, which must also include crime-related prohibitions, drug testing, and some type of alcohol and substance abuse treatment. Courts may also impose conditions such as affirmative conditions as part of the offender's sentence.

If the offender violates or fails to complete the DOSA sentencing conditions, he or she will have a violation hearing held by the DOC. If the department finds that the conditions of the sentence have been willfully violated, then the offender may be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge.

Illegal Aliens. An offender who has been found by the United States Attorney General to be subject to a deportation order or detainer is ineligible for the DOSA program.

Legislative Summary: Illegal Aliens. An offender who is found by the United States Attorney General to be subject to a deportation order, after the offender has already begun his or her DOSA sentence, will be subject to a violation hearing held by the DOC. At the violation hearing, if the offender is confirmed to be subject to a deportation order then the DOC may administratively terminate the offender from the program.

Any offender who fails to complete the DOSA program or who is administratively terminated from the program will be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge as well as a period of community custody.

Court Levels Affected: Superior

OAC Comments: The Sentencing Guidelines Commission requested this legislation.

Court Action: None.

Planned OAC Action: Update Benchbooks.

Bill Tracker: Lynne Alfasso

SHB 2372

C 162 L 00

Synopsis as Enacted

Short Title: Regulating detention of children within secure facilities.

Effective Date: June 8, 2000

Legislative Background: If a child has run away from home or alternative placement, has acted out in some manner that endangers the child or others, or has a substance abuse problem, petitions may be filed in juvenile court seeking court for assessment, treatment, and placement services with the goal of reconciling the family.

An At-Risk Youth (ARY) petition may be filed only by a parent. The petition must demonstrate that: (1) the child has been absent from the home for at least 72 hours without parental consent; and (2) that the child is engaging in behaviors beyond the control of the parent that endanger the child or others.

A Child in Need of Services (CHINS) petition may be filed by the child, parent, or the Department of Social and Health Services. This petition must demonstrate either: (1) that the child has been absent from the home, crisis residential center, out of home placement, or court ordered placement for at least 24 hours on two or more separate occasions, and that the child is engaging in behaviors beyond the control of the parent that endanger the child or others; or (2) that the child needs food, shelter, health care, or other necessities but lacks access to or has declined services, and that the child's parents have been unsuccessful, unable, or unwilling to continue efforts to maintain the family structure.

If a child is truant from school a prescribed number of times the school district must file a petition with the juvenile court seeking court assistance in getting the child to attend school. If the school district fails to act after a prescribed number of unexcused absences, the parent may file a petition. The court may enter an order establishing requirements most likely to cause the juvenile to return to, and remain in, school.

A child subject to a court order resulting from an ARY, CHINS, or truancy petition, is found to be in civil contempt of a court order, may be taken into custody by a law enforcement

officer if so ordered by the court. As a sanction for the failure to comply, the court may order that the child be confined. Confinement must occur in a secure juvenile detention facility operated by a county and may be for a period of up to seven days.

A child may be removed from his or her home and temporarily placed elsewhere based on allegations of child abuse or neglect. The Department of Social and Health Services (DSHS) investigates allegations of abuse or neglect including such allegations regarding state employees.

After investigating, the department may determine that the allegations are unfounded. However, the allegations are not removed from the DSHS records, but remain as "unfounded allegations." There are circumstances in which the DSHS must respond to request for such records containing information of unfounded allegations.

Legislative Summary: Until July 1, 2002, the juvenile court may order confinement of a child for contempt in either (1) a secure facility which is a separate section of a juvenile detention facility; or (2) a juvenile detention facility. Secure facility beds are prioritized for runaways; no more than 50 percent of secure facility beds may be devoted to youth held in contempt.

No unfounded allegation of child abuse or neglect may be disclosed to a child-placing agency, private adoption agency, or any other licensed provider.

Court Levels Affected: Superior (Juvenile Division)

OAC Comments: The use of secure crisis residential centers for juveniles found in contempt of CHINS, At-Risk Youth and truancy orders, is limited to those secure CRCs located within a juvenile detention facility. The use of secure CRCs for juveniles confined pursuant to a contempt order, sunsets on July 1, 2002.

Court Action: None.

Planned OAC Action: Review desk manual for juvenile court administration and the juvenile non-offender Benchbook and make necessary revisions.

Bill Tracker: Michael Curtis

HB 2407

C 165 L 00

Synopsis as Enacted

Short Title: Authorizing judges pro tempore whenever a judge serves on a commission, board, or committee.

Effective: June 8, 2000

Legislative Background: The courts of the state are authorized to appoint judges pro tempore to temporarily serve in the absence of a regular judge, or if necessary for the administration of justice or to deal with an excess caseload. Judges pro tempore are usually attorneys or retired judges. Compensation for judges pro tempore appointed for the Supreme Court, court of appeals, and superior court is established in statute. Compensation for district and municipal court judges pro tempore is determined by the local legislative authority.

A district court is specifically authorized to appoint a judge pro tempore while a regular judge is serving on a judicial commission established by the Legislature or the chief justice of the Supreme Court. Each district court judge is authorized up to 15 days for service on such commissions without reduction in salary.

Legislative Summary: A judge pro tempore may be appointed when a court of appeals, superior court, or municipal court judge serves on a judicial commission, board, or committee established by the Legislature or the Chief Justice of the Supreme Court.

Court Levels Affected: Court of Appeals, Superior and Municipal

OAC Comments: This bill was requested by the Board for Judicial Administration.

Court Action: None.

Planned OAC Action: Devise a procedure for reimbursing counties and cities for pro tems when judges spend time away from the bench on BJA activities.

Bill Tracker: Janet McLane

EHB 2424

C 91 L 00
Synopsis as Enacted

Short Title: Changing provisions to comply with federal standards for monitoring sex offenders.

Effective Date: June 8, 2000

Legislative Background: FEDERAL SEX OFFENDER REGISTRATION LAW

In 1994 Congress passed the Jacob Wetterling Act, 42 U.S.C. Section 14071. The act contains a financial incentive to encourage states to adopt registration procedures for all persons

convicted of sex offenses and kidnapping offenses where the victim is a minor. The act has been amended several times, imposing new requirements relating to sex offender registration. Those requirements include the following:

- requiring all offenders classified as sexually violent predators to register for life;
- requiring sex offenders who are convicted of a sex offense involving sexual intercourse with a victim through the use of force or threat or serious violence to register for life;
- requiring sex offenders who are convicted of a crime involving sexual intercourse with a minor under 12 years of age to register for life;
- requiring sex offenders who have one prior conviction for a sex offense in their criminal history and who are currently being convicted again for a new offense, to register for life;
- requiring county sheriffs to verify sexually violent predators' registered address every 90 days; and
- requiring sex offenders who work or attend school in another state to also register in that new state as well as their state of residence.

Any time the sex offender registration requirements are changed, the state patrol is required to notify registered sex offenders who are currently living in the community of the changes in the law.

States are required to comply with the amended act by November 2000 or face an automatic 10 percent reduction in federal Byrne Formula Grant funding. Washington receives approximately $10 million in Byrne grants per year. Each year the Byrne grant received by Washington helps to provide funding to a number of various criminal justice programs throughout the state such as drug courts, narcotic task forces, and juvenile programs. A partial loss of funding, due to being out of compliance with the federal statute, could result in Washington losing $1 million in funding this fiscal year.

WASHINGTON SEX OFFENDER REGISTRATION LAW

End of Duty to Register. A sex offender who has been convicted of a class A felony, committed as a sexually violent predator, or a person who has one or more prior convictions for a sex offense, may petition the court to be relieved of the duty to register if the person has spent 10 consecutive years in the community without being convicted of any new offenses. The petition must be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions that took place outside of Washington, the petition must be made to the court in Thurston county.

Address Verification. Each year the chief law enforcement officer of a city or county must attempt to verify the sex offender's registered address by mailing a non-forwarding verification form to the last registered address. The offender must sign, verify his or her address, and return the form within 10 days.

If the offender fails to return the verification form or the offender is not at the last registered address, the chief law enforcement officer must promptly forward this information to the

county sheriff and the Washington State Patrol for inclusion in the central registry of sex offenders.

Offenders Working or Attending School in Another State. Any person required to register as a sex offender in Washington, who also works or attends school in another state, is only required to register in his or her state of residence.

Notice for Registration Procedures. Local jails must give notice to the county sheriff and police chief any time a person convicted of a sex offense is discharged or released if that person will reside in a county other than the county of conviction.

Legislative Summary: The sex offender registration conditions and address verification requirements are enhanced for certain sex offenders.

End of Duty to Register. The court may not relieve a person of the duty to register if the person has:

- been determined to be a sexually violent predator; or
- been convicted of a sex offense or kidnapping offense that is a class A felony and that was committed with forcible compulsion.

After fifteen years, such an offender may petition the court to be exempted from any community notification requirements if he or she has lived in the community crime-free. The person will continue to register indefinitely but public notifications are not required.

Address Verification. The county sheriff must verify by mail the address of each sexually violent predator in his or her jurisdiction every ninety days.

Offenders Working or Attending School in Another State. A person required to register as a sex offender in Washington, who also works or attends school in another state, must register in both states (the state of residence as well as the state in which he or she is currently working or attending school). The offender must register his or her address, fingerprints, and a photograph with the new state within ten days of beginning school or employment in that state.

A person who moves to a new state must register a new address, fingerprints, and a photograph with the new state. The person must also send written notice to the county sheriff with whom the person last registered in Washington within ten days of moving to the new state or to a foreign country .

All registration materials submitted to the county sheriff must promptly be forwarded to the Washington State Patrol.

Any person who moves within the state without notifying the county sheriff is guilty of a class C felony.

Notice for Registration Procedures. Local jails must give notice to the county sheriff and police chief any time a person convicted of a kidnapping offense or a sex offense is discharged or released if that person will reside in a county other than the county of conviction.

Court Levels Affected: Superior and Juvenile

OAC Comments: CTED and DOC requested this legislation.

Court Action: None.

Planned OAC Action: Review Judgment & Sentence Form section regarding notice of registration; revise if necessary.

Revise Benchbooks, as necessary.

Bill Tracker: Lynne Alfasso

SHB 2491

C 92 L 00

Synopsis as Enacted

Short Title: Providing a procedure to conduct DNA testing of evidence for persons sentenced to death or life imprisonment.

Effective Date: June 8, 2000, except for Section 1 which takes effect September 1, 2000. However, this bill is null and void unless funded in the budget.

Legislative Background: DNA evidence was first introduced into evidence in a United States court in 1986 and, after numerous court challenges, is now admitted in all United States jurisdictions. It has rapidly become an important forensic technique both for identifying perpetrators and for eliminating suspects when biological tissues such as saliva, skin, blood, hair, or semen are left at a crime scene. Two states, New York and Illinois, specifically authorize postconviction DNA testing. These states permit an indigent inmate to obtain postconviction DNA testing at state expense when certain evidentiary thresholds are met.

In Washington, a convicted defendant who has exhausted the appeals process may challenge a conviction by collateral attack. One mechanism of collateral attack is the writ of habeas corpus which a defendant may pursue in court by filing a personal restraint petition (PRP). Court rules establish the grounds for filing a PRP, including the following: (1) the convicting court lacked jurisdiction; (2) the conviction was obtained in violation of state law or the state or federal constitution; (3) material facts, not disclosed at trial, exist that in the interest of justice require the petitioner's release; (4) sufficient reasons exist to retroactively apply a post-

conviction change in the law; (5) there are "other grounds" for a collateral attack on the conviction; (6) the conditions or manner of the petitioner's restraint violates the state or federal constitution; or (7) "other grounds" exist to challenge the legality of the confinement.

A prisoner under sentence of death who files a PRP is not entitled to discovery or investigative, expert, or other services as a matter of course, but must show good cause to believe that it will produce information that would support granting a PRP. Further, according to court rule, the Supreme Court may only grant a motion for investigative, expert, or other services if the Legislature has authorized and approved funding for such services.

Criminal charges are brought against a person by indictment or by the filing of an information. To be legally sufficient, an indictment or information must name the defendant or, if his or her name is unknown, describe the defendant by a fictitious name.

Legislative Summary: A person sentenced to death or to life without the possibility of release may, on or before December 31, 2002, submit a request for postconviction DNA testing to the prosecutor of the county where the conviction was obtained. The request may only be made if the DNA evidence was not admitted in court because it did not meet acceptable scientific standards or the testing technology was not sufficiently developed to test the DNA evidence in the case. After January 1, 2003, DNA issues must be raised at trial or on appeal. The prosecutor must review requests for DNA testing based on the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis. If it is determined that testing should occur, and the evidence still exists, the prosecutor must request testing by the Washington State Patrol crime lab. A person denied a request for DNA testing may appeal the denial to the Office of the Attorney General.

The Office of Public Defense is required to prepare a report on the postconviction DNA testing process established under the act. The report must be completed by December 1, 2001, and must include a description of the number of requests approved, the number of requests denied and the basis for the denials; the number of appeals approved, the number of appeals denied and the basis for the denials; and a summary of the results of the tests conducted.

An indictment or information may describe the defendant by reference to the defendant's DNA if his or her name is unknown.

The act does not create a legal right or cause of action, nor does it deny or alter any existing legal right. The act may not be interpreted to deny requests made under existing law by persons who have been sentenced to terms less than death or life imprisonment without the possibility of release.

Court Levels Affected: Superior

OAC Comments: There will not be many requests for postconviction DNA testing as a result of this bill, since only persons who have been sentenced to death or life without parole, in cases where DNA evidence existed but was not admitted into evidence, are eligible for testing under the provisions of this bill.

Court Action: None.

Planned OAC Action: Revise Benchbooks, as necessary.

Make any programming changes to JIS which are necessary to accommodate Section 3 of this bill, which allows a defendant in an indictment or information to be identified by reference to a unique genetic sequence of DNA.

Bill Tracker: Lynne Alfasso

HB 2522

C 49 L 00

Synopsis as Enacted

Short Title: Modifying district court jurisdiction.

Effective Date: June 8, 2000

Legislative Background: Constitutional and statutory provisions control jurisdiction of the district courts. The Constitution gives the superior courts exclusive jurisdiction over some matters, such as actions affecting the title of real property and felony crimes, but generally allows the Legislature to set the jurisdiction of the district courts.

Superior and district courts have concurrent jurisdiction over many kinds of civil cases. For these kinds of cases parties may choose which court to use.

Current law enumerates several classes of cases that may be heard in district court. However, all of these are limited to actions in which the amount in controversy does not exceed $35,000.

This jurisdictional limit has been set over the past 40 years by the Legislature as follows:

1961 - $500
1965 - $1,000
1979 - $3,000
1981 - $7,500
1984 - $10,000
1991 - $25,000
1997 - $35,000

Legislative Summary: The dollar limit on the jurisdiction of district courts is raised from $35,000 to $50,000.

Court Levels Affected: District

OAC Comments: Increases district court jurisdiction to $50,000.

Court Action: None.

Planned OAC Action: Change the edit in DISCIS to reflect increase in jurisdiction. Update benchbooks. Update citizen's guide, juror's guide, and court system chart in caseload report and on the website.

Bill Tracker: Doug Haake

HB 2579

C 86 L 00

Synopsis as Enacted

Short Title: Federal welfare reform act.

Effective Date: June 8, 2000

Legislative Background: As part of welfare reform, the federal Person Responsibility and Work Opportunity Act of 1996 (PWORA) made various changes in public assistance programs. It included provisions regarding enforcement of child support orders.

The PWORA requires that the states pass laws which allow for withholding, suspension, or restriction on the use of driver's, professional, occupational, or recreational licenses of delinquent obligors. When Washington's licensing statutes were amended in 1997 as part of the state's welfare reform, licenses granted under the Horse Racing Commission were overlooked.

The notice of payroll deduction, the order to withhold and deliver, and the notice of enrollment to enforce an order to provide health care coverage for a child have differing time frames and service requirements. The use of the uniform withholding form by a state is required by the PWORA; however, Washington does not require the use of the uniform form.

Washington's foster care payments law was also amended to conform with PWORA, but the subrogation and assignment rights of the state for such a payment were excluded.

The PWORA requires the states to give full faith and credit to liens filed by other states, and provides for high volume, automated enforcement of interstate cases.

Legislative Summary: Changes are made to conform Washington law to the federal requirements under the PWORA.

The notice of enrollment may be served on the obligor's employer or union by mail. The notice must be answered within 20 days, thereby making the answer period the same as the notice of payroll deduction and the order to withhold and deliver. An employer is no longer required to retain an order to withhold and deliver for a former employee-obligor.

Full faith and credit is accorded to liens filed by other states. The subrogation and assignment rights for child support are awarded to the Division of Child Support on behalf a foster child who receives public assistance under Title IV-E of the Social Security Act. The division may take enforcement action against the assets of a noncustodial parent located in Washington, regardless of the presence of the noncustodial parent. Washington may file a jeopardy lien against an obligor's property located within the state, regardless of the presence or residence of the obligor.

The uniform interstate withholding form is adopted for use in Washington. A certification process is created to assist other states in high volume, automated enforcement of interstate child support cases.

A delinquent obligor's license granted by the Horse Racing Commission may be suspended.

Court Levels Affected: Superior

OAC Comments: The legislation primarily addresses administrative (i.e., DSHS/Division of Child Support) processing of child support enforcement actions.

Court Action: None recommended.

Planned OAC Action: Review the domestic relations Benchbook to determine if revision is necessary.

Bill Tracker: Michael Curtis

HB 2595

C 51 L 00

Synopsis as Enacted

Short Title: Frail elder and vulnerable adult protection order information in JIS.

Effective Date: June 8, 2000

Legislative Background: The Judicial Information System (JIS) was created to help provide courts with information for the issuance of protection orders and to help prevent the issuance of competing protection orders. The JIS must include all protection orders issued in proceedings involving: domestic violence protection orders, criminal no-contact orders, anti-harassment orders, dissolution of marriage, third-party custody actions, and paternity actions. The information must include the names of the parties, the cause number, the criminal histories of the parties, and any other relevant information necessary to assist courts.

There are procedures and remedies available for frail elder and vulnerable adults who may be suffering abuse or exploitation. In addition to other remedies, a frail elder or vulnerable adult may file a petition with the court seeking a protection order against an abusive or exploitative person. The court may issue a protection order that, in addition to other protections, restrains a person from abusing or exploiting the frail elder or vulnerable adult, excludes the person from the frail elder or vulnerable adult's residence, or prohibits the person from contacting the frail elder or vulnerable adult.

Legislative Summary: The Judicial Information System (JIS) must contain every frail elder or vulnerable adult protection order issued by the court. The clerk of court must enter into the JIS any frail elder or vulnerable adult protection order issued by the court.

Court Levels Affected: Superior

OAC Comments: None.

Court Action: Enter identifying information into the JIS person database for petitioners and respondents who are parties in frail elder and vulnerable adult protection orders.

Planned OAC Action: Determine need for new codes; changes to pattern forms.

Bill Tracker: Janet McLane

HB 2612

C 52 L 00

Synopsis as Enacted

Short Title: Clarifying when a DUI defendant must appear in court.

Effective Date: June 8, 2000

Legislative Background: As part of extensive revisions to the state's drunk driving laws in 1998, the Legislature required that within one judicial day after an arrest for DUI, the

defendant must be brought before a magistrate. The purpose of the appearance is to consider the need to impose conditions on pretrial release. Concern had been expressed that the failure to have a prompt appearance was resulting in problem drivers being released without restrictions on their driving pending trial.

Following the enactment of this prompt appearance requirement, however, some local jurisdictions expressed concern that it was difficult to comply with.

As a result of those concerns, an amendment to the appearance requirement was passed in 1999. Under that change, a local court may waive the requirement that a DUI defendant appear before a judge within one judicial day of arrest. The local waiver must provide for appearance of the defendant at the earliest practicable day as defined by local court rule.

Under the current law, every person "arrested" for DUI who is served with a citation or complaint at the time of arrest is to appear before a "magistrate," while a person who is "charged" with DUI but is not arrested is to appear within 14 days of the issuance of a citation or the filing of a complaint.

The method of charging DUI following an arrest may vary from jurisdiction to jurisdiction. Some jurisdictions may require all charging to be done by the prosecutor's office following a review of the case presented by the arresting law enforcement agency. Other jurisdictions do not require this procedure.

A "magistrate" is any judge or "municipal officer with the power of a district court judge." A "judicial officer" is a person authorized to act as a judge.

Legislative Summary: Language in the law requiring prompt court appearance in DUI cases is clarified. Every person "charged" with DUI who is served with a citation or complaint at the time of arrest must appear before a judicial officer within one judicial day. Every person who is "charged" with DUI but is not served with a citation or complaint at the time of the incident must appear within 14 days.

Court Levels Affected: Limited Jurisdiction

OAC Comments: Clarifies existing law regarding when a DUI defendant must make a first appearance.

Court Action: None.

Planned OAC Action: Revise Benchbooks to reflect new language in statute.

Refer to DMCJA to determine whether CrRLJ 3.3(c)(1) should be amended. The court rule requires that a defendant not in custody or subject to conditions of release be arraigned within 15 days of the filing of the complaint or notice and citation. However, RCW 46.61.50571 seems to require that the arraignment for a DUI defendant take place within 14 days of the filing of the complaint or notice and citation. The statute also requires that a DUI defendant who is cited and released or held in custody must be arraigned the following day.

Bill Tracker: Lynne Alfasso

EHB 2713

C 170 L 00
Synopsis as Enacted

Brief Description: Regarding mandatory arbitration fees.

Effective Date: June 8, 2000

Legislative Background: Arbitration is a nonjudicial method for resolving disputes in which a neutral party is given authority to decide the case. Arbitration is intended to be a less expensive and time-consuming way of settling problems than taking a dispute to court. Parties are generally free to agree between themselves to submit an issue to arbitration. In some cases, however, arbitration is mandatory.

A statute allows any superior court, by majority vote of its judges, to adopt mandatory arbitration in prescribed cases. In counties of 70,000 or more population, the county legislative authority may also impose this mandatory arbitration. This mandatory arbitration applies to cases in which the sole relief sought is a money judgment of $15,000 or less. By a two-thirds vote, the judges of the superior court may raise this limit to $35,000.

Under Initiative 695, any increase in a "tax" requires voter approval. For purposes of the initiative, the term "tax" includes taxes, fees, and "any monetary charge by government."

Legislative Summary: A county legislative authority may impose a filing fee of up to $120 for a mandatory arbitration. If Initiative 695 is determined to apply, however, any such fee must be approved by a vote of the people. The fee is to be used solely for the support of the mandatory arbitration program in the county.

Court Levels Affected: Superior

OAC Comments: Allows courts to collect a filing fee of up to $120 against the party filing a statement of arbitrability. The fee amount is established by local ordinance.

Court Action: Request a local ordinance to set the filing fee amount.

Planned OAC Action: A new transaction code will be created in JRS for receipting the fee.

Bill Tracker: Yvonne Pettus

SHB 2721

C 244 L 00
Synopsis as Enacted

Short Title: Changing provisions relating to venue of actions by or against counties.

Effective: June 8, 2000

Legislative Background: Venue refers to the county within the state where a lawsuit may be brought or heard. The venue for a party suing a county is in the superior court of that county or the superior court of either of the two nearest counties. Counties have the option to sue in the defendant's home county or in either of the two counties nearest the county initiating the action.

"The nearest county" is measured by travel time between county seats using major surface routes as determined by the Office of the Administrator for the Courts (OAC). The OAC uses data from the Department of Transportation to determine the travel time between county seats using highways and car ferries.

Some superior court districts contain two or more counties, and, therefore, the counties share one judge. In some counties, one of the two nearest county seats is in the same court district, providing only one alternative venue outside the district.

Legislative Summary: The superior court venues available for an action involving a county as a party are changed from "the two nearest counties" to "the two nearest judicial districts."

Court Levels Affected: Superior

OAC Comments: Requires actions filed against counties or by counties to be filed in the superior court of the county or in the superior court of either of the two nearest judicial districts as determined by the Office of the Administrator for the Courts.

Court Action: None.

Planned OAC Action: Update the current chart to reflect the two nearest judicial districts rather than counties. Send the list to presiding judges, county clerks, prosecuting attorneys, and bar associations. Post updated chart on the OAC web page.

Bill Tracker: Yvonne Pettus

HB 2774

C 55 L 00

Synopsis as Enacted

Short Title: Revising provisions for appointment of judges pro tempore.

Effective Date: June 8, 2000

Legislative Background: Municipal courts are courts of limited jurisdiction that hear cases involving violations of city ordinances. Municipal courts in cities with a population of more than 400,000 are organized under a different chapter than municipal courts in cities with a population of 400,000 or less.

The mayor of a city is authorized to appoint judges pro tempore to the municipal courts when necessary. Judges pro tempore are usually attorneys and must be qualified to hold the position of judge of the municipal court. Compensation for municipal court judges pro tempore are determined by the local legislative authority. Aside from these similarities, there are differences between the statutory provisions regarding appointment of judges pro tempore in the two municipal court chapters.

In municipal courts in cities of 400,000 or less, judges pro tempore may be appointed in the absence or disability of a regular judge or subsequent to the filing of an affidavit of prejudice. Judges pro tempore are appointed for a specified term and in no case longer than the term of the appointing mayor.

In municipal courts in cities of more than 400,000, judges pro tempore may be appointed in the absence of a regular judge or in addition to the regular judges when necessary for the administration of justice or the accomplishment of the work of the court. A judge pro tempore must take the oath of office of a regular judge and has all the powers of a regular judge. The

judges of the municipal court must adopt standards for the use of judges pro tempore, and the appointment of attorneys must be made from a list of attorneys provided by the judges.

Legislative Summary: Statutes governing the appointment of judges pro tempore of the municipal courts in cities greater than 400,000 and in cities of 400,000 or less are amended to provide consistent standards.

The statute governing appointment of judges pro tempore in municipal courts in cities of 400,000 or less is amended to specify that the presiding judge, rather than the mayor, makes the appointment and that a judge pro tempore may be appointed when necessary for the administration of justice and accomplishment of the work of the court. Judges pro tempore need not be residents of the city or county where the municipal court is located, and must take the same oath of office and have all the powers of an elected or duly appointed judge. The requirement is removed that the term of appointment of a judge pro tempore be specified in writing but in no case exceed the term of the appointing mayor.

The statute governing appointment of judges pro tempore in municipal courts in cities over 400,000 is amended to specify that the presiding judge, rather than the mayor, makes the appointment, and that the term of appointment be specified in writing. The requirement is removed that the municipal court judges adopt standards for the use of judges pro tempore and that the appointment of attorneys be made from a list provided by the judges.

Court Levels Affected: Municipal

OAC Comments: Presiding municipal court judges can appoint pro tems.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Doug Haake

HB 2775

C 164 L 00
Synopsis as Enacted

Brief Description: Clarifying requirements for the transfer of cases from commissioners to judges.

Effective Date: June 8, 2000

Legislative Background: District Court Commissioners. Judges of district courts are authorized to appoint one or more court commissioners to assist in conducting judicial business. A district court commissioner must be a registered voter in the county and must have passed either the state bar exam or the qualifying exam for lay judges.

A district court commissioner has as much of a judge's authority as the appointing judge prescribes.

Transferring a Case from a Commissioner to a Judge. When a case is being heard by a commissioner, any party may have the case transferred to a judge. There is no explicit limit on when a demand to transfer the case may be made.

Transferring a Case from one Judge to another Judge. When a case is being heard by a judge, any party may have the case transferred by filing an affidavit of prejudice. However, the demand to transfer must be filed before the judge has made any order or ruling involving "discretion." There is no statutory definition of a "discretionary ruling," but many court decisions suggests that a ruling is discretionary if the judge has the authority to grant or deny a party's motion. Certain judicial actions are, however, specifically listed in the affidavit of prejudice statute as not being discretionary rulings. These listed rulings do not, therefore, cut off the right to demand a transfer to a different judge. The listed rulings that are not "discretionary" include:

- arrangement of the calendar;
- setting of an action, motion, or proceeding down for hearing or trial;
- arraignment of the accused in a criminal action; or
- fixing bail.

Legislative Summary: A motion to transfer a case from a district court commissioner to a judge must be filed before any discretionary ruling is made. The same rulings that are not considered discretionary for purposes of transferring a case from one judge to another are not considered discretionary for purposes of transferring a case from a commissioner to a judge.

Court Levels Affected: District

OAC Comments: Limits transfer of cases from commissioners after a commissioner makes a discretionary ruling.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Doug Haake

SHB 2776

C 110 L 00
Synopsis as Enacted

Short Title: Providing for deferred findings and collection of an administrative fee in an infraction case.

Effective: June 8, 2000

Legislative Background: When a person is issued a notice of traffic infraction, the notice represents a determination that the infraction occurred. The person may either: (1) pay the fine through the mail; (2) set up a hearing to contest the notice of infraction; or (3) not contest the infraction, but set up a hearing to explain mitigating circumstances.

In a hearing to contest the infraction, the court may consider any written report submitted by the officer and statements from any witnesses. If the court makes a finding that a traffic infraction was committed, the court must forward an abstract of the finding to the Department of Licensing (DOL). In a hearing to explain mitigating circumstances, the court enters an order that the infraction occurred, but it may reduce the fine based on the circumstances.

The DOL may, upon request, provide a certified abstract of a person's driving record to: (1) the individual named in the abstract; (2) an employer or prospective employer; (3) the insurance carrier of the individual; (4) an alcohol/drug assessment or treatment agency if the individual has applied or been assigned for evaluation or treatment; or (5) city or county prosecuting attorneys.

Legislative Summary: A court may defer findings regarding traffic infractions, or in a hearing to explain mitigating circumstances may defer entry of its order, for up to one year and impose conditions on the person who allegedly committed the infraction.

The court may impose on the person any costs appropriate for the administrative processing. After the end of the deferral period, the court may dismiss the infraction if the person has met all the conditions of deferral and the person has not committed another traffic infraction during the deferral period.

A person may not receive more than one deferral within a seven-year period for traffic infractions for moving violations and more than one deferral within a seven-year period for traffic infractions for nonmoving violations.

Court Levels Affected: Limited Jurisdiction

OAC Comments: Allows judges to defer findings in infraction matters, for one moving and one non-moving violation within a seven-year period. The court can impose conditions and

administrative costs. Upon successful completion of conditions, the court can dismiss the infraction.

Court Action: None

Planned OAC Action: Disposition codes need to be developed for defe findings, finding of commission after deferral and dismissal after deferral.

Bill Tracker: Doug Haake

SHB 2799

C 111 L 00
Synopsis as Enacted

Short Title: Granting statewide warrant jurisdiction to courts of limited jurisdiction.

Effective: June 8, 2000

Legislative Background: District and municipal courts are courts of limited jurisdiction. In criminal matters, district courts have jurisdiction over misdemeanor and gross misdemeanor offenses committed within the county and over violations of city ordinances. Municipal courts also have jurisdiction over violations of city ordinances and share jurisdiction with district courts over misdemeanor and gross misdemeanor offenses.

Warrants issued by a court of limited jurisdiction are enforceable within the jurisdiction of the issuing court.

Legislative Summary: The Office of the Administrator for the Courts (OAC) must establish a pilot program for the statewide processing of warrants issued by courts of limited jurisdiction. The OAC must establish procedures and criteria for courts of limited jurisdiction to enter into agreements with other courts of limited jurisdiction in the state to process each other's warrants when the defendant is within the processing court's jurisdiction. The OAC must establish a formula for allocating between the court that processed the warrant and the court that issued the warrant. The OAC must report to the Legislature by June 1, 2003 regarding the effectiveness and costs of the pilot program.

Court Levels Affected: Limited Jurisdiction

OAC Comments: Creates a pilot program allowing judges to resolve warrants from other jurisdiction within the state. Allows the judge in the processing court to arraign, take recognizance and approve bail on warrants issued by other courts participating in the pilot.

Court Action: Pilot project will require involved courts to set interlocal agreements for collection of fines, fees and bail. Courts will establish procedures for transfer of monies collected and reimbursement of costs associated with processing another jurisdiction's warrants.

Planned OAC Action: OAC is to administer the pilot project, establishing procedures and criteria for interlocal agreements. OAC shall establish a formula for allocating any monies collected by a court processing another jurisdiction's warrant.

Bill Tracker: Doug Haake

ESHB 2884

C 21 L 00

Synopsis as Enacted

Short Title: Relocation of children.

Effective Date: June 8, 2000

Legislative Background: Whether a parent may relocate a child away from the other parent who is entitled to residential or visitation time is an issue that has been heavily litigated in recent years. Washington's laws do not explicitly address when a parent may or may not relocate a child and whether the parent must notify the other parent before relocation occurs.

In the 1997 case, In re the Marriage of Littlefield, the state supreme court held that Washington's statutes do not give courts the authority to impose geographical restrictions on a parent when entering an initial parenting plan unless relocation would harm the child. The harm to the child must be more than the normal distress suffered by a child because of travel, infrequent contact with a parent, or other hardships normally associated with dissolution.

In December 1999, the state supreme court issued its opinion in In re the Marriage of Pape, in which it held that a parent may modify the residential schedule of a parenting plan under the "minor modification" statute.

The minor modification statute allows for "adjustments" to the parenting plan if: (a) there has been a substantial change in circumstances of either parent or the child; (b) the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time; and (c) the proposed modification is based on a change of residence or an involuntary change in work schedule by a parent that makes the residential schedule impractical to follow.

The court reasoned that the child's best interests were considered when the court made the initial residential placement of the child. Therefore, in a subsequent modification action there is a presumption that the best interests of the child require the primary placement of the child to remain intact.

Under Pape, the relocating parent must demonstrate a bona fide reason for the relocation. The other parent may object to the move by showing that either no bona fide reasons exist or the move will be detrimental to the child using the Littlefield standard of detriment.

Legislative Summary: Requires that the person with whom the child resides the majority of the time notify anybody with residential time or visitation with the child when the person plans to relocate.

Creates a presumption that relocation will be permitted unless an objecting party meets a certain standard.

Establishes factors the court must consider when determining whether to permit or prohibit relocation of the child.

Notice: The person with whom the child resides a majority of the time must notify every other person entitled to residential time or visitation with the child when the person intends to relocate.

Notice must be given no less than 60 days before the intended relocation by personal service or any form of mailing requiring a return receipt. Notice must contain certain information, including an address where service of process may be accomplished, the reasons for the intended relocation, and a notice to the non-relocating party that an objection to the intended relocation of the child must be filed with the court within 30 days or the relocation will be permitted.

When available, the notice should also contain information such as the new mailing address and phone number, the address of the child's new school or day care, and a proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation.

If the intended relocation will be within the same school district in which the child currently resides the majority of the time, the person intending to relocate need only provide actual notice by any reasonable means.

Limitation of Notices: The time frames for notice and the requirements in the notice may vary under limited circumstances. If a person is entering a domestic violence shelter or is relocating to avoid a clear, immediate, and unreasonable risk to his or her health or safety, or the child's health or safety, then notice may be delayed for 21 days.

If the person believes that his or her health or safety would be at risk by disclosure of some information in the notice, the person may obtain an ex parte court order to have some or all of the notice requirements waived.

Failure to give notice could result in sanctions and a finding of contempt, if applicable.

Objection: A party objecting to the intended relocation of the child or to the proposed revised residential schedule must file an objection with the court and serve the objection on the relocating party and all other persons entitled to notice.

The objection must be filed and served within 30 days of receipt of the notice of intended relocation. The objection must be in the form of a petition for modification of the parenting plan or other court proceeding adequate to provide grounds for relief.

The person intending to relocate the child shall not, without a court order, change the child's principal residence during the 30-day objection period. If the objecting party notes a hearing to prevent relocation for a date not more than 15 days following timely service of the objection, the party intending to relocate may not change the child's principal residence pending the hearing unless special circumstances apply.

Failure to Object: If a person does not object within 30 days, the relocation will be permitted and the non-objecting person is entitled to the residential time or visitation specified in the proposed revised residential schedule that was included in the notice of intended relocation.

Any party entitled to court-ordered residential time or visitation with the child may, after the 30-day objection period has passed, obtain ex parte an order modifying the residential schedule in conformity with the proposed revised residential schedule specified. A party may obtain such an order before the 30-day objection period elapses if the party presents proof that no objection will be filed.

Temporary Orders: A court may grant a temporary order restraining relocation of a child, or ordering the return of a child who has already been relocated, if the court finds:

(a) that the required notice was not provided and the non-relocating party was substantially prejudiced;

(b) the relocation has occurred without agreement of the parties, court order, or notice; or

(c) after examining evidence presented at a hearing, the court finds that there is a likelihood that on final hearing the court will not approve the intended relocation, or no circumstances exist to warrant a relocation prior to final determination at trial.

The court may grant a temporary order permitting the relocation of a child if the relocating party complied or substantially complied with the notice requirements, and the court determines that there is a likelihood on final hearing that it will approve the relocation.

Presumption and Standard: The person intending to relocate with the child must give his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation will be permitted. The objecting party may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person. Whether the detrimental effect outweighs the benefit must be based on the following factors:

(1) the relative strength, nature, quality, extent of involvement, and stability of the child's relationship with the person proposing to relocate and with the non-relocating person, siblings, and other significant persons in the child's life;

(2) prior agreements between the parties;

(3) whether disrupting the contact between the child and the person with whom the child primarily resides would be more detrimental to the child than disrupting contact between the child and the person objecting;

(4) whether either parent or a person entitled to residential time with the child is subject to limitations based on the person's conduct;

(5) the reasons of each person for seeking or opposing relocation and the good faith of each party;

(6) the age, developmental state, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development;

(7) the quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographical locations;

(8) the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;

(9) the alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

(10) the financial impact and logistics of the relocation or its prevention; and

(11) or a temporary order, the amount of time before a final decision can be made at trial.

The factors are not weighted, and no inference should be drawn from the order in which the factors are listed. The court may not consider as a factor whether the person intending to relocate will forego his or her relocation if the child's relocation is prohibited, or whether the opposing party will relocate if the child's relocation is permitted.

Once the court determines whether to permit or restrain the relocation of the child, the court shall determine what modification should be made, if any, to the parenting plan.

Objections By Third Parties: A court may not restrict the child's relocation when the sole objection to the relocation is from a third party, unless the third party is entitled to court-ordered residential time or visitation time and has served as the primary residential care provider to the child for a substantial period of time during the 36 consecutive months preceding the intended relocation.

Sanctions: The court may sanction a party if his or her proposal to relocate or objection to relocation was made to harass a person, delay or increase the cost of litigation, or to interfere in bad faith with the other person's relationship with the child.

Minor Modification: The existing minor modification statute applies when a parent with whom the child does not reside the majority of the time has a change in residence that makes the residential schedule impractical to follow.

Court Levels Affected: Superior

OAC Comments: The new law establishes specific policy and procedures for situations where a parent with whom a child resides for the majority of time, intends to relocate. Procedures implementing the required mandatory notice to parties entitled residential time or visitation should have negligible impact on the workload of the courts. If there is no objection to the relocation, an order modifying the residential schedule may be obtained ex parte and then filed with the court. The law also establishes grounds for sanctions if a person fails to give notice. If a party objects to the relocation, a hearing process takes place where the court determines if the child should be allowed to relocate. The basis for making such a determination is contained in section 14. The proposed legislation is viewed as establishing more guidance to families, attorneys and the courts, resulting in greater predictability and hence, the likelihood of fewer hearings.

Court Action:

- Incorporate child relocation statutes into the current domestic relations policy and procedures.
- For those courts with facilitator programs, parent relocation procedures will need to be incorporated into the resource information provided to clients of the program. Parent relocation requirements may increase the demand for facilitator services.

Planned OAC Action:

- Develop a notice form to be used by a relocating parent, for notifying every other person entitled to residential time or visitation with the child, of the parent's intended relocation of a child.
- Pursuant to section 10(3), develop the form for use in filing an objection to the relocation of the child or of the relocating person's proposed revised residential schedule.
- Incorporate statutory revisions into the domestic relations Benchbook.
- Review SCOMIS codes to determine the need for codes specific to this process.
- Update existing mandatory forms.

Bill Tracker: Michael Curtis

SB 6154

C 202 L 00
Synopsis as Enacted

Short Title: Allowing county clerks to accept credit cards.

Effective Date: June 8, 2000

Legislative Background: The office of county clerk is an elected office provided for in the Washington State Constitution as is a duty of the county clerk to be the clerk of the superior court.

County treasurers are authorized by statute to accept credit cards and similar noncurrency forms of payment for any kind of payment due the county. The payer must bear the cost of processing the transaction in an amount determined by the treasurer. In no event may that cost exceed the additional costs so incurred by the county. The county legislative authority may waive the transaction cost when waiver would be in the best interests of the county.

Legislative Summary: County clerks are authorized to accept payment by credit card and similar noncurrency forms of payment of all fees and moneys collected by the clerk that are due the court for various filings and for services performed by the clerk's office incident to matters on file as well as other charges required by specified statutes. Also included in this authorization are payments of court-ordered fines, restitution and other moneys owed by criminal defendants. The payer must bear the cost of processing the transaction.

Court Levels Affected: Superior

OAC Comments: Allows county clerks to accept noncurrency payment for fees and moneys due the court including legal financial obligations for criminal defendants.

Court Action: None.

Planned OAC Action: Work with the JIS Committee to prioritize changes needed to implement this law.

Bill Tracker: Yvonne Pettus

SSB 6182

C 26 L 00

Synopsis as Enacted

Short Title: Specifying the effect that changes in law will have on sentencing provisions.

Effective Date: June 8, 2000

Legislative Background: In 1990, the Sentencing Reform Act was amended to eliminate sex offenses from the washout provisions. In *State v. Cruz*, the Washington Supreme Court held that the 1990 amendment applies prospectively only. Previously washed out convictions were not revived by the amendment.

Legislative Summary: Any sentence imposed under the Sentencing Reform Act is determined using the law in effect when the current offense was committed.

Court Levels Affected: Superior

OAC Comments: This legislation was proposed in response to the Washington Supreme Court's decision in ***State v. Cruz***, 139 Wash.2d 186 (1999), although it applies to all amendments to sentencing laws which occur after the date of an offense, not solely to amendments concerning "washed out" convictions.

In *Cruz*, the Supreme Court held that the 1990 amendments to the Sentencing Reform Act, which disallowed the "washing out" of certain prior sex convictions, among other provisions, were not retroactive and, therefore, the trial court should not have revived a previously "washed out" rape conviction for sentencing purposes.

One of the bases for the Court's decision was the Court's finding that the legislature had not expressed a specific intent that the 1990 amendments were to apply retroactively.

Court Action: None.

Planned OAC Action: Revise Benchbooks.

Bill Tracker: Lynne Alfasso

SB 6190a

C 68 L 00

Synopsis as Enacted

Short Title: Promoting expeditious resolution of public use disputes in eminent domain proceedings.

Effective Date: June 8, 2000

Legislative Background: Counties, like other state and municipal jurisdictions, have the authority to acquire land for public use through eminent domain or condemnation procedures. There is a two-step process involved in which issue of public use is initially determined by the superior court, and then a trial is held, with a jury if requested, on the issue of just compensation for the property. Because of court congestion, it is now very difficult to get a court date for the compensation trial, and county eminent domain proceedings often are delayed for up to three years, resulting in additional costs to the counties due to inflation and changing permit requirements.

The laws governing eminent domain proceedings for cities and for state highway purposes have long given precedence to these cases over other court cases not involving criminal prosecutions or other public interests.

Legislative Summary: County eminent domain proceedings are given precedence over all other court cases except criminal cases. A joint legislative study group is created, consisting of two members from each caucus of the Senate and House, to study the use of eminent domain and ways to expedite resolution of disputes in eminent domain proceedings. The authorization for the study group expires December 31, 2000.

Court Levels Affected: Superior

OAC Comments: SCJA likely will be asked to address the legislative study group reviewing eminent domain issues (including judicial workload impacts) this year.

Court Action: Update calendaring procedures so that county condemnation actions are added to the list of actions receiving special precedence.

Planned OAC Action: Monitor the activity of the legislative study group.

Bill Tracker: Rick Neidhardt

SSB 6194

C 154 L 00

Synopsis as Enacted

Short Title: Attempting to limit the incidents of rural garbage dumping.

Effective Date: June 8, 2000

Legislative Background: Illegal garbage dumping on rural lands has been an increasing problem for several years. As the cost of proper disposal of hazardous materials continues to rise, private and public rural landowners have also seen an increase in the amount of hazardous material dumped. In 1998, the Legislature expanded the definition of littering to include solid waste that is illegally dumped.

Law enforcement agencies are often without adequate funds to focus intense efforts on patrols against dumping. Landowners are often forced to pay for cleaning up illegal dumps themselves.

Some have reduced public access to their lands in an effort to curb dumping.

Legislative Summary: It is a misdemeanor to litter more than one cubic foot but less than one cubic yard in an unincorporated area. It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more in an unincorporated area of a county. It is a gross misdemeanor for a person to abandon a junk vehicle in an unincorporated area.

In addition to criminal penalties, the litterer must also pay a litter cleanup restitution payment. In the case of between one cubic foot and one cubic yard of litter, the litterer must pay twice the actual cost of cleanup or $50 per cubic foot of litter, whichever is greater. In the case of more than a cubic yard of litter, the litterer must pay twice the actual cost of cleanup or $100 per cubic foot, whichever is greater. In the case of a junk vehicle, the vehicle's registered owner must pay a cleanup restitution payment equal to twice the cost for removal of the vehicle. A first time offender is allowed to avoid or pay a reduced restitution payment, at the judge's discretion, if the offender cleans up and properly disposes of the litter. The court may also order the person to pick up and remove the litter with the prior permission of the landowner.

The court must distribute one-half of the restitution payment to the landowner and the other one-half of the restitution payment to the law enforcement agency or jurisdictional health department investigating the incident.

Court Levels Affected: District

Court Action: None.

Planned OAC Action: Add to Law Table (creates a new misdemeanor and gross

misdemeanor.)

Bill Tracker: Lynne Alfasso

SB 6206

C 27 L 00

Synopsis as Enacted

Short Title: Student firearm violations.

Effective Date: June 8, 2000

Legislative Background: Current law requires that when a youth is convicted of certain offenses, the court must notify the youth's parents or guardians and the Principal of the youth's school. Offenses requiring notification include violent offenses, sex offenses, inhaling toxic fumes, controlled substance violations, liquor violations, assault, kidnapping, harassment, arson, and malicious mischief.

The Principal must provide the criminal history information to the student's teachers, supervisors, and other personnel that the Principal feels should be aware of the student's record.

Legislative Summary: Firearm and dangerous weapon violations are added to the list of offenses that require parental and Principal notification.

Court Levels Affected: Superior (Juvenile Division)

Court Action: If relying upon a means other than the JUVIS JVR 250 report for identification of those adjudicated and diverted offenses which must be reported to schools, revise local reporting procedures adding crimes under Chapter 9.41 RCW (firearm and dangerous weapons violations).

Revise "advice about diversion" and "statement on a plea of guilty" forms, adding firearm and dangerous weapons to the list of offenses required to be reported to schools.

Planned OAC Action: Make programming revisions to the JUVIS JVR 250 report, adding referrals for offenses under chapter 9.41 RCW which have been diverted or adjudicated.

Review and revise if necessary the desk manual for juvenile court administration.

Review and revise applicable court rules (i.e., Rule 6.4 advice about the diversion process, and Rule 7.7, statement of juvenile on plea of guilty) and model pattern forms.

Bill Tracker: Michael Curtis

ESSB 6217

C 122 L 00
Synopsis as Enacted

Short Title: Parental rights.

Effective Date: June 8, 2000

Legislative Background: The dependency statutes have been amended repeatedly over the years without consideration of the most appropriate placement of the language in the statute. This process has caused people difficulty in grasping the statutory requirements.

Legislative Summary: Technical and clarifying changes, not substantive, are made to the dependency and termination of parental rights statutes. Outdated information is deleted. Cross references are corrected. Substantive provisions in RCW 13.34.130 pertaining to termination of parental rights, review hearings and permanency planning are removed and each placed in a separate section. The predisposition report requirements are placed under the social study definition.

Court Levels Affected: Superior (Juvenile Division)

OAC Comments: Although the legislation is billed as "technical" and not making "substantive" changes to chapter 13.34 RCW, revisions to RCW 13.34.110 contained in section 11 require a dependency disposition hearing to take place not longer than 14 days subsequent to the entry of the findings of fact. Under the current law, for good cause, a dependency disposition hearing can be held longer than 14 days after the fact-finding.

Court Action: Due to restructuring and section moving within chapter 13.34 RCW, it is recommended local courts review all local documentation related to the dependency process (i.e., forms, informational brochures, local court rules, etc.) to ensure statutory references are accurate.

Planned OAC Action: Review and revise statutory references contained within the juvenile non-offender Benchbook, juvenile dependency model pattern forms and other OAC generated documentation containing chapter 13.34 statutory references. Also propose changes to the JuCRs, correcting inaccurate statutory references.

Bill Tracker: Michael Curtis

ESSB 6218

C 123 L 00
Synopsis as Enacted

Short Title: Making technical and clarifying amendments to the family reconciliation act.

Effective Date: June 8, 2000

Legislative Background: Since its creation, the out-of-home placement chapter has been amended a number of times, occasionally without reference to other affected statutes. The result of these amendments is to make the statute sometimes inconsistent or redundant and hard for practitioners to follow.

Legislative Summary: Technical and clarifying changes, not substantive, are made to the family reconciliation services statutes. Dated and outdated information is removed. Cross references are corrected and some substantive provisions moved into sections where they more appropriately belong.

Court Levels Affected: Superior (Juvenile Division)

Court Action: Due to restructuring and section moving within chapter 13.32A RCW, it is recommended local courts review all local documentation related to the CHINS and At-Risk Youth processes (i.e., forms, informational brochures, local court rules, etc.) to ensure statutory references are accurate.

Planned OAC Action: Review and revise statutory references contained within the juvenile non-offender Benchbook, CHINS and At-Risk Youth model pattern forms and other OAC generated documentation containing chapter 13.32A statutory references. Also propose changes to the JuCRs, correcting inaccurate statutory references.

Bill Tracker: Michael Curtis

SB 6223

C 28 L 00
Synopsis as Enacted

Short Title: Community supervision/sentencing.

Effective Date: June 8, 2000
July 1, 2001 (Sections 1-42)

Legislative Background: The Sentencing Reform Act was enacted in 1981. The main sentencing provision has been amended 34 times and now contains 25 subsections spread over five pages of the code.

Legislative Summary: The Legislature intends to make the Sentencing Reform Act easier to use and understand. The "sentences" statute is divided into 42 separate sections. No provision of the act is meant to make, nor does any provision in fact make, a substantive change to the Sentencing Reform Act. It is clarified that persistent offenders are not eligible for extraordinary medical placement.

If any amendments are enacted during the 2000 legislative session that do not conform to these changes to the Sentencing Reform Act, the Code Reviser is directed to prepare a bill that incorporates those amendments for the 2001 legislative session.

Court Levels Affected: Superior

OAC Comments: Reorganizing and renumbering of provisions of the Sentencing Reform Act, which will make it easier to use. Legislation was brought at the request of the Sentencing Guidelines Commission.

Court Action: None.

Planned OAC Action: Revise Benchbooks and Felony Judgment and Sentence form, as necessary, to reflect renumbering of statutory provisions.

Bill Tracker: Lynne Alfasso

SSB 6244

C 71 L 00
Synopsis as Enacted

Short Title: Extending juvenile court jurisdiction for the purpose of enforcing penalty assessments.

Effective Date: March 22, 2000

Legislative Background: On March 29, 1999, Division I of the Washington State Court of Appeals decided *State v. Y.I.* The court held that the victim penalty assessment, which the defendant in this case did not pay, was part of a disposition order. Because the state did not file a motion on violation of the disposition order before the expiration of the community supervision period, the court held the trial court had no jurisdiction to hear the matter. Furthermore, the court held that if the Legislature had intended that the court's jurisdiction extend past the expiration of the community supervision period, it would have specifically stated that as it did in RCW

13.40.190 with restitution orders. Since the Legislature was not specific, the trial court was without jurisdiction to hear the matter.

Legislative Summary: The legislative intent is to clarify the holding in *State v. Y.I.* to require juvenile offenders to satisfy penalty assessments. If a juvenile is required to pay a penalty assessment, he or she remains under the court's jurisdiction for 10 years after his or her 18th birthday. Before expiration of the 10-year period, the court may extend the judgment for payment of the penalty assessment for an additional 10 years.

A person's conviction is the triggering event for purposes of assessing a victim penalty assessment.

Court Levels Affected: Superior (Juvenile Division)

OAC Comments: Orders for penalty assessments can now be treated the same as orders for restitution with regard to extension of jurisdiction. This allows courts to enforce penalty assessments beyond the conclusion of the juvenile's term of community supervision and until the point where it can be converted to a civil judgment.

Court Action: If extending jurisdiction in order to enforce a penalty assessment, it is suggested the court only extend jurisdiction to age 18. Pursuant to RCW 13.40.192, after the respondent turns 18, any outstanding penalty assessment must be docketed by the court clerk as a civil judgment.

Planned OAC Action: Review juvenile court administration desk manual for possible revision.

Bill Tracker: Michael Curtis

2SSB 6255

C 225 L 00

Synopsis as Enacted

Short Title: Prescribing penalties for unlawful possession and storage of anhydrous ammonia.

Effective Date: June 8, 2000

Legislative Background: Anhydrous ammonia (NH_3) is a widely used nitrogen fertilizer and refrigerant. It is stored under high pressure and can cause burns and other injuries if mishandled. The United States Department of Transportation certifies containers as safe to hold anhydrous ammonia and several other state and federal agencies have regulations governing storage and handling of anhydrous ammonia.

Anhydrous ammonia is increasingly being used as an ingredient in the illegal production of

methamphetamine, a controlled substance. Often, illegal drug manufacturers will store anhydrous ammonia in containers not designed to hold this corrosive chemical.

Legislative Summary: It is a crime to possess anhydrous ammonia with the intent to manufacture a controlled substance. It is a crime to possess anhydrous ammonia in a container not approved for that use or to otherwise improperly store or transport anhydrous ammonia. Theft of anhydrous ammonia is specifically made a crime. All crimes are class C felonies.

Those who unlawfully possess, store, or tamper with anhydrous ammonia or equipment are solely responsible for damage they cause. Lawful anhydrous ammonia manufacturers, sellers, possessors, and users are liable for their negligent misconduct to abide by the laws regarding anhydrous ammonia possession or storage.

Court Levels Affected: Superior

OAC Comments: Creates several new Class C felonies related to anhydrous ammonia.

Court Action: None.

Planned OAC Action: Update SCOMIS law table.

Revise Benchbooks, as necessary.

Refer to Pattern Jury Instructions Committee for review regarding new jury instructions.

Bill Tracker: Lynne Alfasso

SSB 6260

C 132 L 00

Synopsis as Enacted

Short Title: Increasing penalties for manufacturing a controlled substance when children are present.

Effective Date: June 8, 2000

Legislative Background: Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine is a class B felony ranked at level VIII on the sentencing grid. Manufacture of methamphetamine is a class B felony ranked at level X on the sentencing grid. Current law provides for an additional 24-month sentence when certain controlled substances are manufactured, sold, delivered, or possessed in public areas such as at or near schools, parks, public transit, drug free zones, or civic centers.

Legislative Summary: A person convicted of manufacturing methamphetamine, or possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine receives a 24-month sentence enhancement in addition to the standard sentence if the underlying crime was committed when a person under the age of 18 was present in or upon the premises.

The prosecutor must plead the special allegation and prove it beyond a reasonable doubt. The judge or jury only considers the special allegation after the offender is convicted of the underlying crime.

Court Levels Affected: Superior and Juvenile.

OAC Comments: Mandatory sentence enhancement.

Court Action: None.

Planned OAC Action: Revise Judgment and Sentencing Form to include description of new mandatory sentencing enhancement.

Update SCOMIS law table.

Revise Benchbooks, as necessary.

Bill Tracker: Lynne Alfasso

ESSB 6264

C 115 L 00

Synopsis as Enacted

Short Title: Establishing intermediate drivers' licenses.

Effective Date: July 1, 2001

Legislative Background: A Washington resident under the age of 18 is eligible for an unrestricted driver's license if the parent or guardian signs the application and the applicant has completed an approved driver's education course.

Graduated driver's licensing is a system of three phases of licensing that a driver under the age of 18 must progress through in order to qualify for a driver's license.

Currently, 34 states have adopted legislation that restricts teen driving and 22 states have adopted a full graduated driver's licensing system.

Legislative Summary: The Legislature recognizes the need to develop a graduated driver's licensing system.

An intermediate driver's license is established.

Intermediate License Requirements: An applicant for an intermediate driver's license must have possessed a learner's permit for six months, passed a road test, passed a driver's education course, and certified to the Department of Licensing (DOL) that the applicant has at least 50 hours of supervised driving experience and that ten of those hours were at night.

Intermediate License Restrictions: For the first six months after issuance of an intermediate license, the holder of the license may not have any passengers in the car under the age of 20, who are not members of the holder's immediate family. After the first six months, the holder may not have more than three passengers in the car under the age of 20, who are not members of the holder's immediate family.

The holder of an intermediate driver's license may not operate a vehicle between the hours of 1 a.m. and 5 a.m. except when the holder is accompanied by a parent or guardian or the holder is moving a vehicle for agricultural purposes. An intermediate licensee may drive without restrictions if the licensee does not have any accidents or traffic infractions for 12 months after issuance of the license.

Intermediate License Penalties: The first time a person issued an intermediate driver's license is convicted of or found to have committed a traffic offense, DOL must mail a letter to the person's parent or guardian indicating the potential future penalties. On a second conviction or finding, DOL must suspend the intermediate license for six months, and on a third conviction or finding, DOL must suspend the intermediate license until the person turns 18. Enforcement of intermediate violations may only be accomplished as a secondary action.

DOL must issue an instruction permit and an intermediate license in distinctive forms.

A driver's license issued to a person under the age of 18 is an intermediate license subject to the restrictions accompanying intermediate licenses.

The intermediate license program sunsets June 30, 2009.

Court Levels Affected: Limited Jurisdiction

OAC Comments: Creates a new traffic infraction for driving in violation of restriction set out in the legislation.

Court Action: None.

Planned OAC Action: Add infraction to law table.

Bill Tracker: Doug Haake

ESSB 6295

C 72 L 00
Synopsis as Enacted

Short Title: Changing garnishment proceedings.

Effective Date: June 8, 2000

Legislative Background: The proponents of this bill believe there are problems across the state with the processing of writs of garnishment and that differences in form and procedure exist from court to court. In many parts of the state, garnished funds are remitted to the plaintiff through a "pay order," without reducing to judgment any of the garnishment costs incurred or funds withheld. The practice in other parts of the state is to reduce the withheld funds to judgment against the garnishee, reduce the amount of the costs incurred in the garnishment process to judgment against the defendant, and order the withheld amount paid to either the plaintiff or the court clerk, depending on the county. A recent Supreme Court opinion states that the garnished amounts must be reduced to judgment against the garnishee, and that requiring payment of costs or other garnished amounts without judgment violates the statute. In addition, the current statutes do not provide a mechanism for reducing incurred cost to judgment against the defendant.

Legislative Summary: Any fees legally chargeable to the plaintiff in the garnishment proceeding can be included in the amount garnished. The garnishee is informed in the writ form of the possibility that judgment may be taken against it even if the writ is answered properly and that a judgment for costs may be entered.

The court is authorized to order garnished amounts to be paid to the plaintiff or to the court. The garnishee is advised that failure to pay the withheld amounts could result in execution of the judgment against the garnishee. When a garnishee tenders funds to the plaintiff or to the court in lieu of answering and/or prior to any judgment on answer being entered, the court is allowed to treat such tenders as answers.

Payments in superior court are made through the court clerk while payments in district court are made directly to the plaintiff.

Judgment may be taken against the defendant for the taxable costs of the writ. However, if at the time the writ was issued, the defendant was not employed by the garnishee or did not have a bank account with the garnishee or the garnishee did not have in its possession any funds or property of the defendant, then no judgment for costs will be awarded. If a defendant or third party attempts to pay off a judgment during the pendency of a garnishment, the costs and attorney fees incurred in the garnishment must also be paid. A standardized Judgment and Order to Pay form is created.

Court Levels Affected: Superior and District

OAC Comments: The court decision discussed in the background section above is *Watkins v. Peterson Enterprises, Inc.*, 137 Wn.2d 632 (1999). The bill was drafted as a response to

Watkins and creates uniform statewide procedures and forms for garnishment judgments. Section 5 of the bill differentiates between district courts and superior courts as to payment procedures.

Court Action: Review procedures. Revise any court-generated forms.

Planned OAC Action: The Pattern Forms Committee, staffed by OAC, will review the district court garnishment forms for necessary changes. (The Pattern Forms Committee does not maintain a current set of garnishment forms for superior courts.)

Bill Tracker: Rick Neidhardt

ESSB 6305a

C 124 L 00

Synopsis as Enacted

Short Title: Changing provisions relating to guardians ad litem.

Effective Date: June 8, 2000

Legislative Background: In 1996, legislation passed making improvements to guardian ad litem (GAL) programs currently in place (ESSB 6257). GALs are appointed by the court to provide information to the court to aid the court in its decision making. GALs are appointed for minors or other incapacitated persons in probate cases, child custody cases, and child dependency cases. GALs serve for a short period of time, usually the course of the lawsuit. GALs can be distinguished from guardians appointed long-term in probate cases. A statewide curriculum was established for GALs and other language was included that was designed to improve GAL accountability. A steering committee was established to review Washington State courts' GAL systems. King County Superior Court Judge George Mattson agreed to chair the steering committee, which conducted a ten-month review and issued a final report dated August 1997 that included recommended statutory changes to the GAL provisions.

A bill addressing the recommendations passed through the Senate in 1998 and died in the House (SSB 6217), and again in 1999 (ESSB 5447).

Legislative Summary: Some statutory changes recommended in the August 1997 report are adopted:

Guardians ad litem in all types of actions must report their qualifications, including any removal from a case or court registry. Superior court must remove any guardian ad litem from the registry who misrepresents his or her qualifications.

None of the provisions affect personal injury settlement guardians ad litem.

Guardians ad litem may be allocated fees by the court in a probate proceeding.

Guardians ad litem and investigators appointed in any domestic proceeding must complete training requirements.

Courts must set guardian ad litem fees, except local courts may by rule specify court fees for certain types of GALs. The intent is that fees are limited before incurred, preventing excessive fees.

Guardians ad litem must not have ex parte communications with the court which are not specifically authorized by law for purposes of ex parte motions.

Guardians ad litem in domestic cases must disclose their files to the parties pursuant to the rules of discovery, but must otherwise treat the files as confidential.

In dependency proceedings, the GAL's or CASA's report must be filed with the court and parties prior to the hearing and parties are allowed to file written responses prior to the hearing. The report must include a written list of persons interviewed and reports or documentation considered. The report must include specific information on which the GAL or CASA relied in making a particular recommendation. The court must consider responses to a GAL or CASA report.

In family law proceedings, parties are allowed to file written responses to the GAL's or investigator's report and the court must consider these responses.

Each superior court must adopt rules establishing procedures for filing, investigating and adjudicating grievances made by or against GALs.

The Department of Social and Health Services advisory group that develops model training for guardianship GALs must include representatives knowledgeable in domestic violence.

Court Levels Affected: Superior

OAC Comments: The proposal incorporates many of the recommendations of the August 1997 report of the OAC's Guardian ad Litem project, chaired by Judge George Mattson. Of significant impact is that as of June 8, only GALs and family investigators who have been trained using the OAC curriculum are eligible for appointment as a GAL or investigator. The new law interfaces with, and therefore should not affect the September 1 implementation date of the GAL court rules (published for comment in the 1/18 Advance Sheets).

Court Action:

- Ensure current GALs and parenting investigators requiring training under the OAC curriculum are aware of training opportunities for such.
- Develop policy/procedure for screening applicants for the GAL registry, incorporating information with regard to prior removal from another court's GAL registry.
- Make sure GALs are aware of new requirements with regard to prohibitions on ex-parte communication as well as report deadlines and content.

Planned OAC Action:

- Support those who are developing training opportunities, so training is available in time to make the June 8 deadline.
- Review the mentoring requirement of the curriculum, considering the possiblity of conditionally waving the requirement for certain, qualified GALs appointed prior to 1/1/98.
- Review domestic relations Benchbook and the juvenile non offender Benchbook (under development), incorporating necessary changes.
- Review/revise order for GAL appointment incorporating sections with regard to fees (hourly and total).
- Develop policies addressing training requirement for GALs appointed prior to 1/1/98 and parenting investigators.

Bill Tracker: Michael Curtis

SSB 6336

C 226 L 00

Synopsis as Enacted

Short Title: Criminal sentencing/tolling.

Effective Date: June 8, 2000

Legislative Background: Recent changes have affected the tolling of community supervision and created the concern that offenders who abscond from supervision or who are reincarcerated might be subject to less community supervision than offenders who comply with the terms of their supervision and do not reoffend. The department must now request the court to toll the term of a person on one of these release statuses who is unavailable for supervision. In 1999 the court decided *In re Sappenfield*, 980 P.2d 1271 (1999), and held that the practice of tolling legal financial obligations was not authorized by the language of the statute. These results are not consistent with the policy stated by the Sentencing Reform Act.

Legislative Summary: Terms of community supervision, community placement, and community custody must toll when the offender absents himself or herself from supervision or is confined for any reason. The entity responsible for the confinement or supervision determines the date that the term begins to toll.

The Department of Corrections (DOC) must supervise an offender required to pay legal financial obligations for ten years following the judgment and sentence or the release from confinement, whichever is longer. For offenses committed after July 1, 2000, the court retains jurisdiction over the offender for purposes of the payment of legal financial obligations until

the obligation is completely satisfied regardless of the statutory maximum sentence. DOC is not responsible for supervising offenders under the court's jurisdiction after the initial ten-year period.

Legal financial obligations may be enforced at any time during the ten years following entry of the judgment and sentence or release from confinement or at any time the offender remains under the court's jurisdiction for payment of the legal financial obligation.

A civil child support order for a child born as the result of a rape of a child, and included as a legal financial obligation,may be enforced for the longer of the civil statute of limitations, or 25 years following entry of the judgment and sentence or release from confinement, whichever is longer.

Court Levels Affected: Superior

Court Action: Courts retain jurisdiction over offenders for the purpose of enforcing legal financial obligations until the legal financial obligation is satisfied. DOC is responsible for supervising offenders for the initial ten-year period only.

Planned OAC Action: Revise Benchbooks, as necessary.

Revise Judgment and Sentence Form, as necessary.

Bill Tracker: Lynne Alfasso

SSB 6351

C 73 L 00

Synopsis as Enacted

Short Title: Providing additional authority for superior court commissioners.

Effective Date: June 8, 2000

Legislative Background: The superior court judges in any county are authorized to appoint superior court commissioners to assist in handling the work of the court. Such commissioners are able to hear probate matters, supplemental proceedings, adoptions, involuntary mental illness commitments, ex parte and uncontested civil matters, juvenile offender proceedings and enter default civil judgments. They are not now authorized to handle any phase of adult criminal cases.

Legislative Summary: The authority of superior court commissioners is expanded to allow commissioners to preside over a number of proceedings in adult criminal cases, including arraignments, preliminary appearances, probable cause determinations, appointment of counsel, review of conditions of release, waivers of speedy trial rights, continuances, and noncompliance proceedings.

Court Levels Affected: Superior

OAC Comments: This bill was requested by the Superior Court Judges' Association.

Court Action: Allow court commissioners to preside over expanded range of adult criminal matters.

For commissioners to **accept pleas** under this bill, local court rules must so authorize. Courts that wish to amend their local court rules to allow commissioners to accept pleas must file the proposed amendment with OAC on or before **July 1.** See **GR 7** for the filing requirements for proposed local court rules, including the filing of emergency rules for those courts that amend their local rules after July 1.

Planned OAC Action: None.

Bill Tracker: Lynne Alfasso

SB 6366

C 33 L 00
Synopsis as Enacted

Short Title: Prohibiting false advertising through electronic communication.

Effective Date: June 8, 2000

Legislative Background: False or misleading advertising by mail, telephone, or door-to-door contacts is a misdemeanor under state law.

Legislative Summary: False or misleading advertising by electronic communication is clarified as illegal.

Court Levels Affected: Superior and Limited Jurisdiction

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Lynne Alfasso

SSB 6375

C 74 L 00
Synopsis as Enacted

Short Title: Clarifying timelines, information sharing, and evidentiary standards in mental health competency procedures.

Effective Date: June 8, 2000

Legislative Background: In 1998 the Legislature passed 2SSB 6214 which addressed issues related to mentally ill offenders and provided a competency restoration process for misdemeanor defendants. The portions of this act relating to competency evaluation and restoration took effect in March 1999. Since their implementation, some procedures and standards have demonstrated a need for refinement. Some practitioners have also requested clarification with regard to coordination between the civil commitment and competency restoration provisions of the code.

Legislative Summary: Procedural, technical, and clarifying amendments to the competency restoration provisions are made. Prior acquittals by reason of insanity or findings of incompetence under any equivalent out-of-state or federal statute also qualify an incompetent defendant to receive competency restoration treatment.

The competency evaluator must provide an opinion as to whether the defendant should be evaluated by a county designated mental health professional under the civil commitment chapter.

The local correctional facility must inform the evaluator to which professional person the report must be submitted. If there is no professional person at the jail, the jail must designate a person or work with the Regional Support Network (RSN) to designate a professional person at the RSN to receive the report. The local correctional facility must notify the evaluator no later than the commencement of the defendant's evaluation.

The court calculates the time for restoration and the civil and criminal courts may share information for the purpose of preventing inconsistent evaluation and treatment orders.

A procedure is specified for determining whether a past conviction, guilty plea, or finding of not guilty by reason of insanity is for a violent act. The court may consider certain documentary evidence to establish the facts in these cases.

The detention for a 72-hour evaluation hold under the civil commitment statute begins on the next nonholiday weekday following the court order, does not include weekends or holidays, and continues through the end of the last nonholiday weekday in the period. The timing and procedure for a petition for civil commitment following competency evaluation and failed restoration conform to the civil commitment chapter and a civil commitment proceeding brought as a result of the competency process must be brought in the county in which the criminal charge was dismissed.

Court Levels Affected: Superior and Limited Jurisdiction

OAC Comments: The bill makes relatively minor changes to the procedures for handling mentally ill criminal defendants. Sections 1 through 5 address procedures for determining and restoring mental competency, which affect both superior and limited jurisdiction courts. Sections 6 and 7 address civil commitment procedures in superior court for mentally ill misdemeanants who have been found incompetent to stand trial.

Court Action: Review procedures.

Planned OAC Action: Revise Benchbooks as necessary.

Bill Tracker: Rick Neidhardt

SSB 6382

C 76 L 00

Synopsis as Enacted

Short Title: Protecting dependent persons.

Effective Date: June 8, 2000

Legislative Background: Recent published reports identified numerous occasions in the past several years where, without consequence to the perpetrator, an elderly or disabled person in this state was subject to abuse or neglect, sometimes over an extended period of time. Often the abuse or neglect occurred at the hands of someone paid by the state to provide these persons with care.

Blame for this, it is suggested, lies in part with existing criminal laws that fail to deter such acts, and make them difficult to prosecute when they occur. Among these are hearsay rules which limit the use of out-of-court statements to circumstances frequently not present in cases involving vulnerable adults; crimes defined in such a way that it is difficult to apply them to the circumstances in which these acts frequently occur; and sentences which do not take into account the vulnerable nature of the person against whom the crime was committed.

Legislative Summary: A new crime of criminal mistreatment in the third degree is created. This crime is committed when a person entrusted with the care of a dependent person or child, with criminal negligence creates a risk of substantial bodily harm by withholding the basic necessities of life, or with criminal negligence causes substantial bodily harm by withholding the basic necessities of life. Criminal mistreatment in the third degree is a gross misdemeanor.

It is clarified that the new crime does not apply in situations covered by the Natural Death Act.

Court Levels Affected: All levels

OAC Comments: Creates the new crime of *criminal mistreatment in the third degree*, a gross

misdemeanor, for negligently causing harm or the risk of harm to a dependent person. The crimes of first- and second- degree criminal mistreatment, which are already in the code, are both felonies.

Court Action: None.

Planned OAC Action: Update Benchbooks as necessary.

Refer to Pattern Jury Instruction Committee for review.

Add new crime to Law Table.

Bill Tracker: Lynne Alfasso

ESSB 6389

C 135 L 00

Synopsis as Enacted

Short Title: Extending juvenile court jurisdiction over dependency proceedings.

Effective Date: June 8, 2000

Legislative Background: Several years ago, the Legislature added permanent legal custody orders (third party custody) under RCW 26.10 as a permitted permanency plan under the dependency statute. This change allowed a juvenile court to approve a permanent legal custody order entered by the superior court as a permanency plan and dismiss the dependency.

Permanent legal custody orders have not been utilized as a permanent plan as often as originally anticipated because obtaining a permanent custody order presents an additional step that can be costly.

Legislative Summary: The juvenile court hearing a dependency petition has concurrent jurisdiction to hear a permanent custody petition under RCW 26.10. The parents, guardians or legal custodians, with the court's approval, must agree to the entry of the permanent custody order. Other parties to the dependency may agree to the order. The petitioner in an RCW 26.10 action who is not a party to the dependency must agree to the entry of the custody order. In addition, the order must be in the best interests of the child.

If a custody order is entered under RCW 26.10 and the dependency dismissed, the Department of Social and Health Services shall not continue to supervise the placement.

Court Levels Affected: Superior and Superior (Juvenile Division)

OAC Comments: The legislation is intended to expedite permanency for children involved in the dependency system, by authorizing concurrent jurisdiction for determining issues under Chapter 26.10 (third party custody), when a permanency plan for a dependent child provides for permanent legal custody with a non-parent.

Court Action: The legislation may require a review of the contracts with public defenders involved in dependency cases to determine their involvement in a concurrent title 26 action. Additionally, the role of dependency GALs/CASAs in title 26 actions may require revision of local policy and/or court rule.

Planned OAC Action: Review domestic relations and juvenile non-offender Benchbooks and the county clerk handbook and make necessary revisions.

Review mandatory domestic relations forms and juvenile dependency model pattern forms to determine the need for revisions.

Bill Tracker: Michael Curtis

E2SSB 6400

C 119 L 00

Synopsis as Enacted

Short Title: Changing provisions relating to domestic violence.

Effective Date: June 8, 2000
July 1, 2000 (Section 17)

Legislative Background: This bill is based on the recommendations of the Governor's Domestic Violence Action Group. It was formed to review the case of Linda David and recommend ways to improve the state's response to domestic violence.

Currently, penalties for violations of domestic violence court orders vary depending on whether the underlying case is criminal, civil, dissolution, custody or paternity. A violation of a criminal no-contact order or a domestic violence protection order is a gross misdemeanor. It is a felony if the violation involves an assault or act of reckless endangerment, or results in a third conviction for violating such an order. A violation of a restraining order issued in conjunction with a dissolution is always a simple misdemeanor. The proponents of this bill believe penalties for violating the restraint provisions of various types of orders should flow from the conduct violating the order rather than the type of order.

The Court of Appeals, Division II, recently held that a batterer who violates a prohibition in a court order against coming within a specified distance of a victim's house or other location is punishable with contempt of court. The violation however does not constitute a crime because

such a prohibition is not a "restraint provision" within the meaning of RCW 26.50.110.

Courts may issue protective orders in cases of abuse, neglect, exploitation, or abandonment of vulnerable adults; however, violations of these orders are not defined as crimes. A "vulnerable adult" is defined in statute as including a person (1) 60 years or older who has the functional, mental, or physical inability to care for himself or herself; (2) has been found incapacitated by a superior court; (3) has a developmental disability as defined in statute; (4) is admitted to any "facility" as defined in law; (5) is receiving services from home health, hospice, a licensed home care agency, or a state-funded individual provider.

Legislative Summary: The Department of Social and Health Services (DSHS) is authorized to seek orders for protection under RCW 26.50 on behalf of and with the consent of vulnerable adults. Such protection orders may prohibit a person from coming within specified distances of locations. Violation of the order is a criminal offense if the person to be restrained knows of the order.

Violations of restraint provisions of court orders related to domestic violence issued in all types of proceedings where authorized triggers arrest when a police officer has probable cause to believe an order was issued, the person restrained had knowledge of the order, and a violation has occurred. A prohibition against a person coming within a specified distance of a location is a restraint provision which, if violated, will lead to arrest. Courts are authorized to order parties not to come within specified distances of locations in the following proceedings: dissolution, paternity, nonparental actions for custody, and order for protection cases.

It is a class C felony to violate a no-contact order, a foreign protection order, or restraining order issued in a dissolution, paternity, or nonparental action for custody if the violation constituted an assault, not amounting to assault in the first or second degree, reckless endangerment, or the offender has two or more previous such convictions. A violation of a no-contact order, foreign protection order or restraining order that does not constitute a class C felony is a gross misdemeanor. Felony violations of domestic violence protection orders are assigned to a seriousness Level V.

Certificates of discharge received upon an offender's release from confinement must not terminate his or her duty to comply with a court order. Courts must also immediately notify the proper law enforcement agency any time a court order is modified or terminated. Upon receipt of an order that has been changed or terminated, the law enforcement agency must modify or remove the order from any computer-based system that is used to list outstanding warrants.

DSHS is directed to periodically evaluate domestic violence perpetrator programs previously approved for court referral to determine compliance with existing standards.

Foreign protection orders filed under RCW 26.52 and orders for protection of vulnerable adults must be entered into the domestic violence database of the Judicial Information System.

DSHS is authorized to fund nonprofit organizations with expertise in the field of domestic violence to develop and provide advocacy, education, and specialized services to underserved victims of domestic violence.

The Office of the Administrator for the Courts must revise all informational brochures relating to court orders designed to assist petitioners, to specify the use of and process for obtaining, modifying, and terminating an order.

Court Levels Affected: Superior and Limited Jurisdiction

OAC Comments: Section 17, which ranks the seriousness of felonies, does not take effect until July 1, 2000.

Court Action: None.

Planned OAC Action: Make changes to protection order forms. Discuss with the Pattern Forms Committee the need for forms for orders for protection of vulnerable adults. Work with the JIS Advisory Committees on potential cause codes for foreign protection orders and protection orders for vulnerable adults. Make changes in the statewide law table in DISCIS.

Bill Tracker: Yvonne Pettus

SSB 6467

C 229 L 00
Synopsis as Enacted

Short Title: Reversing the 1999 license fraud law.

Effective Date: March 30, 2000

Legislative Background: In 1999, the Legislature decriminalized license fraud and enacted civil penalties for intentionally licensing a vehicle in another state. Individuals who license vehicles in another state to avoid paying Washington taxes or fees are liable for a minimum monetary penalty of $1,000 and a maximum penalty of $10,000.

The Legislature also authorized the Washington State Patrol to use an administrative process to enforce the civil penalties established for license fraud. As a result of establishing this process, local law enforcement officials no longer had the authority to issue citations for license fraud.

Legislative Summary: The specific administrative process for the Washington State Patrol is eliminated. The criminal penalties for license fraud are reinstated. Intentionally registering a vehicle in another state to evade Washington taxes and fees constitutes a gross misdemeanor.

Court Levels Affected: Limited Jurisdiction

OAC Comments: Recriminalizes the license fraud violations that were decriminalized in the previous session. Fines levied for second and subsequent offenses are to be deposited in the

vehicle licensing fraud account.

Court Action: None

Planned OAC Action: Include the laws on the statewide law table in DISCIS. Ensure the vehicle licensing fraud BARS code properly distributes fines to the vehicle licensing fraud account for second and subsequent violations.

Bill Tracker: Yvonne Pettus

ESSB 6487

C 75 L 00

Synopsis as Enacted

Short Title: Providing for the release of mental health information to the Department of Corrections (under certain circumstances).

Effective Date: June 8, 2000

Legislative Background: Current law mandates cooperation between the Department of Corrections (DOC) and state mental health service providers. Part of the cooperation, with regard to the supervision of offenders in the community, is the sharing of mental health information between the departments and those responsible for assisting mentally ill offenders in the community.

Legislative Summary: The Department of Social and Health Services Mental Health Division and mental health providers are permitted to share relevant mental health records with DOC employees for whom the information is necessary to their employment duties. Information under this act may be provided only for completing pre-sentence investigations, risk assessment, supervising of incarcerated offenders, and planning for and supervising offenders in the community.

DOC may disclose mental health information to the Indeterminate Sentence Review Board, which is bound by DOC's provisions on redisclosure. DOC may disclose to state and local agencies as relevant to plan for and provide offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger presented by a particular offender. State and local agencies may redisclose the information only as permitted by chapters 70.02, 71.05, and 71.34 to the extent that the information is to counteract the danger presented by a particular offender. DOC may provide all relevant and necessary information to law enforcement agencies, on request, in a crisis or emergent situation that poses a public safety risk.

DOC may disclose mental health information to individuals as relevant and necessary for those individuals to take reasonable steps for self protection, but not to engage the public in a system

of supervising, monitoring, and reporting offender behavior to DOC. Nothing prevents a member of the public from reporting behavior believed to create a public safety risk to either DOC or law enforcement.

In sentencing hearings or any other hearings in which DOC presents mental health information, the court may close those portions of the hearing that include disclosure of mental health information to the public, seal those portions of the record, or grant other relief to prevent the inappropriate disclosure of mental health information to the public. Sealing a record under this provision does not prevent the subsequent release of the information as authorized in the act.

Court Levels Affected: Superior

Court Action: See Section 8, subsection 2 for steps courts may take to prevent public disclosure of mental health services used by criminal defendants.

Planned OAC Action: None.

Bill Tracker: Janet McLane

SB 6570

C 61 L 00
Synopsis as Enacted

Short Title: Providing additional judicial authority in truancy petitions.

Effective Date: June 8, 2000

Legislative Background: Under Washington's compulsory school attendance law, a truancy petition may be filed against a child for failing to attend school. Juvenile courts hearing truancy petitions may order a truant minor to meet court imposed obligations listed in RCW 28A.225.090.

Legislative Summary: The authority granted to juvenile courts hearing truancy petitions is broadened.

Juvenile courts may set minimum school attendance requirements, including the authority to deal with suspensions. This allows courts to treat school suspensions as unexcused absences.

Juvenile courts are granted explicit authority to order a minor, who has tested positive to drug or alcohol use, to abstain from further use of controlled substances and alcohol at no expense to the minor's school.

Court Levels Affected: Superior (Juvenile Division)

OAC Comments: With regard to suspensions, the intent of the legislation is to allow courts to treat school suspensions as unexcused absences, and thus, for youths already under the courts supervision pursuant to a truancy matter, violations of a truancy order. Some judicial officers question if a suspension can be considered unexcused since the youth is prohibited from attending the school and therefore the non attendance is not willful. In addition, there is concern with regard to the courts having a "review/oversight" role with regard to school suspension decisions and for some cases, truancy court becoming "school discipline" court.

Court Action: None.

Planned OAC Action:

- Incorporate statutory revisions into the non-offender Benchbook.
- Review pattern forms to determine any necessary changes.

Bill Tracker: Michael Curtis

E2SSB 6683

C 118 L 00

Synopsis as Enacted

Short Title: Reporting information on routine traffic enforcement.

Effective Date: March 24, 2000

Legislative Background: Concern exists about the possibility of "racial profiling" or the practice of targeting certain racial groups for traffic stops. While some local law enforcement agencies have collected some data on the issue, and the Washington State Patrol has recently begun collecting information, no comprehensive study of the problem has been done to determine whether the practice is widespread in Washington.

Legislative Summary: Beginning May 1, 2001, the Washington State Patrol must collect data on all traffic stops. The data collected includes total number of stops, reason for each stop, race or ethnicity, age, and gender of individuals stopped, whether there was a search, and whether there was an arrest or citation issued. A report on this data must be made to the Legislature by December 1, 2000.

The State Patrol must cooperate with the Washington Association of Sheriffs and Police Chiefs to develop further criteria for use and evaluation of racial profiling data and training for officers. A report must be made to the Legislature by December 1, 2000, concerning voluntary cooperation by local law enforcement agencies.

Court Levels Affected: None.

OAC Comments: Requires WSP to collect and report demographic information, information about searches conducted and outcome of traffic stops. WSP is to report to the legislature by December 1, 2000.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Doug Haake