SHB 1004

C 6 L 99 E1
Synopsis as Enacted

Short Title: Transient Sex Offenders.

Effective Date: June 7, 1999

Background: Sex offenders released from the Department of Corrections, the Juvenile Rehabilitation Administration, and the Indeterminate Sentence Review Board are classified into one of three risk levels: I (low risk), II (moderate risk), or III (high risk).

Although state law does not specify where a sex or kidnapping offender may live upon being released to the community, every adult and juvenile who has been adjudicated or convicted of a sex or kidnapping offense, or who has been found not guilty by reason of insanity of a sex or kidnapping offense, is required to register with the county sheriff for the county of the person's residence. When registering, he or she must provide the following information: name, address, date and place of birth, place of employment, crime for which convicted, date and place of conviction, aliases used, Social Security number, photograph, and fingerprints. If a person who is required to register changes his or her residence, the person must notify the county sheriff of the change of address. If the person moves to a new county, the person must, before moving, notify the sheriff in the new county, and the sheriff of the county with whom the person last registered. The person is also required to register with the sheriff of the new county within 24 hours of moving into the county.

Each year the county sheriff must attempt to verify the offender's registered address by mailing a verification form to the last registered address. The offender must sign the verification form, state on the form whether he or she still resides at the last registered address, and return the form to the county sheriff within 10 days after receipt of the form.

A person convicted of a felony sex or kidnapping offense who knowingly fails to register or who moves without notifying the county sheriff is guilty of a class C felony.

In May 1999, the Court of Appeals held in *State v. Pickett* that a homeless offender could not be convicted of failure to register because the registration statute does not provide a way of registering for individuals who have no permanent place of residence.

Summary: A sex or kidnapping offender who is required to register but who does not have a fixed residence must report in person to the county sheriff and, instead of an address, provide information about where he or she plans to stay. Those sex and kidnapping offenders classified as risk level I must report monthly to the county sheriff. Risk level II and III sex and kidnapping offenders must report weekly.

A sex or kidnapping offender who ceases to have a fixed residence must also notify the sheriff of the county where he or she last registered within 14 days after ceasing to have a fixed residence and provide all of the otherwise required information except a photograph and fingerprints (unless the sheriff, for reasonable cause, requires the photograph and fingerprints). If the person intends to reside in another county, the sheriff must forward the information to the sheriff of the new county. An offender, who lacks a fixed residence, leaves the county in which he or she is registered, and enters and remains in a new county for 24 hours must, within those 24 hours, register with the new county sheriff and provide

all of the required information.

The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

Court Levels Affected: Superior.

Comments: This legislation is intended to respond to the Court of Appeal's recent decision in *State v. Pickett*, in which the court held that an offender who was homeless, and did not have a residence address to register, could not be convicted of a crime for his failure to register.

The new law requires homeless sex offenders to report to the sheriff of the county in which the offender is physically present. The offender must report either monthly (Level I) or weekly (Level II and III.) Also requires an offender who previously had a fixed residence and was registered to report to that sheriff that he/she no longer has a fixed residence.

Court Action: None.

Planned OAC Action: Refer to Pattern Forms Committee for review of Paragraph 5.7 in the Judgment & Sentence Form for possible revision.

Amend Benchbooks, as necessary.

Bill Tracker: Lynne Alfasso

E2SHB 1006a

C 197 L 99
Partial Veto

Short Title: Revising sentencing options for drug and alcohol offenders.

Effective Date: July 25, 1999

Partial Veto Summary: The Governor vetoed section eight of the final bill, which allowed Superior and District courts to establish drug court programs. In his veto message, the Governor said he thought the section was not necessary and violated the separation of powers doctrine, and was also poorly worded in several respects. *(Please see Governor Locke's Partial Veto Letter following this bill report).*

Background: The Department of Corrections reports that 80 percent of offenders that are sentenced are arrested for a drug offense or a crime that is a result of a chemical dependency. These offenders are usually sentenced to a term of confinement in jail, prison, the Drug Offender Sentencing Alternative, or the Work Ethic Camp. Most offenders, however, cannot be forced to participate in chemical dependency rehabilitation programs as part of their sentence.

Community Supervision. "Community supervision" is a technical term in the Sentencing Reform Act that includes up to one year in the county jail and one year of supervision in the community. The courts may often subject an offender to limited crime-related prohibitions. Violations of community

supervision conditions may result in up to 60 days in jail. Courts usually do not impose affirmative conditions (such as drug treatment) on an offender sentenced to community supervision.

Affirmative Conditions. Sentencing conditions known as crime-related prohibitions are commonly imposed by courts on offenders who are placed on community supervision, community placement, partial confinement, or the sex offender sentencing alternative. These conditions prohibit conduct that directly relates to the circumstances of the crime for which the offender was convicted, such as requiring a drug offender to not unlawfully possess or use controlled substances.

However, crime-related prohibitions ordered by the court cannot direct an offender to affirmatively participate in rehabilitative programs, otherwise known as performing affirmative conditions. An exemption is made for trial courts that are authorized to impose affirmative acts as conditions in specified circumstances, such as for sex offenders, who can be ordered to participate in crime-related treatment or counseling.

Pre-sentence Reports. Before imposing a sentence upon an offender the courts usually conduct a pre-sentence hearing. At that time, courts may order the Department of Corrections (DOC) to complete a pre-sentence report to assist the trial court in sentencing an offender after he or she has been convicted. A pre-sentence report usually includes an offender's prior convictions, prior arrests, employment history, education history, and family and social background.

Drug Offender Sentencing Alternative. The Drug Offender Sentencing Alternative (DOSA) allows a court to waive imposition of a drug offender's sentence within the standard sentencing range. As an alternative, 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.

In addition, the court must also impose one year of concurrent community custody and community supervision, which must include outpatient substance treatment and crime-related prohibitions. Courts usually do not impose other conditions, such as affirmative conditions, as part of the offender's sentence.

A first-time offender convicted of a drug offense may be eligible for the DOSA program if the current offense only involved a small quantity of drugs as determined by the court. An offender is prohibited from participating in this program if the offender has any prior convictions for a sex or violent felony offense.

If an offender violates any of the DOSA sentencing conditions, the DOC may impose sanctions administratively and the court must hold any violation hearings and subsequent sanctions.

An offender with a deportation order or detainer is eligible for the DOSA program.

Work Ethic Camp. The Work Ethic Camp (WEC) is an alternative sentencing program that consists of at least 120 days and no more than 180 days of confinement, including a two-week period of transition training. This program allows a successful offender completing the program to convert the period of the WEC confinement at the rate of one day of the WEC confinement to three days of total standard confinement.

Although drug offenders, after special review of their circumstances, are eligible for the WEC, an

offender with prior convictions for any sex offenses or violent offenses is not eligible to participate in this particular program. An offender participating in a WEC must be referred by the court and have received a sentencing term of total confinement ranging from a minimum of 16 months to a maximum of 36 months.

Some offenders are eligible for both the DOSA program and the WEC. Alien offenders may also participate in WEC.

County Supervised Community Option. Alternatives to total confinement are available for offenders with sentences of one year or less. One day of partial confinement may be substituted for one day of total confinement. In addition, for offenders convicted of nonviolent offenses only, eight hours of community service may be substituted for one day of total confinement, with a maximum conversion limit of 240 hours or 30 days. Community service hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed 24 months, pursuant to a schedule determined by the department.

Drug Courts. Drug courts are federally funded programs that remove drug offenders from standard criminal procedures and require them to participate in treatment. There are currently drug courts in several counties, including King, Pierce, Spokane, and Thurston counties.

Drug courts diverge from traditional courts by diverting non-violent drug criminals into court-ordered treatment programs rather than prison. The program allows people arrested for drug possession to choose an intensive, heavily supervised rehabilitation program in lieu of incarceration. In drug court, defendants agree to the facts of their arrest, then are required to participate in drug treatment, counseling, find work, meet with parole officers, attend weekly visits with a judge, and meet conditions set by a judge.

If a defendant completes the program, the charges may be dropped. If a defendant fails, he or she may ultimately be sentenced at the top of the sentencing range and be jailed, but the courts typically give drug defendants more than one chance to reform.

With the incentive of keeping an offender's record clear of drug charges, the court pushes people with substance abuse problems into a year-long program of frequent drug tests and counseling.

The aim of the court is to encourage drug offenders into a productive, drug-free lifestyle.

Summary: The eligibility for chemical dependency rehabilitative programs operated by the courts, local jurisdictions, and the Department of Corrections is expanded to allow the placement of more offenders into treatment. In addition, the Sentencing Guidelines Commission, in conjunction with the Washington State Institute for Public Policy, is directed to conduct a five-year study on the effect of the changes of the drug sentencing laws.

Community Supervision. The courts are authorized to order an offender, under a term of community supervision, to participate in drug or alcohol treatment if his or her crime is a result of a chemical dependency.

Affirmative Conditions. The courts are authorized, subject to available resources, to require an offender, found to have a chemical dependency, which has contributed to his or her crime, to perform affirmative acts. The affirmative acts may include requiring the offender to participate in

rehabilitative programs or take drug or polygraph tests as a condition of his or her sentence.

Pre-sentence Reports. Unless waived by the courts, the courts are required to order the Department of Corrections to perform a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a controlled substance offense or where the court finds the offender has a chemical dependency which has contributed to his or her crime.

Drug Offender Sentencing Alternative. The Drug Offender Sentencing Alternative (DOSA) authorizes a judge to waive imposition of an offender's sentence within the standard range.

The offender must spend the remainder of the midpoint of the standard sentencing range in community custody (instead of both community custody and community supervision) following incarceration which must also include some type of alcohol and substance abuse treatment that has been approved by the Division of Alcohol and Substance Abuse. Courts may impose crime-related prohibitions, as well as affirmative conditions, as part of the offender's sentence.

An offender convicted of solicitation of a drug offense or a violation of the Uniform Controlled Substance Act may be eligible for the DOSA program if the current offense only involved a small quantity of drugs as determined by the court. An offender is prohibited from participating in this program if the offender has any prior or current convictions for sex or violent felony offenses.

The DOC is required to develop criteria for an offender's successful completion of the DOSA program by December 31, 1999. 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 offender is found guilty then he or she will be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender will be subject to all rules relating to earned early release time.

Alien offenders are ineligible for the DOSA program if they are subject to a deportation detainer or order.

Work Ethic Camp. Offenders convicted of solicitation of a drug offense or with a current violation of the Uniform Controlled Substance Act (a drug offense) are ineligible for the Work Ethic Camp (WEC). The 3:1 (three days of total confinement equals one day of the WEC) conversion is eliminated; however, the sentencing range is expanded to allow offenders to participate in the WEC if they have been referred by the court and have received a sentencing term of total confinement ranging from a minimum of 12 months and one day to a maximum of 36 months.

Offenders who are eligible for the DOSA program are ineligible for the WEC. The DOC is authorized to remove an offender if the offender has a deportation detainer or order; or if the offender has participated in the WEC in the past.

County Supervised Community Option. A local county-supervised option is created for community custody whereby jails may place nonviolent/nonsex offenders into alternative placements augmented by affirmative conditions.

Drug Courts. Counties are authorized to establish drug courts. The term "drug court" is defined as a court that has special calendars or dockets designed to achieve a reduction in recidivism and

substance abuse among nonviolent, substance abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

Counties are required to fully exhaust all available federal drug court funding from the Office of National Drug Control Policy before seeking state funds for its county operated drug court program. Counties are required to make a dollar-for-dollar match before seeking state funds for drug court programs.

In addition, if funding is not provided in the 1999-01 omnibus appropriations act for the provisions relating to drug courts, those provisions are null and void.

Court Levels Affected: Superior.

Comments: The bill gives courts more options at sentencing time. Offenders under a term of community supervision may be ordered to participate in drug or alcohol treatment if their crime is a result of a chemical dependency.

Courts also have the power to place affirmative conditions on other offenders if a chemical dependency has contributed to their crime. Offenders may be ordered into treatment, and also be subject to other conditions as well, such as the requirement to take drug/alcohol tests and polygraph tests.

The original bill had a section that appropriated four million dollars to the DSHS to fund alcohol and drug treatment programs. This section was taken out of the final bill before it was passed by the legislature.

Unless specifically waived by the court, the court must order a chemical dependency screening report prior to sentencing for certain categories of defendants.

This bill broadens eligibility for DOSA. However, offenders who are subject to deportation are no longer eligible for DOSA.

This bill modifies eligibility for Work Ethic Camp.

The DOC rather than the courts must hold hearings on alleged violations of DOSA sentencing conditions.

Court Action: Become familiar with new sentencing rules. Local courts should work with their community corrections officer to determine implementation of chemical dependency screening report.

Planned OAC Action: Refer to Pattern Forms Committee for possible revisions to the Judgment and Sentence forms.

Revise Criminal Benchbooks, as necessary.

Bill Tracker: Lynne Alfasso

VETO MESSAGE ON HB 1006-S2

May 7, 1999

To the Honorable Speaker and Members,
The House of Representatives of the State of Washington

Ladies and Gentlemen:

I am returning herewith, without my approval as to section 8, Engrossed Second Substitute House Bill No. 1006 entitled: "AN ACT Relating to sentencing for crimes involving drugs or alcohol;"

Section 8 of E2SHB 1006 would authorize District and Superior Courts to establish drug court programs for "offenders that have been diverted by the courts from the normal course of prosecution for drug offenses." This section is not necessary to the operation of the bill, and violates the separation of powers doctrine. The courts, as a separate branch of government, already have authority to establish programs like these, and are in fact now operating them in several counties. Additionally, including District Courts in this section could imply that the state would fund drug court programs established by those courts. Funding of District Court programs has not been specifically discussed in the legislature. Finally, the reference in section 8 to "drug offenders" could imply that state funding cannot be provided to programs serving drug-addicted nonviolent property offenders, as some now do.

For these reasons, I have vetoed section 8 of Engrossed Second Substitute House Bill No. 1006.

With the exception of section 8, Engrossed Second Substitute House Bill No. 1006 is approved.

Respectfully submitted,

Gary Locke
Governor

HB 1011

C 27 L 99
Synopsis as Enacted

Short Title: Clarifying that electronic communications are included in the crimes of harassment and stalking.

Effective Date: July 25, 1999

Background: A person who is harassed by another may obtain relief by bringing criminal charges, or obtaining a civil antiharassment protection order, against the person doing the harassing.

(1) Criminal Sanctions. There are two crimes that deal directly with harassment: criminal harassment and criminal stalking.

· Criminal Harassment. A person is guilty of criminal harassment if he or she threatens to harm another person and "words or conduct," places the threatened person in reasonable fear that the threat will be carried out.

· Criminal Stalking. A person is guilty of criminal stalking if he or she repeatedly harasses or follows another person and places that person in reasonable fear of harm. To be guilty of stalking, the stalker must intend to place the person in fear of harm. An attempt to "contact" the person after being given actual notice that the person does not want to be contacted constitutes *prima facie* evidence that the stalker intends to place the person in reasonable fear of harm.

(2) Antiharassment Protection Orders. A person being harassed by another may petition a court for an antiharassment protection order. The court must grant the petition if it finds that unlawful harassment exists. Unlawful harassment means a "course of conduct" aimed at a person which alarms, annoys, harasses, or is detrimental to that person and serves no other lawful purpose. "Course of conduct" means a pattern of conduct evidencing a continuity of purpose. "Course of conduct" does not include any constitutionally protected activity.

Summary:
(1) Criminal Sanctions.

· Criminal Harassment. "Words or conduct" that place the person in reasonable fear that the threat will be carried out include, in addition to any other form of communication or conduct, the sending of an electronic communication.

· Criminal Stalking. "Contact," after the stalker is given notice that the person being stalked does not want to be contacted includes, in addition to any other form of contact or communication, the sending of an electronic communication.

(2) Antiharassment Protection Orders. "Course of conduct" for purposes of defining "unlawful harassment" includes, in addition to any other form of contact or communication, the sending of an electronic communication.

Court Levels Affected: All.

Comments: This bill clarifies that electronic communications are included in the crimes of harassment and stalking, and that electronic communications are included in the definition of "unlawful harassment" for purposes of obtaining a civil protective order.

Court Action: None.

Planned OAC Action: The Domestic Violence Manual for Judges is published by the Washington State Gender and Justice Commission. The Commission may wish to include an explanation of the bill's provisions in its next revision of the Manual.

Refer to Pattern Forms Committee to determine whether page 2 of the pattern form "Petition for an Order for Protection (Unlawful Harassment)" should be revised, because it sets forth the statutory definition of "unlawful harassment," which has been amended by the passage of this bill.

Refer to Committee on Jury Instructions to determine whether expanded definitions should be included in harassment and stalking jury instructions.

Bill Tracker: Lynne Alfasso

EHB 1067

C 141 L 99
Synopsis as Enacted

Short Title: Amending statutory double jeopardy provisions.

Effective Date: July 25, 1999

Background: Under the double jeopardy clauses of the federal and state constitutions, it is unconstitutional for a person to be tried twice for the same crime by the same sovereign. However, there is no constitutional prohibition against successive prosecutions for the same crime by different sovereigns. For example, a Washington court could constitutionally prosecute a defendant who has already been prosecuted for the same crime in another state or in a military tribunal. This is known as the doctrine of dual sovereignty.

Many states, including Washington, statutorily override the doctrine of dual sovereignty. In Washington, double jeopardy protections apply to a defendant who has already been criminally prosecuted for the same offense by another sovereign. The Washington Supreme Court has ruled that this includes a person who has been subject to nonjudicial punishment under the Uniform Code of Military Justice.

Summary: Double jeopardy protections do *not* apply to a defendant who has received administrative or nonjudicial punishment, civilian or military, for the same offense from another sovereign. Double jeopardy protections continue to apply to a defendant who has already been prosecuted for the same offense in judicial proceedings conducted under the criminal laws of another sovereign.

Court Levels Affected: Superior and Limited Jurisdiction.

Comments: The impetus for this bill was a recent decision of the Washington Supreme Court, in which the Court held that double jeopardy protection applied to an offender who had been subject to

nonjudicial punishment under the Uniform Code of Military Justice.

Under the new law, double jeopardy protection applies only to a defendant who has already been prosecuted for the same offense in *judicial proceedings* conducted under the *criminal laws* of another sovereign.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Lynne Alfasso

SHB 1124

C 5 L 99
Synopsis as Enacted

Short Title: Correcting DUI penalty provisions.

Effective Date: March 16, 1999

Background: As part of extensive amendments to the state's drunk driving laws in 1998, the Legislature greatly expanded the use of electronic home monitoring in DUI sentences. All DUI offenders are now explicitly subject to electronic monitoring. Electronic home monitoring may include an alcohol detection breathalyzer test to which the offender is periodically required to submit. The offender must pay for the monitoring. In some instances the monitoring is mandatory.

For first-time offenders, electronic monitoring may be given in lieu of what is otherwise mandatory jail time. This means that for first-time offenders, either a prescribed minimum jail sentence or a prescribed minimum monitoring sentence must be given. For a first-time offender with an alcohol concentration (BAC) below 0.15 percent, not less than 15 days of electronic monitoring may be given in lieu of an otherwise mandatory one day in jail. In the case of a first-time offender with a BAC of 0.15 or more, not less than 30 days may be given in lieu of an otherwise mandatory two days in jail.

For repeat offenders, electronic monitoring must be given in addition to mandatory jail time. This means that for repeat offenders, a prescribed minimum sentence of both jail and monitoring must be given. For these repeat offenders, the prescribed minimum sentence ranges from 60 to 150 days, depending on the offenders' histories and BAC levels.

Electronic home monitoring is not considered "confinement." Under the Sentencing Reform Act (SRA), confinement includes "home detention . . . for a substantial portion of the day with the balance of the day spent in the community." The state is responsible for the cost of incarcerating offenders who are sentenced to more than one year of incarceration.

Some local jurisdictions have expressed concern that the requirements for mandatory electronic home detention may prove ineffective or impractical if, for instance, the offender lacks a dwelling or a phone line which are necessary for home monitoring. Some concern has also been expressed that exempting electronic home monitoring from the SRA definition of detention makes administration of

the program difficult.

Summary: Courts may waive otherwise mandatory electronic home monitoring in DUI cases if:

- The offender has no dwelling, phone, or other necessity for monitoring;
- The offender resides outside the state;
- There is reason to believe the offender will violate the terms of the monitoring.

Whenever a court waives the mandatory monitoring, it must give its reasons and must impose an alternative sentence with similar punitive consequences. Alternatives include, but are not limited to, more jail time, work crew, or work camp.

The statement that electronic monitoring is not "confinement" is removed.

If the total of jail time and electronic monitoring (or an alternative to monitoring) would exceed one year, the jail time is to be served first and the monitoring (or alternative) is to be reduced so that the combination does not exceed one year.

Court Levels Affected: Superior and Limited Jurisdiction.

Court Action: Court must give reasons in writing if it waives the electronic home-monitoring requirement.

Planned OAC Action: None.

Bill Tracker: Bill Fosbre

ESHB 1131a

C 327 L 99
Synopsis as Enacted

Short Title: Impounding cars used to patronize prostitutes.

Effective Date: July 25, 1999

Background: A law enforcement officer may impound a vehicle under a variety of circumstances, such as when the vehicle is unattended on a highway and is obstructing traffic, when the officer arrests the driver, or when a person is driving the vehicle without a valid driver's license. Courts interpreting this statute have ruled that the authority granted is a discretionary authority to impound and that the statute does not authorize impoundment unless impoundment is reasonable under the circumstances.

A person whose vehicle has been impounded may redeem the vehicle by paying the costs of towing and storage. The person may request a hearing in court to contest the validity of the impoundment.

If the impoundment is determined to be invalid, the person or agency that authorized the impoundment is liable for towing and impoundment costs and reasonable damages for loss of use of the vehicle.

A person is guilty of patronizing a prostitute if he or she: (1) pays a fee, under a prior understanding, as compensation for another person having engaged in sexual conduct with him or her; (2) pays a fee to another person with the understanding that the person will engage in sexual conduct; or (3) solicits another person to engage in sexual conduct in exchange for a fee. A person is guilty of patronizing a juvenile prostitute if that person engages in, or offers or agrees to engage in, sexual conduct with a minor in return for a fee. It is a misdemeanor offense for a person to patronize a prostitute and a class C felony for a person to patronize a juvenile prostitute.

Summary: The Legislature finds that many patrons of prostitutes use motor vehicles to obtain the services of prostitutes. The Legislature intends to decrease prostitution and eliminate traffic congestion caused by patrons cruising in cars in areas of high prostitution.

A person convicted of patronizing a prostitute or juvenile prostitute under state law is required, as part of the person's sentence, to remain outside the geographical area in which the person was arrested. The requirement may be waived if it interferes with the person's employment, residence, or is otherwise infeasible. In addition, the court must impose a sentencing condition that the person not be subsequently arrested for patronizing a prostitute or juvenile prostitute. These requirements also apply when a person receives a deferred sentence or deferred prosecution for patronizing a prostitute or juvenile prostitute.

When a police officer arrests a person suspected of patronizing a prostitute or juvenile prostitute, the officer may impound the patron's vehicle if: (1) the vehicle was used in the commission of the crime; (2) the vehicle is owned by the person arrested; and (3) the person arrested has previously been convicted of patronizing a prostitute or juvenile prostitute under state law.

Impoundments must be performed in accordance with current law regarding towing and impoundment.

Court Levels Affected: Superior and Limited Jurisdiction.

Comments: (1) When sentencing or imposing conditions on a person convicted of, or receiving a deferred sentence or deferred prosecution for, violating RCW 9A.88.110 or 9.68A.100, the court must impose a requirement that the offender:

(a) Not be subsequently arrested for patronizing a prostitute or patronizing a juvenile prostitute; and (b) Remain outside the geographical area, prescribed by the court, in which the person was arrested for violating RCW 9A.88.110 or9.68A.100, unless such a requirement would interfere with the person's legitimate employment or residence or otherwise be infeasible. (2) This requirement is in addition to the penalties set forth in RCW 9A.88.110, 9A.88.120, and 9.68A.100.

Upon an arrest for a suspected violation of patronizing a prostitute or patronizing a juvenile prostitute, the arresting law enforcement officer may impound the person's vehicle if (a) the motor vehicle was used in the commission of the crime; (b) the person arrested is the owner of the vehicle; and (c) the person arrested has previously been convicted of patronizing a prostitute, under RCW 9A.88.110, or patronizing a juvenile prostitute, under RCW 9.68A.100.

Court Action: The impound and redemption procedures are the same as required in Title 46.55.

Planned OAC Action: None.

Bill Tracker: Bill Fosbre

HB 1139

C 32 L 99
Synopsis as Enacted

Short Title: Removing a director of a nonprofit corporation from office.

Effective Date: July 25, 1999

Background: A nonprofit corporation is a corporation that does not have or issue shares of stock and that cannot distribute any part of the corporation's income to its members, directors, or officers. Nonprofit corporations may sue and be sued, make contracts, elect or appoint officers and agents, and generally do that which is necessary to lawfully conduct its business.

The corporation's board of directors manages the affairs of the corporation. A director has the duty to perform his or her functions in good faith, in a manner he or she believes to be in the best interests of the corporation, and with the care that a reasonable person in that position would use.

The corporation's bylaws or articles of incorporation may establish how many directors the corporation has and in what manner the directors are elected or appointed.

The bylaws or articles of incorporation may also contain procedures for removing directors. Under the statutes governing nonprofit corporations, a director may be removed, with or without cause, by two-thirds of the votes cast by the members having voting rights with regard to the election of a director.

The statutes governing corporations for profit allow a court to remove a director in a proceeding commenced by the corporation or its shareholders when the director has engaged in fraudulent or dishonest conduct regarding the corporation and the removal is in the best interest of the corporation. The statutes governing nonprofit corporations do not contain such a provision allowing for the judicial removal of a director.

Summary: A superior court may remove a director of a nonprofit corporation in a proceeding commenced by the corporation when the court finds that the director engaged in fraudulent or dishonest conduct regarding the corporation and removal is in the best interest of the corporation. The court may bar the director from reelection for specified periods.

Court Levels Affected: Superior.

Comments: The superior court procedures created in this bill likely will not be used very often. Nonprofit corporations already have other, non-judicial procedures for removing directors.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Rick Neidhardt

HB 1142

C 143 L 99
Synopsis as Enacted

Short Title: Making technical corrections to various criminal laws.

Effective Date: July 25, 1999

Background: Technical errors may develop in the statutes for a variety of reasons. Many of these errors are the result of successive amendments to the same section of law over several years. Some are the result of simple drafting errors. Others are caused by a failure to find and amend every statute that contains a reference to another statute, when the repeal or amendment of one of the statutes makes the reference incorrect.

The Code Reviser's office, under the direction of the Statute Law Committee, is authorized to correct certain "manifest errors" in the statutes. These errors may include such things as mistakes in spelling or obvious clerical or typographical errors.

The Code Reviser is also authorized to recommend to the Legislature changes regarding statutory deficiencies, conflicts and obsolescence, and regarding the need for reorganization in the statutes.

Summary: Various statutes relating to criminal law are revised to correct technical defects. These defects include such things as:

- statutes that contain cross-references to other statutes that have been repealed;
- statutes that contain incorrect cross-references to subsections that have been renumbered by amendments to the referred-to statute;
- statutes that refer to entities, such as agencies or accounts, that no longer exist or have had name changes as the result of amendments to other statutes;
- statutes that by their own terms expired as of a date that has already passed; and
- statutes that have long definition sections in which the terms defined are not in alphabetical order.

Court Levels Affected: All.

Comments: Corrections to 52 sections of the criminal code recommended by the Code Reviser, to correct obsolete references and other technical defects in the statutes. These corrections are not intended to cause any substantive changes in the law.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Lynne Alfasso

SHB 1153

C 198 L 99
Synopsis as Enacted

Short Title: School Safety Information.

Effective Date: July 25, 1999

Background: When a juvenile who has committed a sex, violent, or stalking offense will be released, paroled, or transferred to a community residential facility (group home), the Department of Social and Health Services must notify the private schools and the public school board in the district in which the offender intends to reside or the district in which the offender last attended school, as appropriate. This notification requirement was expanded in 1997 to require the department to notify schools when an offender under the jurisdiction of the department for any offense will be transferred to a community residential facility.

The juvenile court administrator must notify the school principal if an elementary or secondary school student is convicted of any of the following offenses: violent or sex offenses, inhaling toxic fumes, violations of the controlled substances provisions, liquor violations, or offenses relating to kidnapping, harassment, or arson. The principal must provide the criminal history information to the student's teachers, supervisors, and other personnel who need to know for security reasons. Otherwise, the information is confidential except when it may be disseminated pursuant to a statute or federal law.

When a student transfers to another school, the records of immunization, academic performance, disciplinary actions, and attendance follow the student to the new school. When a student switches school districts, the new school may ask the parent and student to provide certain information about the student, including information about disciplinary actions and any history of violent or sex offenses, violations of the controlled substances provisions, liquor violations, or offenses relating to inhaling toxic fumes, kidnapping, harassment, or arson. School districts may reject a nonresident student applicant if the student's history indicates a history of violent or disruptive behavior or gang membership.

Except for official juvenile court files, most records regarding juvenile offenses are confidential. Records of juvenile justice or care agencies, which include schools, may be released to other participants in the juvenile justice system when the participant is involved in the investigation or when the participant is responsible for supervising the juvenile.

Summary: The Department of Social and Health Services must notify the private schools and the public school board in the district in which the juvenile offender intends to reside or the district in which the offender last attended school, as appropriate, whenever an offender under the jurisdiction of the department for any offense will be released, paroled, or granted leave. The community residential facility housing a juvenile offender must provide a written notice to any school that the juvenile is attending while residing at the facility describing the juvenile's criminal history. This notice must also be provided to any employer while the juvenile is residing at the community residential facility.

In addition to the current information that follows a student to a new school, information from the previous school must be provided on any offenses relating to violent or sex offenses, violations of the

controlled substances provisions, liquor violations, or offenses relating to inhaling toxic fumes, kidnapping, harassment, or arson. School districts may reject a nonresident student applicant if, in addition to reasons under current law, the juvenile has committed crimes or offenses. Teachers and security personnel must be informed when the school receives information that a student poses a safety risk.

Law enforcement officials and prosecuting attorneys are authorized to share information regarding the arrest of a student with the school, including information on the investigation, prosecution, or diversion of the student. Information should be released to the maximum extent possible without jeopardizing the investigation or prosecution, or endangering witnesses.

Court Levels Affected: For information only, no real substantive impact on the courts.

Comments: The legislation addresses the provision of juvenile offense information by JRA to schools, by school district to another school district, by schools to school teachers and security personnel and, by law enforcement and prosecuting attorneys to schools.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Mike Curtis

SHB 1181

C 147 L 99
Synopsis as Enacted

Short Title: Domestic Violence Perpetrators.

Effective Date: July 25, 1999

Background: Domestic violence laws provide civil and criminal remedies to victims of domestic violence. A person commits a domestic violence crime if the person commits one of several specified crimes against a family or household member. Examples include assault, rape, stalking, malicious mischief, and criminal trespass. In the civil context, a person who is a victim of domestic violence may petition the court for a domestic violence protection order or, in domestic relations actions, for a restraining order.

Civil Protection Orders. In response to a petition for a protection order, the court may order a variety of relief, such as excluding the respondent from the residence the parties share, restraining the respondent from having any contact with the victim of the domestic violence or the victim's children, and ordering the respondent to participate in batterers' treatment.

Domestic Violence Perpetrator Treatment Programs. The Department of Social and Health Services is required to have standards for the approval of domestic violence perpetrator treatment programs that accept perpetrators of domestic violence into treatment to satisfy court orders. Programs must meet certain minimum qualifications to be approved.

Community Supervision. Community supervision is a period of time during which a convicted offender is subject to crime-related prohibitions (i.e., orders prohibiting conduct that directly relates to the circumstance of the crime for which the offender has been convicted) and other sentence conditions imposed by the court. Crime-related prohibitions do not include orders directing the offender to participate in rehabilitative programs. However, if the offender receives a first-time offender waiver, up to two years of community supervision may be ordered, which may include requirements that the offender undergo available outpatient or inpatient treatment.

Summary: Civil Protection Orders. When the court orders a respondent to participate in batterers' treatment in response to a petition for a protection order, it is clarified that this means a domestic violence perpetrator treatment program that has been approved by the Department of Social and Health Services.

Domestic Violence Perpetrator Treatment Programs. The department's standards for approval of domestic violence perpetrator treatment programs must include a requirement that treatment will include education regarding the effects of domestic violence on children if the perpetrator or the victim has a minor child.

Community Supervision. If either the offender or the victim of the domestic violence crime has a minor child, the court may order the offender to participate in an approved domestic violence perpetrator treatment program as part of any term of community supervision ordered.

Court Levels Affected: Superior and Limited Jurisdiction.

Court Action: None.

Planned OAC Action: Revise OAC publications: (Family Law Benchbook, DV Manual for Judges, and the CLJ Civil Benchbook).

Bill Tracker: Mike Curtis

HB 1199

C 170 L 99
Synopsis as Enacted

Short Title: Antiharassment Actions/Jurisdiction.

Effective Date: July 25, 1999

Background: A victim of unlawful harassment (the petitioner) may petition a court for a civil antiharassment protection order against the person doing the harassing (the respondent). If the court finds that unlawful harassment exists by a preponderance of the evidence, it must grant an order to the petitioner prohibiting the respondent from engaging in such harassment.

The district courts have jurisdiction over civil actions and proceedings relating to civil antiharassment protection orders. A superior court also has jurisdiction over such matters if a district court finds that meritorious reasons exist to transfer the case to the superior court.

Summary: A district court must transfer an action and/or proceedings relating to a civil antiharassment protection order to the superior court when the respondent is under 18 years of age.

Court Levels Affected: Superior and District.

Comments: A district court must transfer an action or proceeding relating to a civil antiharassment protection order to the superior court when the respondent is under 18 years of age.

Court Action: The appropriate procedures for transferring such pleadings from district to superior court must be determined.

Planned OAC Action: Revise OAC publications.

Bill Tracker: Bill Fosbre

EHB1232

C 296 L 99
Synopsis as Enacted

Short Title: Changing provisions relating to judgments.

Effective Date: July 25, 1999

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.

Judgments may also affect specific kinds of property, such as real property or motor vehicles. There are specific laws relating to these kinds of property that may require action based on a judgment. In particular:

- Any legal instrument affecting the ownership of real property may be recorded with the county auditor. The instrument must include an "abbreviated legal description" of the property and the assessor's tax parcel number.

- Under the state's motor vehicle financial responsibility law, when a driver is subject to a judgment for damages as the result of an accident he or she caused, the Department of Licensing is to be notified if the driver fails to pay the damages. Notice must be given when the driver is 30 days late in satisfying the judgment.

The inclusion of specific information in summaries of judgments involving real property or motor vehicles could facilitate compliance with the real estate recording law and the motor vehicle financial responsibility law.

Summary: The requirements for a summary page of a judgment are expanded as follows:

- If the judgment involves an award of any interest in real property, the summary page must include an abbreviated legal description of the property and the assessor's tax parcel number.

- If the judgment involves damages from a motor vehicle accident, the summary page must include a clear statement that the clerk is to notify the Department of Licensing as required by the financial responsibility law.

Court Levels Affected: Superior and Limited Jurisdiction.

Court Action: Review procedures. Judges and court staff will need to review the judgments submitted by the attorneys for compliance with these new requirements.

Planned OAC Action: Update Benchbooks.

Bill Tracker: Rick Neidhardt

EHB 1263

C 152 L 99
Synopsis as Enacted

Short Title: Regulating process and fees of district and municipal courts.

Effective Date: July 25, 1999

Background: All district and municipal courts are required to have a "seal." The design of the seal is prescribed by statute, and the seal must be stamped on "all process" issued by the court. "Process" is undefined in the statute, but has been interpreted in practice to cover virtually any document issued by a court. Such "process" may include not only subpoenas, summons, orders and judgments, but also receipts, traffic infraction notices sent to the Department of Licensing, and other relatively routine paperwork. Court rules (for instance, regarding the subpoena of witnesses) and federal law (for instance, regarding legal change of a person's name) requires that some documents be issued "under seal." However, it has been questioned whether stamping seals on virtually every document issued by a court is necessary or efficient.

The statutes covering district courts, including municipal departments of district courts, and the statutes covering separate municipal courts in cities of more than 400,000 population, both contain express statements that the process issued by these courts is good statewide. However, the statute covering separate municipal courts in cities of 400,000 or less does not explicitly say that process from those courts "runs throughout the state."

Summary: The requirement that all process issued by district and municipal courts be under seal is removed. The Supreme Court may determine by rule which documents of the courts must be stamped with a seal.

A statement is added to the statute covering legal process issued by municipal courts in cities of 400,000 or less population indicating that such process runs throughout the state.

Court Levels Affected: Limited Jurisdiction.

Comments: The requirement that all process issued by district and municipal courts be under seal is removed. The Supreme Court may determine by rule, which documents of the courts must be stamped with a seal. A statement is added to the statute covering legal process issued by municipal courts in cities of 400,000 or less population indicating that such process runs throughout the state.

Court Action: None.

Planned OAC Action: Work with District and Municipal Court Judges Association (DMCJA) Rules Committee to recommend a definition of "process."

Bill Tracker: Bill Fosbre

ESHB 1407a

C 173 L 99
Synopsis as Enacted

Short Title: Changing adoption provisions.

Effective Date: July 25, 1999

Background: In an adoption, the legal parent-child relationship is created between persons who do not have a biological parent-client relationship related. Any person may be adopted, although a child 14 years of age or older must consent to an adoption. Any person who is legally competent and 18 years of age or older may become an adoptive parent. In all adoption matters, the best interests of the child are paramount.

Before an adoption may take place, the biological parents must give up their parental rights to control and have custody of their child. This can be done voluntarily or involuntarily by court order. The biological parents must also give their free and knowing consent to the adoption. The biological parents may revoke their consent until the consent is approved by the court. The consent of either parent is not required if a court of competent jurisdiction has terminated the parent's relationship with the child.

If all the statutory provisions are met and the court has found that the placement is in the best interests of the child, the court must enter a decree of adoption. When the adopted child is a Native American, the adoptive parents must be within the placement preferences of the federal law relating to the placement of Native American children before the court may issue a decree of adoption.

In the context of a dependency hearing, before the court may order the filing of a petition to terminate a parent and child relationship, reasonable efforts to unify the family must be made. However, if aggravating circumstances exist, a court may order the filing of a petition to terminate a parent and child relationship without reasonable efforts to unify the family.

Summary: The consent of an alleged father, birth parent, or parent to a proposed adoption is not required if he or she was found guilty of rape or incest where the child was the victim or was born of the offense, and the court finds that the proposed adoption is in the child's best interest. This does not

affect the parent's right to notice of the adoption as required by law.

If an alleged father, birth parent, or parent has voluntarily terminated his or her parental rights and has indicated his or her intention to make a voluntary adoption plan for the child, the Department of Social and Health Services (DSHS) must follow the wishes of the alleged father, birth parent, or parent as to the placement of the child. However, the DSHS does not have to follow the wishes of the alleged father, birth parent, or parent if the prospective adoptive parents do not meet state statutory adoption qualifications, or if the court finds that the adoption is not in the best interest of the child. If the DSHS has filed a petition seeking termination of a parent and child relationship, it must give consideration to the placement wishes of an alleged father, birth parent, or parent.

Conviction of the parent of a sex offense or incest when the child is born of the offense is added as a factor a court must consider when determining whether aggravating circumstances exist that would allow the court to order the filing of a petition to terminate a parent and child relationship without reasonable efforts to unify the family. Aggravating circumstances must be proved by clear, cogent, and convincing evidence.

Court Levels Affected: Superior.

Comments: Note that the "clear, cogent, and convincing evidence" standard applies to all aggravating circumstances under RCW 13.34.130(2), not just the new aggravating circumstance of a parent's conviction of a sex offense. See section 3 of the bill.

Court Action: None.

Planned OAC Action: Update Benchbook.

Bill Tracker: Rick Neidhardt

E2SHB 1493a

C 267 L 99
Synopsis as Enacted

Short Title: Homeless Children & Families.

Effective Date: July 25, 1999 (However, sections 12 and 13, providing for the establishment of HOPE Centers and Responsible Living Skills programs are not effective until January 1, 2000.)

Background: The Department of Social and Health Services (DSHS) was sued by the Washington Coalition for the Homeless over the department's role in delivering services to homeless children and their families. In December 1997, the Washington Supreme Court ruled in favor of the plaintiff and determined, based on language in the state child welfare statute, that the department had a responsibility to devise and implement a "coordinated and comprehensive" plan for the care and protection of homeless children and their families. The court's ruling only applied to homeless children and their families, not to a broader population of homeless children without parental care or support. The court also ruled that juvenile court judges have the authority to order the department to offer housing assistance to a child's family when homelessness is the primary reason for placing a child in foster care or continuing a foster care placement.

The Governor directed the Department of Community, Trade, and Economic Development (DCTED) and the DSHS to jointly develop the "coordinated and comprehensive" plan required by the Supreme Court's ruling.

Summary: The DCTED is the principal state agency responsible for the state's activities for developing a coordinated and comprehensive plan to serve homeless children and their families. The DSHS must coordinate with the DCTED on the plan to serve homeless children and their families and must modify its programs and services to address the needs of homeless children and their families. In dependency cases, the judge must determine whether the DSHS used reasonable efforts, including housing assistance, to avoid out-of-home placements or shorten the duration of an out-of-home placement.

The DSHS is directed to license and establish up to 75 HOPE Center beds across the state for short-term crisis residential services, and up to 75 "Responsible Living Skills Program" beds for dependent youth. Subject to available funds, these beds are to be established at a rate of 25 percent per year, beginning in the year 2000, and will be fully implemented by 2003.

The DSHS must link with the Missing Children's Clearinghouse and make sure that efforts are made to reunify runaway youth served in its programs with parents who are looking for them.

The Institute for Public Policy is required to evaluate and report to the Legislature on the HOPE Centers and Responsible Living Skills Centers, and to evaluate procedures used by DSHS to link with the Missing Children's Clearinghouse to reunite them with parents who are looking for them.

Court Levels Affected: Superior - Juvenile Division.

Court Action: None.

Planned OAC Action: Review and revise Juvenile Non-Offender Benchbook.

Recommend the addition of JUVIS disposition codes for HOPE Center placement, Responsible Living Skills Program placement, and housing assistance.

Bill Tracker: Mike Curtis

ESHB 1514a

C 174 L 99
Synopsis as Enacted

Short Title: Parenting Plan Modifications.

Effective Date: July 25, 1999

Background: Under Washington's family law statutes, divorcing couples with children must establish a parenting plan that includes: (1) a dispute resolution process for future disagreements; (2) an allocation of decision-making authority; and (3) a residential schedule.

A court may make both major modifications and minor modifications to a parenting plan. However, there is a strong presumption in favor of custodial continuation and against modification.

Criteria for Making Major Modifications. Generally, a court may make major modifications to the parenting plan only if: (1) there has been a substantial change in circumstances of the child or the nonmoving parent (the parent not requesting the modification) based upon facts that were not in existence or unknown when the original plan was entered; and (2) the modification is necessary to serve the child's best interest.

With regard to the residential schedule, the court may make major modifications only if: (1) both parents agree; (2) both parents have already acquiesced in a deviation from the parenting plan that has resulted in the child being integrated into the petitioner's family; (3) the present environment is detrimental to the child's physical, mental, or emotional health and the benefit of changing the child's residential schedule outweighs the harm likely to be caused by a change; or (4) the nonmoving parent has been in contempt of court at least twice within three years for failure to comply with the residential time provisions in the parenting plan, or the parent has been convicted of custodial interference.

Criteria for Making Minor Modifications. A court may make minor modifications to a parenting plan upon a showing of a substantial change in circumstances of either parent, or the child if the proposed modification is only: (1) a modification in the dispute resolution process; or (2) a minor change in the residential schedule that does not change the primary residential placement of the child and that either does not exceed 24 full days per year or five full days per month, or is based on a change of residence or involuntary change in work schedule by a parent that makes the residential schedule in the parenting plan impractical.

Factors Considered to Limit or Preclude Residential Time with a Child. In establishing a parenting plan, the court may limit decision-making authority and limit or preclude residential time based upon child abuse, neglect, abandonment, or a history of domestic violence. The court may also limit or preclude residential time if the parent's conduct may have an adverse effect on the child. Factors to be considered include: neglect or substantial nonperformance of parenting functions, the parent's long-term emotional or physical impairment, the parent's long-term substance abuse, the absence of emotional ties, an abusive use of conflict which creates a danger to the child's psychological development, a parent's withholding the child from the other parent without good cause, and any other factor the court finds adverse to the child's best interest.

Summary: The circumstances under which a court may make minor modifications to the residential schedule in a parenting plan are expanded. The court may order a minor modification in the residential schedule upon a showing of a substantial change in circumstances to either parent or the child when the modification does not change the primary residence of the child and: (1) the modification does not result in a schedule over 90 overnights per year in total; (2) the court finds that the parenting plan does not provide reasonable time with the nonprimary residential parent; and (3) it would be in the best interest of the child. The criteria used for major modifications do not apply, unless the person seeking a minor modification under this new provision has already received a modification under the same provision within the past 24 months. A nonprimary residential parent who is required to complete treatment, or parenting classes, or whose residential time is already limited due to inappropriate conduct, may not seek a minor modification under this new provision unless the parent has completed treatment, or classes, or has made significant changes related to the inappropriate conduct. Modification of any child support may not be based solely on the modification of the residential schedule under this provision.

If the nonprimary residential parent voluntarily fails to exercise residential time for an extended

period, the court may make adjustments to the parenting plan.

The court may reduce or restrict contact between the child and the nonprimary residential parent if it finds that the reduction or restriction would serve and protect the best interest of the child. The court must consider the same factors established for limiting or precluding decision-making and residential time when entering a parenting plan.

The court may order adjustments to any nonresidential aspects of the parenting plan upon a showing of a substantial change of circumstances of either parent, or of the child if the adjustment is in the best interest of the child.

Court Levels Affected: Superior.

Court Action: None.

Planned OAC Action: Revise Family Law Benchbook. Review mandatory domestic relations forms and revise if necessary.

Bill Tracker: Mike Curtis

SHB 1525

C 360 L 99
Synopsis as Enacted

Short Title: Authorizing mediation in guardianship proceedings.

Effective Date: July 25, 1999

Background: A court may appoint a guardian to help an "incapacitated" person manage his or her personal or financial affairs. A person may be "incapacitated" because of old age, disability, or youth. To establish a guardianship, a person must file a petition with the superior court. Upon the filing of such a petition, the court must appoint a guardian ad litem to represent the best interests of the alleged incapacitated person.

Once a guardianship has been established, a person may apply to the court to have the guardianship modified or terminated. After the application has been filed, the court may (1) schedule a hearing, (2) appoint a guardian ad litem to investigate the issues raised by the application or protect the incapacitated person until the hearing, or (3) deny the application. In a hearing to modify or terminate a guardianship, the court may grant any relief it deems just and in the best interests of the incapacitated person.

Summary: In a guardianship proceeding, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, the court may order the parties subject to its jurisdiction into mediation upon a motion of certain parties. Before the appointment of the guardian, the incapacitated person of the guardian ad litem may make a motion for mediation. After the appointment of the guardian, any interested person may make a motion for mediation. The court must establish the terms for the mediation and allocate the costs of the mediation among the parties and the estate of the

incapacitated person as justice requires.

Court Levels Affected: Superior.

Court Action: None

Planned OAC Action: Update Benchbooks.

Bill Tracker: Rick Neidhardt

HB 1544a

C 352 L 99
Synopsis as Enacted

Short Title: Making corrections to sentencing laws.

Effective Date: July 25, 1999

The amendments made to seriousness level V in RCW 9.94A.320 shall apply to offenses committed on or after July 1, 2000. These offenses are stalking, no-contact order violation (DV pretrial and sentence condition) and protection order violation (DV civil action).

Background: Technical Corrections.

· The Crimes of Murder in the Second Degree and Setting off Explosives. The 1997 Legislature enacted two bills affecting sentencing at seriousness level XIII. The unintended interaction of the two bills has created an inconsistency in the state's statute.

Senate Bill 5938 (Chapter 365 of the Laws of 1997) brought the upper end of the sentence range for second degree murder closer to the lower end of the sentence range for first degree murder, reflecting the sometimes slight difference in mental state between the two degrees (premeditation). However, where the maximum term of a standard sentence range is more than one year, the minimum term in the range cannot be less than 75 percent of the maximum term. The minimum term of the new range created by the 1997 Legislature in Senate Bill 5938 was less than 75 percent of the maximum and, as a result, Senate Bill 5938 was amended to allow that in the particular case of second degree murder, the minimum term must be no less than 50 percent of the maximum term.

In the same year, the Legislature also passed Substitute House Bill 1069 (Chapter 120 of the Laws of 1997) which amended felony statutes relating to explosives and placed the new explosive offenses at a seriousness level XIII with second degree murder. However, the Legislature did not change the sentence ranges for the explosive offenses in level XIII to comply with the 75 percent rule where the maximum term of a standard sentence range is more than one year, then the minimum term in the range cannot be less than 75 percent of the maximum term.

Because Senate Bill 5938 exempted second degree murder from the 75 percent width rule within seriousness level XIII, that ratio continues to apply to the two explosive offenses (malicious explosion 2 and malicious placement of an explosive 1). Since all three crimes (murder 2, malicious explosion

2, and malicious placement of an explosive 1) are placed in the same level XIII seriousness level, the unintended interaction of several of the bills passed in 1997 has created an inconsistency with the state's current statute.

· Distribution of Methamphetamine to Persons under 18 Years Old. The 1996 Legislature enacted Substitute House Bill 2339 (Chapter 205 of the Laws of 1996), which increased the penalty for distributing Methamphetamine to persons under age 18. However, the Legislature did not amend the Sentencing Reform Act grid to change the seriousness level for the offense from a seriousness level IX to a seriousness level X, which is necessary to allow for imposition of the appropriate sentence range for that offense.

· Sex Offender and Kidnapper Registration. In 1997, the Legislature passed legislation requiring certain kidnappers to register and made it a felony not to register. However, since the registration procedure that had applied before only related to sex offenders, failure to register was itself a sex offense. As a result, a kidnapper who now fails to register is deemed to have committed a sex offense, irrespective of whether the kidnapping was sexually motivated.

· Manslaughter as a Serious Violent Offense. Under the Sentencing Reform Act, manslaughter in the first degree is committed when a person recklessly causes the death of another person or intentionally and unlawfully kills an unborn child by assaulting the mother. In 1997, first degree manslaughter was increased from a class B felony to a class A felony and it was also added to the list of "serious violent offenses."

"Serious violent offense" is a subcategory of violent offense and, prior to 1997, the list of serious violent offenses included the following eight crimes: aggravated murder in the first degree; homicide by abuse; murder in the second degree; manslaughter in the first degree; assault in the first degree; kidnapping in the first degree, or rape in the first degree; assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense.

The Sentencing Reform Act states that prior convictions of any of the "serious violent" offenses listed above count as three points in the offender score when the current offense is one of the eight "serious violent" offenses. The 1997 law made manslaughter in the first degree a "serious violent" offense, but did not require scoring this serious violent offense as three points on the sentencing grid which is required in all other cases. As a result, prior convictions of first degree manslaughter do not count as three points in the offender score when the current offense is one of the eight enumerated "serious violent" offenses, and conversely, prior convictions of any of the eight enumerated "serious violent" offenses do not count as three points in the offender score when sentencing first degree manslaughter as the current offense.

· DUI-related Vehicular Homicides. In 1998, the Legislature enacted Engrossed Substitute Senate Bill 6166 (Chapter 211 of the Laws of 1998) to increase the penalties for DUI (driving while under the influence). The bill amended the motor vehicle statute to add a two-year enhancement for each prior DUI-related offense when the current offense is vehicular homicide while under the influence.

The same bill also amended the Sentencing Reform Act statute to exclude prior DUI-related convictions from consideration in the computation of the offender score when the current offense is vehicular homicide while under the influence (because each prior DUI-related conviction should

already result in a two-year sentence enhancement). The bill had an unintended effect of preventing the consideration of prior non-DUI-related serious traffic offenses when computing the score for the current offense of vehicular homicide while under the influence. The result is that some offenders convicted of vehicular homicide while under the influence will find it to their advantage if they have a DUI-related conviction in their criminal history.

· Multiple Weapon Offenses. In 1998, the Legislature enacted Engrossed Senate Bill 5695 (Chapter 235 of the Laws of 1998), clarifying how sentences for weapon-related offenses are to be served, with relation to concurrent and consecutive sentences, to sentence enhancements, to earned early release time, and to statutory maximum sentences. The bill amended the Sentencing Reform Act to provide that sentences must be served consecutively for the multiple offenses of unlawful possession of a firearm in the first or second degree and possession of a stolen firearm or theft of a firearm, but that current weapon-related offenses may not be considered in criminal history when calculating the offender score to determine the sentence range. The language of the bill had an unintended effect of preventing the consideration of any current offense when calculating the offender score.

Unranked Offenses. The Act makes a number of technical corrections to the state's sentencing laws as well as provides seriousness level ranking for several felony offenses that are currently unranked under the Sentencing Reform Act.

The state's sentencing guidelines provide a classification of most felonies by their "seriousness level," from level I, punishable by 0 days to 29 months imprisonment, to level XV, punishable by life imprisonment without parole or by death. An adult offender is also assigned an "offender score," based on a number of factors, including prior convictions. The seriousness level of the crime and the offender score determine what sentence the offender will receive, unless the court determines that the conditions for imposing an exceptional sentence are met.

"Unranked" felonies are those offenses that are not assigned a seriousness level. The standard sentence range for an unranked felony is 0-12 months, unless the court finds that there are substantial and compelling reasons for imposing an exceptional sentence. In 1997, the Legislature directed the Sentencing Guidelines Commission to review conviction data for the previous 10 years and submit a proposed bill that appropriately ranked all unranked felony offenses for which there had been convictions. Legislation was proposed, but not enacted, in 1998.

Other Issues.

· Malicious Injury to Railroad Property. The crime of malicious injury to railroad property occurs when a person endangers the safety of any railroad property or person thereon, and is punishable by up to 25 years imprisonment. Because it is considered a class A felony, it also falls within the definition of "most serious offense" for the purposes of the persistent offender ("3 strikes") legislation.

· Incendiary Devices. A person who knowingly possesses, manufactures, or disposes of an incendiary device is guilty of a felony, punishable by up to 25 years imprisonment. Because it is considered a class A felony, it also falls within the definition of "most serious offense" for the purposes of the persistent offender ("3 strikes") legislation.

· Theft of Rental or Leased Property. Theft of rental, leased, or lease-purchased property is a class

B felony (ranked seriousness level II) if the property is valued at $1,500 or more and a class C felony (ranked seriousness level I) if the property is valued between $250 and $1,500.

· Alphabetization. The crimes within each seriousness level in the Sentencing Reform Act are not listed in any particular order.

Summary: Technical Corrections.

This follows technical corrections to the state's sentencing laws.

· Murder in the Second Degree. A conflict is resolved between two 1997 laws (Chapters 365 and 120) by creating a new seriousness level in the sentencing grid for Murder 2 with the same range set in 1997.

A new seriousness level XIV is created for Murder 2 with the same ranges set in 1997, but separate from the new (explosive) crimes added to level XIII in 1997. This clarifies the Sentencing Reform Act rule that requires the minimum term of a presumptive range to be no less than 75 percent of the maximum term except in cases of murder in the second degree. In these particular cases, the minimum term must be no less than 50 percent of the maximum term.

· Distribution of Methamphetamine to Persons under 18 Years Old. Delivering Methamphetamine to someone under the age of 18 is included in the Sentencing Reform Act grid at a seriousness level X allowing it to be consistent with legislation passed in 1996.

· Sex Offender and Kidnapper Registration. The failure of a kidnapping offender to register will not be a sex offense unless the kidnapping was sexually motivated.

· Manslaughter as a Serious Violent Offense. The triple scoring rule is applied to manslaughter in the first degree, the same rule that applies to other serious violent offenses. Rather than listing the offenses individually, a general reference is made to "serious violent offenses," so that triple scoring will be automatic for any crimes added to the "serious violent" list in the future. The new wording will ensure that any other offenses added to the "serious violent" category in the future will score three points in the offender's history when determining the sentence range.

· DUI-related Vehicular Homicides. Prior DUI-related convictions may not be considered when computing the offender score for the current offense of vehicular homicide while under the influence (because a two-year sentence enhancement will result from each prior DUI-related offense), but other prior non-DUI-related serious traffic offenses will continue to be included in the offender score when the current offense is vehicular homicide while under the influence.

· Multiple Weapon Offenses. All current offenses, other than current weapon-related offenses, are considered as prior offenses when calculating an offender's score to determine the sentences for multiple weapon-related offenses.

Unranked Offenses. The following unranked felony offenses are ranked at the seriousness levels noted:

- Level VII (15-116 months): Use of a Machine Gun in the Commission of a Felony

- Level V (6-96 months): Stalking (effective on and after July 1, 2000)

No-Contact Order Violation: Domestic Violence Pretrial Condition (effective on and after July 1, 2000)

No-Contact Order Violation: Domestic Violence Sentence Condition (effective on and after July 1, 2000)

Protection Order Violation: Domestic Violence Civil Action (effective on and after July 1, 2000)

- Level IV (3-84 months): Indecent Exposure to Person Under Age Fourteen (subsequent sex offense)

- Level III (1-68 months): Maintaining a Dwelling or Place for Controlled Substances

Malicious Injury to Railroad Property

Possession of Incendiary Device

Possession of Machine Gun or Short-Barreled Shotgun or Rifle

Telephone Harassment (subsequent conviction or threat of death)

Unlawful Use of Building for Drug Purposes

Other Issues.

· Malicious Injury to Railroad Property. The penalty for malicious injury to railroad property is reduced from a maximum of 25 years to a maximum of 10 years imprisonment, which also removes it from the definition of "most serious offense."

· Incendiary Devices. The penalty for the felony of possessing, manufacturing, or disposing of an incendiary device is reduced from a maximum of 25 years to a maximum of 10 years imprisonment, which also removes it from the definition of "most serious offense."

· Theft of Rental or Leased Property. The designations for the crime of theft of rental, leased, or lease-purchased property (class B and C felonies) are modified to make them easier to locate. The seriousness levels are not changed.

· Alphabetization. The Code Reviser is required to alphabetize the offenses within each seriousness level.

Court Levels Affected: Superior.

Comments: The Sentencing Guidelines Commission requested this bill, which makes several technical corrections to the Sentencing Reform Act, provides seriousness level ranking for some unranked felonies and decreases the maximum penalties for the crimes of malicious injury to railroad property and possession of an incendiary device.

Court Action: None.

Planned OAC Action: Amend Benchbooks, as necessary.

Bill Tracker: Lynne Alfasso

HB 1554

C 206 L 99
Synopsis as Enacted

Short Title: Clarifying status of HOV lane violations as traffic infractions.

Effective Date: July 25, 1999

Background: District courts have ruled that reserving portions of highways for High Occupancy Vehicle (HOV) lanes is unenforceable, because the law does not provide for enforcement action by police officers. The law was written to give authority to the Department of Transportation and local authorities to build, designate, or sign highway lanes as high occupancy use only. Wording must be added to the statute to allow law enforcement agencies to properly enforce these lane restrictions.

Summary: It is a traffic infraction to use HOV lanes in violation of restrictions placed on the use of such lanes by the proper authority.

Court Levels Affected: Limited Jurisdiction.

Comments: Some district courts have ruled that reserving portions of highways for High Occupancy Vehicles (HOV) lanes is unenforceable, because the law does not provide for enforcement action by police officers.

The bill makes it a traffic infraction ($71 total penalty including statutory assessments) to use HOV lanes in violation of restrictions placed on the use of such lanes by the proper authority.

Court Action: None.

Planned OAC Action: Add new law to the JIS/DISCIS law table.

Bill Tracker: Bill Fosbre

HB 1599a

C 303 L 99
Synopsis as Enacted

Short Title: Creating an account to reimburse counties for extraordinary costs in the criminal justice system.

Effective Date: July 25, 1999

Background: Each county in Washington operates a superior court with jurisdiction to adjudicate

civil and criminal cases. Counties elect superior court judges and prosecuting attorneys and establish programs for indigent defense and systems for sheriffs to provide law enforcement and investigate crimes.

Summary: A process is created for counties to seek reimbursement of extraordinary criminal justice costs which are costs associated with investigation, prosecution, indigent defense, jury impanelment, expert witnesses, interpreters, incarceration, and other adjudication costs of aggravated murder cases.

Counties may submit petitions for relief to the Office of Public Defense (OPD). The OPD, in consultation with the Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs, is required to develop procedures for:

- processing the petitions;
- auditing the veracity of the petitions; and
- prioritizing the petitions.

Factors considered in prioritizing petitions include disproportionate impact relative to the county budget, efficient use of resources, the extraordinary nature of the costs, and the county's ability to accommodate and anticipate the costs in its normal budget process.

Before January 1st of each year, the OPD, in consultation with the Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs, is required to develop and submit to the Legislature a prioritized list of petitions recommended for funding by the Legislature.

Court Levels Affected: Superior.

Comments: Bill provides a mechanism for relief to counties for the reimbursement of extraordinary costs associated with aggravated murder cases.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Janet McLane

SHB 1620

C 176 L 99
Synopsis as Enacted

Short Title: Protecting vulnerable adults.

Effective Date: July 25, 1999

Background: Elder abuse is widespread in the United States. It is a national problem with a frequency and rate approximate to that of child abuse. Based on two national studies on elder abuse, 48 percent of the incidents investigated are substantiated. However, only one in five incidents of abuse or neglect are ever reported and substantiated by Adult Protective Services. In general, there appears to be a higher rate of female abuse victims. The National Elder Abuse Incident Study found

that almost 90 percent of the elder abuse and neglect incidents are with a known perpetrator, who most often is a family member. Two-thirds of the perpetrators are adult children or spouses. Rates of reported abuse to the state's Adult Protective Services Program have increased approximately 60 percent in the last three years.

The protections for vulnerable adults in Washington are for:

- adults over the age of 60 who lack the functional, mental, physical ability to care for himself or herself;

- adult clients of the Division of Developmental Disabilities;

- dependent adults with a legal guardian;

- adults receiving in-home care services; and

- adults living in a nursing home, adult family home, boarding home.

There are three separate statutes that direct the reporting requirements of abandonment, abuse, exploitation, and neglect of vulnerable adults, investigating those elements and protecting vulnerable adults from further abuse. The three statutes contain overlapping client populations, separate and different sets of definitions, different lists of professionals required to report incidents of abuse, different criteria for reporting suspected criminal activity to law enforcement, different requirements for investigating incidents, and different provisions for providing protective services.

Summary: The three statutes that require the reporting and investigation of incidents of abuse are consolidated. One statutory reference is created to be applicable to law enforcement, prosecutors, mandated reporters, medical professionals, licensing authorities, other agencies that are involved in services provision for vulnerable adults, the Department of Social & Health Services (DSHS), social workers and investigators of abandonment, abuse, financial exploitation, and neglect, and anybody wishing to report.

The definition of abandonment, abuse, financial exploitation, and neglect are made uniform for all vulnerable adults.

The three overlapping lists of those responsible for reporting suspected cases of abuse and neglect are combined into one list and the reporters are given the same reporting requirements for vulnerable adults. The items that must be reported are specified. Immunity and confidentiality is provided for the reporter. Whistleblower, protection order, injunction, and civil penalty provisions are amended to correspond with changes in definitions.

Language is added to guide the DSHS in the disclosure of public records, responding to reports, reporting to law enforcement when a crime is suspected, and for reporting to the appropriate licensing authority. The department is given the authority to expand its ability to interview other individuals, such as neighbors or landlords, not just family members. The department may develop separate rules relating to the investigation of vulnerable adults in in-home settings. The department must provide a report on the feasibility of developing a registry of perpetrators of abuse.

Court Levels Affected: Superior, District (only as to changes in elements of misdemeanors).

Comments: The bill modifies the definitions of abuse, abandonment, financial exploitation, and neglect. The new definitions appear to be slightly broader than before, but not to such a degree that it would significantly increase the number of cases in district court (primarily criminal cases) or superior court (petitions for protection orders and other civil actions).

Court Action: None.

Planned OAC Action: Update Benchbooks.

Bill Tracker: Rick Neidhardt

SHB1647

C 233 L 99
Synopsis as Enacted

Short Title: Amending recording statutes.

Effective Date: August 1, 1999

Background: County auditors record deeds and other written instruments, and are authorized to copy, preserve, and index documents filed with the county. County auditors are required to charge fees for services and to act as clerk for the board of county commissioners.

Summary: Numerous outdated language references are changed, processes are streamlined, and some processes applicable to the standardization process that applies to recorded documents are clarified. Substantive changes include the following:

· County auditors are authorized to keep a separate tax lien index listing from the general index provided by the county commissioners.
· The recording statutes are updated to add the definition of "legible and capable of being imaged," which means documents must be suitable to produce a readable image, effectively updating for technology.
· The definition of an abbreviated legal description used when recording is expanded to include quarter/quarter sections.
· The document for a recording must be sufficiently clear enough to image the document and only bar codes or address labels may be affixed to the pages.
· Certain documents are exempt from recording format requirements.
· The county auditor is authorized to charge "appropriate recording fees" to record the liens on real estate replacing the 50 cent charge.
· County auditors' authority to accept non-standard recording documents is added under certain circumstances, for a $50 fee.

Court Levels Affected: Superior.

Comments: This bill, which was drafted by the county auditor's association, makes many changes to the recording statutes. The changes, in part, are intended to allow the county auditors to use electronic technology to store and index recorded documents.

Of interest to the legal system are the changes to the format requirements for documents that are submitted to the auditor for recording, including court orders.

Section 10 requires that all content within a document must be legible and capable of being imaged. Section 12 sets forth the margin requirements for recorded documents, which are not changed significantly by this bill. Section 14 allows documents that do not meet margin and font requirements to be recorded for an additional fifty dollars.

Section 13 contains a list of documents that are exempt from the format requirements.

Court Action: None.

Planned OAC Action: Advise the Limited Practice Board, the Records Management Advisory Committee and the Pattern Forms Committee to review the bill to ensure that court orders and forms comply with the recording requirements.

Bill Tracker: Lynne Alfasso

SHB 1663

C 397 L 99
Synopsis as Enacted

Short Title: Unified Family Court.

Effective Date: July 25, 1999

Background: The juvenile court and the family court are both divisions of the superior court. The juvenile and family courts are established to hear specific types of related matters.

The juvenile court hears cases involving juvenile offenses and infractions, dependencies, termination of parental rights, family reconciliation (such as at-risk youth petitions) interstate compact on juveniles, and emancipation.

The family court hears domestic relations proceedings, including dissolutions, parenting plans, child custody, establishment and modification of child support, paternity, adoption, and domestic violence protection orders. If a majority of the superior court judges of the county authorize it, the family court may have concurrent jurisdiction with the juvenile court over proceedings that the juvenile court may hear.

A party making a demand for a jury of six persons in a civil action in superior court must pay a fee of $50. If the demand is for a jury of 12, the fee is set at $100. If, after a party demands a jury of six and pays the required fee, any other party to the action whom subsequently requests a jury of 12 must pay an additional fee of $50. In a criminal action, the court has the option of imposing such fees.

Arbitration is a non-judicial method for resolving disputes in which a neutral party is given authority to decide the case. An award by an arbitrator may be appealed to the superior court. The superior court hears the "de novo;" that is, the court will conduct a trial on all issues of fact and law as though the arbitration had not occurred. In certain counties, arbitration is mandatory for certain civil cases

where the sole relief sought is less than a specified dollar amount.

There is no fee required for requesting a trial de novo of an arbitration award.

Summary: A unified family court pilot program is established to be conducted by the Office of the Administrator for the Courts (OAC). The site for the pilot program must be selected using a request for proposal process. The site must be established in no more than three superior court judicial districts that each have statutory authority for at least five judges.

The OAC must develop criteria for the pilot program. The pilot program must include:

- cases involving (1) juvenile offenses; (2) child dependency and termination; (3) family reconciliation, such as at-risk youth petitions and children in need of services petitions; (4) interstate compact on juveniles; (5) emancipation; (6) dissolution of marriages; (7) establishment and modification of parenting plans; (8) third-party child custody; (9) child support; (10) paternity; (11) adoption; (12) domestic violence prevention; and (13) truancy;
- judges and judicial officers who volunteer for the program and who meet certain training requirements established by local court rule;
- case management that provides a flexible response to diverse needs and helps reduce redundancies;
- a court facilitator to provide assistance; and
- an emphasis on nonadversarial methods of dispute resolution.

The OAC must publish a state-approved listing of nonadversarial methods of dispute resolution. The OAC must also provide the selected districts with the computer resources necessary to implement the program.

Judges of the superior court districts selected for the program must adopt local court rules to direct the program. The court rules must include a training program requirement and a continuing education requirement, case management based on the practice of one judge or judicial team handling all matters relating to a family, and programs that provide for record confidentiality.

The OAC must study and evaluate the pilot program, and report to the Governor, Chief Justice of the State Supreme Court, and the Legislature on a biennial basis. The initial report is due by July 1, 2000, and the final report is due by December 1, 2004.

Family courts within each superior court have concurrent jurisdiction with the juvenile court over all juvenile and truancy proceedings. The requirement that a majority of the superior court judges in the county authorize such jurisdiction is removed.

The fee for requesting a six-person jury in a civil action is increased from $50 to $125, and the fee for a 12-person jury is increased from $100 to $250.

Counties are required to impose a fee, not to exceed $250, for filing a request for a trial de novo of an arbitration award.

Court Levels Affected: Superior – Juvenile Division.

Comments: In addition to establishing a unified family court pilot project, authorizes family court commissioners to preside over juvenile offender matters, increases the jury demand fees in superior

courts and establishes a maximum filing fee when requesting a trial de novo of an arbitration award. Increases the jury demand fees in superior court.

Court Action: None.

Planned OAC Action: Draft RFP for the pilot projects and develop processes for selecting the project sites.

Prepare evaluation plan for the study of the pilot project.

Prepare a state-approved listing of definitions of nonadversarial methods of dispute resolution.

Revise County Clerk's manual with regard to filing fee changes.

Update JIS/JASS reflecting filing fee changes.

Bill Tracker: Mike Curtis

SHB 1744

C 162 L 99
Synopsis as Enacted

Short Title: Changing lake outflow regulation.

Effective Date: July 25, 1999

Background: Ten or more owners of land abutting on a lake may petition the superior court of the county in which the lake is situated for an order to provide for regulating the outflow of the lake to maintain a specified lake level. The court is required to hold a hearing and hear any testimony provided on the issue. If the order is granted, the court also directs the Department of Ecology to regulate and control the outflow of the lake so as to maintain the lake level.

Orders to control lake levels may be requested only on meandered lakes. A "meander line" is a term used when lands in Washington were originally surveyed. Lands were sold in blocks of forty acres, but when a lake or other water body was situated on the land, the block would be short of forty acres and would extend to the meander line. Lakes today may no longer resemble lakes as they were surveyed 100 years ago. Some have disappeared and some have increased in size.

Summary: When there are fewer than ten owners of land abutting on a lake, a majority of the owners are authorized to petition a superior court for an order fixing the water level. The court must notify the Department of Fish and Wildlife before issuing an order fixing the lake level (regardless of the number of owners). The term "meander" is deleted.

Court Levels Affected: Superior.

Comments: Courts will probably see a few more of these petitions, but these proceedings generally are not very time-consuming. Other bills in the last two years that would have called for much greater judicial intervention into lake management issues have been defeated.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Rick Neidhardt

SHB 1774

C 272 L 99
Synopsis as Enacted

Short Title: Occupational Drivers Licenses for On-The-Job Training.

Effective Date: January 1, 2000

Background: A person whose license has been mandatorily suspended or revoked due to a criminal conviction other than vehicular homicide or vehicular assault may obtain an occupational driver's license if the person can show, among other things, that he or she is engaged in an occupation or trade that requires operation of a motor vehicle. A person whose license has been administratively suspended may not obtain an occupational license. People who have had their drivers' licenses administratively suspended due to failure to pay a fine are often not able to pay the fine because of financial constraints. Some assert that enrollment in an apprenticeship program could give such a person the skills to obtain a job, pay the fine, and in some cases, leave public assistance.

Summary: A person whose driver's license has been administratively suspended for failure to pay a traffic ticket, violation of financial responsibility laws, or multiple infractions within a specified period may apply for an occupational driver's license. To qualify, the applicant must show that he or she is in one of the following programs where a driver's license is required:

(1) a member or an applicant for an apprenticeship program or on-the-job training program;
(2) a program that assists persons who are enrolled in a WorkFirst program to become gainfully employed; or
(3) undergoing substance abuse treatment or participating in a twelve-step program such as Alcoholics Anonymous.

The occupational driver's license is valid for the period of the suspension but in no case for more than two years except that the occupational license for a person who has only applied to be in an apprenticeship program is in effect no longer than 14 days. The Department of Licensing is required to cancel the license if the person is no longer enrolled in a qualifying program. If the license is canceled, the driver may obtain a new license at no cost by submitting evidence of enrollment in another qualifying program. A person who qualifies due to participation in a substance abuse or twelve-step program:

(1) may not receive a license if able to receive adequate transit services; and
(2) may only receive a license valid for specific times, days, and routes.

Court Levels Affected: Limited Jurisdiction.

Court Action: None.

Planned OAC Action: OAC will work with the DMCJA – DOL Liaison Committee to devise program rules.

Bill Tracker: Bill Fosbre

HB 1849

C 330 L 99
Synopsis as Enacted

Short Title: Expanding aggravating circumstances when a court may impose an exceptional sentence.

Effective Date: July 25, 1999

Background: In sentencing a defendant who is convicted of a misdemeanor or gross misdemeanor, the court generally has discretion to impose any sentence up to the maximum allowed by law. Under the Sentencing Reform Act (SRA), however, "presumptive" sentence ranges are statutorily prescribed and when sentencing a defendant who is convicted of a felony, the standard range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the presumptive range (there are mitigating circumstances), or above the range (if there are aggravating circumstances). The SRA provides "illustrative" mitigating and aggravating factors as examples of the kinds of factors a court may use to justify an exceptional sentence outside of the presumptive range. Among the illustrative aggravating factors provided by the SRA are deliberate cruelty by a defendant, vulnerability of a victim, sexual motivation on the part of the defendant, and multiple incidents of abuse of a victim.

Summary: The list of "illustrative" aggravating factors in the Sentencing Reform Act is expanded to include an offender who knew the victim was a runaway (a youth who was not residing with a legal custodian) and the offender established or promoted the relationship for the primary purposes of victimization. (This new illustrative aggravating circumstance is an example of the kind of factor a court may use to justify an exceptional sentence outside of the presumptive range).

Court Levels Affected: Superior.

Comments: Adds a new “aggravating factor” that courts may consider when sentencing an offender under the Sentencing Reform Act.

Court Action: None.

Planned OAC Action: Amend Benchbooks, as necessary.

Bill Tracker: Lynne Alfasso

HB 2205

C 114 L 99
Synopsis as Enacted

Short Title: Providing conditions for waiver of the requirement for a mandatory appearance following arrest for DUI.

Effective Date: July 25, 1999

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 "driving under the influence" (DUI), the defendant must be brought before a judge. The purpose of the appearance is to consider the need for imposing conditions on pretrial release. The legislation responded to concerns that the failure to have a prompt appearance was resulting in problem drivers being released without restrictions on their driving pending trial.

Summary: 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.

Court Levels Affected: Superior and Limited Jurisdiction.

Comments: 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.

Court Action: Courts not holding sessions regularly must pass a local court rule defining “earliest practicable day” for purposes of conducting the mandatory DUI appearance hearing required to be held on the next judicial day. The Legislature has yet to define “next judicial day.”

Planned OAC Action: None.

Bill Tracker: Bill Fosbre

HB 2206

C 71 L 99
Synopsis as Enacted

Short Title: Allowing declaratory judgment actions when county elected officials have abandoned their responsibilities.

Effective Date: July 25, 1999

Background: A county elected official is required to take an oath of office to faithfully and impartially discharge the duties of office to the best of his or her abilities. A county elected official is paid a salary for the services required by law. Before entering office, an official must post a bond subject to the condition that he or she will faithfully perform the duties of his or her office.

By statute, a county office is considered vacant for the following reasons: death; resignation; removal;

ceasing to be a registered voter in the county; conviction of a felony, or any offense involving a violation of an oath of office; neglect by the official to take the oath of office; the election being declared void; and a judgment against the incumbent for breach of the condition of the bond. However, there are no specific vacancy provisions for abandonment of office.

A declaratory judgment is a judicial remedy for the determination of a justiciable controversy where the plaintiff is in doubt with respect to his or her legal rights. A court's declaratory judgment is a binding adjudication of the rights and status of litigants even though no consequential relief is awarded.

Summary: A county legislative authority may file an action in superior court seeking a declaratory judgment that a county elected official has abandoned his or her responsibilities. Abandonment is caused by being absent from the county for 30 consecutive days. Absences approved by the county legislative authority, or absences for medical or disability leave are not considered abandonment.

The county official is not eligible to receive compensation from the date a declaratory judgment is issued finding abandonment until a court issues another declaratory judgment finding that the official has resumed performing his or her duties.

Court Levels Affected: Superior and District.

Comments: It is not clear whether "county elected officials" include superior and district court judges. The term is not defined in the bill. Superior courts are not likely to receive many of these cases.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Rick Neidhardt

SSB 5011

C 214 L 99
Synopsis as Enacted

Short Title: Changing provisions relating to dangerous mentally ill offenders.

Effective Date: March 1, 2000 (for all sections except for three sections that relate to rule making and a study).

Background: It is estimated that the Department of Corrections releases over 125 inmates each year who are believed to be both mentally ill and pose a serious threat to public safety. Generally these offenders have completed their sentences and are referred for either civil commitment or community services for their mental disorders. For a variety of reasons, the mental health community has been unable to provide, or the offenders are unwilling to engage in, needed mental health services.

Summary: The Department of Corrections (DOC) must identify offenders who (1) are reasonably believed to be dangerous to themselves or others, and (2) have a mental disorder. Prior to release, DOC must create a team consisting of representatives from DOC, the Regional Support Network (RSN), appropriate divisions of the Department of Social and Health Services (DSHS), and providers as appropriate, to develop a plan for delivery of treatment and support services to these offenders upon release. The team consults with the offender's counsel, if any, and as appropriate, the offender's family and community. The team must also provide, through the victim/witness program, opportunity for enrolled persons to provide information and comments on the potential safety risk an offender poses to specific individuals or classes of individuals. The team can propose any appropriate plan including: (1) involuntary civil commitment for inpatient treatment; (2) an involuntary civil commitment to a less restrictive alternative (LRA); (3) DOC supervised community treatment; or (4) voluntary community treatment.

Prior to release, the team determines whether a review by a county designated mental health professional (CDMHP) is needed for the purposes of involuntary civil commitment. If the review is recommended, supporting documentation is forwarded to the appropriate CDMHP. If recommended by the team, CDMHP evaluation must occur between five and ten days prior to release from DOC.

On the day of release, a second review by a CDMHP (when the initial review did not result in a commitment or LRA decision) must be conducted if requested by the team. The request must be based upon new information or a change in the offender's mental condition. If the CDMHP determines an emergency detention is necessary, DOC must arrange transportation for the offender to a state hospital or to a consenting evaluation and treatment (E&T) facility.

If the CDMHP determines an LRA is appropriate, CDMHP must seek a summons to require the offender to appear at an E&T facility serving the jurisdiction where the offender will reside upon release. If a summons is issued, DOC must transport the offender to the E&T.

Changes to the intent language clarify that past confinement in a state, federal, or local correctional facility does not limit a person's access to mental health services. Changes also clarify that the language relating to RSN services only limits the RSN's duties regarding persons currently confined at, or under the supervision of, a state hospital under the criminal insanity statutes.

When conducting an evaluation of an offender coming out of DOC, time spent in confinement is not automatically included in determining whether the person has committed a "recent overt act" when the

court makes a decision whether to require an LRA. In addition, the CDMHP or professional person must consider the offender's recent history of judicially ordered (through a *Harper* hearing) anti-psychotic medication while in confinement. When determining whether an offender is a danger to self or others under the mental health civil commitment law, a court must give "great weight" to evidence regarding the offender's recent history of judicially ordered involuntary anti-psychotic medication while in confinement.

DOC and DSHS must enter into working agreements to assist offenders in obtaining a Medicaid eligibility decision prior to their release from DOC. DSHS must contract for case management services to assist offenders in coordination and procurement of needed services as identified by the assessment team at DOC. The offenders are eligible to receive assistance for up to five years. DSHS must also provide additional funds to the RSNs for expenses incurred for offenders who would not have otherwise received their services.

The Washington State Institute for Public Policy and the University of Washington must collaborate on an evaluation and report to the Legislature on December 1, 2004. The report must evaluate whether the act results in a reduction in criminal recidivism; increases in treatment of and services to dangerous mentally ill offenders; and increases in the effectiveness of those services; and bed spaces saved in DOC by this proposal. The study must also evaluate: possible expansion of the release planning process to other groups of offenders including cost estimates; effectiveness of efforts to obtain early Medicaid enrollment and associated cost savings; and the validity of DOC's risk assessment tool.

The study must separate evaluation data by whether offenders have mental illness or mental illness combined with substance abuse and must cross-reference it to criminal history.

Court Levels Affected: Superior.

Comments: While most of the bill does not directly affect the courts, changes are made regarding "recent overt acts" and consideration of an offender's recent history of judicially ordered anti-psychotic medication. See section 6 of the bill.

Court Action: None.

Planned OAC Action: Update Benchbooks.

Bill Tracker: Rick Neidhardt

ESB 5036

C 245 L 99
Synopsis as Enacted

Short Title: Adding a judge to the superior courts of Okanogan and Grant Counties.

Effective Date: July 25, 1999

Background: The Legislature sets by statute the number of superior court judges in each county. Periodically, the Office of the Administrator for the Courts (OAC) conducts a weighted caseload

analysis to determine the need for additional judges in the various counties. The Legislature has authorized one judge for Okanogan County and two judges for Grant County. The caseload analysis by the OAC indicates a need for an additional judicial position in each of the two counties.

One-half of the salary and retirement benefits of a superior court judge are paid by the state. The other half of the judge's salary, half of retirement benefits, and all other costs associated with a judicial position, such as capital and support staff costs, are borne by the county.

New superior court positions are filled by gubernatorial appointment. The appointed judge must then stand for election at the next general election.

Summary: The number of superior court judges in Okanogan County is increased from one to two. The number of superior court judges in Grant County is increased from two to three. The new positions take effect only upon approval by the legislative authority in each county. The additional judicial position in Okanogan County is effective only if the county agrees to pay the expenses of existing judicial positions as required by state law.

Court Levels Affected: Superior.

Comments: This bill creates new superior court judicial positions in these counties: Okanogan – one position; Grant – one position.

Court Action:
- Arrange with county for facilities, staff and other support services for new judges.
- Schedule new judge for Judicial College.
- Notify the Governor's office when a judge can be appointed and discuss probable timetable for the appointment process.
- Advise OAC as soon as a firm appointment date is known.

Planned OAC Action:
- Monitor availability of funds for additional positions. Make arrangements for payment of state's portion of salary and benefits.
- Compile bench and formbooks and other OAC materials to distribute to new judges.
- Arrange to notify judges of dates for the Judicial College and arrange for their participation.

Bill Tracker: Yvonne Pettus

SB 5037

C 75 L 99
Synopsis as Enacted

Short Title: Creating a new court of appeals position for Pierce County.

Effective Date: July 25, 1999

Background: Since 1993, Division II of the Court of Appeals has continued to experience an increase in criminal and civil appeals. In 1997, there were 150 more filings than in 1993. Also, the number of

superior court judges in the counties that appeal cases to Division II has increased since 1993. As more decisions are rendered in the trial court, the number of appeals continues to grow. Four more trial judges have been added to the trial courts in Division II, a fifth will be added October 1999, and state funding has been authorized for another new judge in both Lewis and Clark counties.

Over a year ago, each judge and commissioner in Division II agreed to increase workloads for a minimum of one year in an effort to eliminate the division's backlog of cases. The result is that a March 1997 backlog of 243 cases was completely eliminated by the summer of 1998.

Given future projections of workload, Division II is of the opinion that an additional judicial position is necessary.

Summary: An additional judicial position, effective July 1, 2000, is authorized for Division II of the Court of Appeals. The judgeship is added to Division 1, Pierce County.

At the general election held in November 2000, the voters are to select a person to fill the position for a six-year term.

Court Levels Affected: Court of Appeals.

Comments: This bill creates a new court of appeals judicial position in Division II of the Court of Appeals.

Court Action: None.

Planned OAC Action: Monitor filing of judicial position. Ensure necessary payroll and personnel actions are completed.

Bill Tracker: Yvonne Pettus

SSB 5046

C 11 L 99
Synopsis as Enacted

Short Title: Revising hearing procedures for defendants receiving mental health evaluations.

Effective Date: April 15, 1999

Background: Under 1998 legislation, a defendant whose misdemeanor charges have been dismissed due to his or her incompetency, but who remains in custody, is required to have an additional mental health evaluation under the civil commitment statute. If the professional person recommends that the defendant be released, the superior court must review the recommendation not later than the next judicial day. The 1998 legislation does not specify court procedures or provide guidance for the required hearing when the court disagrees with the professional person's recommendation.

Summary: Incompetent misdemeanor offenders who could not be made competent to stand trial (who

have a prior history of violent acts or findings of either incompetence or not guilty by reason of insanity), who are still in custody at the time charges are dismissed, and regarding whom a judge disagrees with a mental health professional's recommendation of unconditional release, are subject to a review.

At the review, the court may order the person held at an evaluation and treatment center for 72 hours prior to a hearing or may order the person conditionally released, subject to a hearing within 11 days.

If the court releases the individual subject to a hearing and the person fails to appear, the court must order the person taken into custody at an evaluation and treatment facility and brought to court the next judicial day.

If the court releases the person subject to a hearing, the prosecutor may file a direct petition for 90-day inpatient or outpatient treatment. If the prosecutor files a petition, the court may order the person detained at the evaluation and treatment facility that performed the evaluation, or order the person to participate in outpatient treatment.

Court Levels Affected: Superior (although courts of limited jurisdiction may be interested as well).

Comments: This bill clarifies the procedure that the superior court shall follow when the recommendation of the professional person is to release the individual without filing a petition for involuntary civil commitment.

Court Action: None.

Planned OAC Action: Advise courts of change in the law.

Bill Tracker: Lynne Alfasso

SSB 5047

C 12 L 99
Synopsis as Enacted

Short Title: Changing the standards for information sharing among mental health professionals.

Effective Date: July 25, 1999

Background: Under 1998 legislation, a defendant whose misdemeanor charges have been dismissed due to his or her incompetency but who remains in custody is required to have an additional mental health evaluation under the civil commitment statute. Concern exists that present law does not permit the professionals providing the evaluation and treatment services or follow-up services to obtain relevant information or records without the consent of the patient.

Summary: Professionals providing evaluation and treatment or follow-up services under the criminal insanity law are permitted to obtain relevant mental health information or records without the patient's consent.

Court Levels Affected: Superior.

Comments: This bill allows mental health professionals to obtain otherwise-confidential information and records regarding prior mental health treatment received by the individual. However, the bill does *not* give the mental health professional access to confidential court records involving the individual, such as other RCW 71.05 cases involving the individual. Access to records in those cases is governed by RCW 71.05.620.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Lynne Alfasso

SSB 5048

C 13 L 99
Synopsis as Enacted

Short Title: Making technical corrections to chapters 10.77 and 71.05 RCW.

Effective Date: July 25, 1999

Background: The implementation of mentally ill offender legislation enacted in 1998 has revealed the need for several technical and clarifying amendments.

Summary: Several cross-references are corrected, grammatical corrections are made, past effective date and chapter law references are clarified by amending the sections to the actual calendar date that the provisions took effect, and the words "expert or" are stricken from the phrase "expert or professional person" in a definition section. Striking the words "expert or" clarifies actual usage and removes confusion related to other uses of the term "expert."

In addition, the definition of professional person is corrected to clarify that either the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry may certify a professional person.

The procedural issue that for a court to give great weight to a matter, it must do so based on the evidence before the court, is also clarified. The existing language may have been ambiguous.

Only technical and clarifying changes are made. None of the amendments are intended to have substantive effect.

Court Levels Affected: Superior and Limited Jurisdiction.

Comments: Makes several technical and clarifying changes to RCW 10.77 (insanity and incompetency) and RCW 71.05 (civil commitments).

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Lynne Alfasso

SSB 5134

C 184 L 99
Synopsis as Enacted

Short Title: Foreign Protection Orders.

Effective Date: July 25, 1999

Background: State law provides a number of protections for persons who are victims of domestic violence, abuse, or harassment. In the criminal context, a victim of domestic violence may be protected by a no-contact order prohibiting the offender from contacting the victim. In the civil context, a victim may petition for a domestic violence protection order or an anti-harassment protection order. In a pending dissolution, third-party custody, paternity action, or an action relating to the abuse of a child or dependent person, a person may seek a restraining order against another party.

A violation of a no-contact or protection order is generally a gross misdemeanor offense. A violation of a no-contact or protection order is a class C felony if the offender has two previous violations of an order, or if the violation involved an assault that is not first- or second-degree assault, or conduct that is reckless and creates a substantial risk of death or serious physical injury to another person. A violation of a provision of a restraining order is a misdemeanor offense.

A police officer must arrest a person without a warrant if the officer has probable cause to believe that the person has violated a no-contact, protection, or restraining order, of which the person had knowledge. A police officer is immune from criminal and civil liability for making an arrest under this provision if the officer acted in good faith and without malice.

In 1994, Congress enacted the Violence Against Women Act (VAWA) as part of the Violent Crime Control and Law Enforcement Act. VAWA contains a requirement that each state, United States territory or possession, and tribal court provide full faith and credit to protection orders issued by another state, United States territory or possession, or tribal court. The issuing court must have had personal and subject matter jurisdiction, and reasonable notice and an opportunity to be heard must have been provided to the person subject to the restraint provisions of the order.

Summary: A statutory procedure for the filing and enforcement of foreign protection orders is created. "Foreign protection order" means an order related to domestic or family violence, harassment, sexual abuse, or stalking. The purpose of the foreign protection order is to prevent violent or threatening acts

or harassment against, contact or communication with, or physical proximity to another person. A court of another state, United States territory or possession, a military tribunal, or a tribal court in a civil or criminal action must issue it.

A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the jurisdiction. A presumption is created that a foreign protection order is valid if it appears authentic on its face. The person subject to the restraint provisions of the order must have been given reasonable notice and the opportunity to be heard before the foreign order was issued. In the case of ex parte orders, notice and opportunity to be heard must have been given as soon as possible after the order was issued, consistent with due process. The failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order.

A procedure is created for filing foreign protection orders by presenting a certified, authenticated, or exemplified copy to the clerk of the Washington court where the person entitled to protection resides or believes enforcement may be necessary. Any out-of-state department, agency, or court responsible for maintaining protection order records may, by facsimile or electronic transmission, send a copy of the foreign protection order to the clerk of the Washington court as long as it contains a facsimile or digital signature by a person authorized to make the transmission. The clerk may not charge a fee for the filing of foreign protection orders.

The court clerk must forward a copy of the filed foreign protection order to the county sheriff who must enter the order into a computer-based criminal intelligence information system used by law enforcement agencies to list outstanding warrants. The information entered into the criminal intelligence information system must include, if available, notice to law enforcement of whether the foreign order was served and method of service.

It is a gross misdemeanor for a person under restraint who knows of the foreign protection order to violate the provision prohibiting the person from contacting or communicating with another person; the provision excluding the person from a residence, workplace, school, or day care; or any provision for which the foreign protection order specifically provides that violation is a crime. Violation of a restraining order issued in a nonparental proceeding for child custody or a paternity action is a gross misdemeanor when the person restrained knows of the order.

A violation of a foreign protection order is a class C felony, ranked at seriousness level V under the Sentencing Reform Act, in the following three circumstances: the violation is an assault that does not amount to assault in the first- or second-degree; the violation involved conduct that is reckless and creates a substantial risk of death or serious physical injury to another person; or the offender has at least two prior convictions for violating the provisions of a no-contact order, a domestic violence protection order, or a comparable federal or out-of-state order.

A police officer must arrest a person under restraint when the officer has probable cause to believe that the person violated a provision of a foreign protection order, of which the person had knowledge.

The person entitled to protection must divulge other orders between the parties in order to alert the court to the existence of other orders or conditions that exist between the protected party and the person under restraint. Any disputes regarding provisions in foreign protection orders dealing with custody of children or visitation issues are to be resolved judicially. A peace officer is not to remove a child from his or her current placement unless a writ of habeas corpus issued by a court of this state is produced or

the officer believes the child would be injured or could not be taken into custody if it were necessary to first obtain a court order.

Court Levels Affected: Superior and Limited Jurisdiction.

Court Action: None.

Planned OAC Action: Recommend inclusion in 2000 Spring conferences curricula.
Revise OAC publications: (Family Law Benchbook, DV Manual for Judges, County Clerks' Handbook, and the CLJ Civil Benchbook).

Suggest the Gender and Justice Commission review policies and procedures with regard to implementation.

Review the domestic violence petition and law enforcement information sheet and revise, if warranted, to comply with section 5.

Make necessary changes in JIS to file foreign protection orders and advise the courts of the new procedures.

Bill Tracker: Mike Curtis

ESSB 5195

C 81 L 99
Synopsis as Enacted

Short Title: Protecting employee benefits.

Effective Date: July 25, 1999

Background: Except for child support collection actions or unless otherwise provided by federal law, all federal and certain state pension plans are exempt from execution, attachment, garnishment or seizure by legal process. This exemption applies to family members who obtain these pensions after the debtor dies or absconds.

The Washington State Bar Association suggests that other commonly used types of pension plans (such as Roth IRAs, tax sheltered annuities, etc.) should be brought under these same protections from garnishment because federal law encourages these types of savings as a matter of public policy.

Summary: The existing statute which exempts various pension plans from execution, attachment, garnishment or seizure is expanded to include various types of retirement savings plans recognized by the federal government. Included in the term "employee benefit plan" are tax-sheltered annuities, individual retirement accounts, Roth individual retirement accounts, medical saving accounts, education individual retirement accounts, retirement bonds, and the monies deposited in the advanced college tuition payment plan. Language is added, conforming the act to the numerical changes of the IRS Tax Code and to the alternate dispute resolution provisions that are required with disputes of wills or trusts.

Court Levels Affected: Superior, District.

Comments: Defendants will be able to protect a few more categories of assets from plaintiffs' collection efforts.

Court Action: None.

Planned OAC Action: Update Benchbooks.

Bill Tracker: Rick Neidhardt

SB 5196

C 42 L 99
Synopsis as Enacted

Short Title: Resolving trust and estate disputes.

Effective Date: January 1, 2000

Background: Currently, matters concerning probate and trusts are codified under Title 11 RCW. Procedures for resolving disputes that occur with trusts and estates are scattered throughout the various sections of this title and provide for resolution of disputes in the state courts or by written agreement between the parties.

The Real Property, Probate and Trust Section of the Washington State Bar has studied Title 11 for the past seven years and suggests that all the procedures for resolving trust and estate disputes be consolidated into a separate section of the probate code which would be referred to as the Trust and Estate Dispute Resolution Act. Centralization makes the procedures easier to locate and follow and would codify current practice in this area.

Summary: The Trust and Estate Dispute Resolution Act is created to centralize all procedures for resolving disputes that occur regarding trusts and estates. The act (1) reaffirms that the courts have full power to administer and settle all matters concerning trusts and estates; (2) specifically provides that the superior courts of each county have original subject matter jurisdiction over the probate of wills and the administration of trusts, identifies in which venue actions may be brought, and provides for a three-year statute of limitations in actions against personal or special representatives for breach of their fiduciary duty; (3) identifies the parties who can sue in state court and the procedures to follow, such as notice requirements, attorney's fees, obtaining jury trials, and execution on judgments; (4) provides mechanisms for resolving disputes by informal binding agreements between parties; and (5) outlines the process by which parties can obtain resolution of disputes using mediation and/or arbitration methods to select mediators or arbitrators, determine the costs, and to obtain compliance with decisions.

The act also expressly adopts the common law doctrine of "virtual representation," which allows a living person, who is a member of a class of persons, to represent all members of the class in a dispute that determines interests in an estate, trust, or nonprobate asset. For example, if the terms of a trust state that the beneficiaries are the trustee's children during their life and then grandchildren, an adult grandchild could "virtually" represent all grandchildren, even those not yet born, to determine the interests of those grandchildren in the trust.

Court Levels Affected: Superior.

Comments: A committee of the State Bar Association drafted this bill. The committee stated that the overriding purpose of this act is to foster nonjudicial resolution of certain trust and estate disputes by providing for greater use of binding settlements, arbitration, and mediation. The bill is also designed to streamline procedures and to give courts greater flexibility. Contact OAC's Legal Services at (360) 357-2123 for a copy of the Bar Association committee's section-by-section analysis of the bill.

Court Action: Review procedures.

Planned OAC Action: None.

Bill Tracker: Rick Neidhardt

2SSB 5210

C 17 L 99
Synopsis as Enacted

Short Title: Children in Shelter Care.

Effective Date: July 25, 1999

Background: Concern exists that present law does not adequately protect the bond between a parent and a child. It has been suggested that the Legislature should protect this bond by creating a duty to place children taken into protective custody with a relative whenever possible. Presently, a child taken into protective custody is placed in either a shelter care facility or with a relative. Current law does not require that priority placement of the child should be with a relative.

Summary: The Legislature has determined that an intervention into the life of a child is also an intervention into the life of a parent, guardian, or legal custodian. The Legislature finds that the bond between parent and child is a critical element of child development. If a child cannot be with a parent, the child should, if possible, be placed with a relative with whom the child has a relationship.

The procedure for placing children in shelter care has been clarified. Within available resources, when a child is taken into protective custody the supervising agency must try to place the child with a relative. The relative must be willing and available to care for the child and be able to meet any special needs of the child. If it is not possible for the supervising agency to place the child with a relative immediately, the supervising agency must try to do so on the next business day.

The supervising agency must document the efforts made by it to locate and place the child with the relative. If the supervising agency is unable to place the child with a relative, the agency must place the child in a shelter care facility. This does not establish entitlement or the right to a particular placement.

Parents are provided with written notice that if a court commissioner presides over the shelter care hearing, the parent has the right to have the decision reviewed by a superior court judge within ten days upon a filing of a motion for revision.

At the shelter care hearing, the court hears evidence regarding the efforts made to place a child with a relative. If the court does not release the child to his or her parent and the child was initially placed with a relative, the court must order continued placement with a relative, unless there is reasonable cause to believe the safety or welfare of the child would be jeopardized. If the child was not initially placed with a relative and the child is not released to his or her parent, guardian, or legal custodian, the supervising agency must make reasonable efforts to locate a relative. If a relative is not available, the court must order continued shelter care or placement with another suitable person.

Court Levels Affected: Superior - Juvenile Division.

Court Action: None.

Planned OAC Action: Review Juvenile Non-Offender Benchbook and make necessary revisions.

Bill Tracker: Mike Curtis

SB 5211

C 56 L 99
Synopsis as Enacted

Short Title: Clarifying the jurisdiction over drunk drivers.

Effective Date: July 25, 1999

Background: The district and municipal courts generally have jurisdiction over criminal defendants for two years. In 1998, in conjunction with many changes in DUI penalties, these courts were given five years of jurisdiction over drunk driving cases.

Although the specific DUI laws were amended to grant this five-year period of jurisdiction, the general laws on jurisdiction of district and municipal courts still provide for a two-year period of jurisdiction.

Very long periods of mandatory use of ignition interlocks were part of the 1998 changes to DUI laws. For a third-time offender, the minimum period of required use is ten years.

Summary: The statutes that deal generally with district and municipal court jurisdiction over criminal defendants are amended in two ways:

· the statutes are made to explicitly reflect the five-year jurisdiction granted in the DUI law changes;

· the enforcement of ignition interlock orders is exempt from the jurisdictional time restrictions.

Court Levels Affected: Limited Jurisdiction.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Bill Fosbre

SSB 5214

C 167 L 99
Synopsis as Enacted

Short Title: Firearms on School Premises.

Effective Date: July 25, 1999

Background: Under current law, it is illegal to possess dangerous weapons on school premises and school-provided transportation. Specific exemptions are provided for military academies, military and law enforcement activities, conventions, educational activities, rifle competitions, and persons licensed to carry concealed pistols who are picking up or dropping off students. A student who illegally possesses a firearm on school premises is subject to expulsion for at least one year, subject to modification by the local school district superintendent.

Summary: Detention for Illegally Possessing Firearm. A person must be detained up to 72 hours if the person has been arrested for illegally possessing a firearm on school premises, and the person is at least 12 and not more than 21 years of age. The arrested person may not be released from detention until a county designated mental health professional (CDMHP) has examined and evaluated the person. However, a court may release the person at any time after a determination regarding probable cause or on probation bond or bail.

Post-Arrest Notifications by Police. Within 24 hours of arresting a 12 to 21 year-old who has illegally possessed a firearm on school premises, the police must refer the person to the CDMHP for an examination and evaluation and contact the person's parent or guardian.

Mental Health Examination and Evaluation. The CDMHP must examine and evaluate the arrested person using the appropriate criteria in the RCW titles concerning mental illness and mental health services for minors. The examinations must occur at the facility where the person is being held or at any other appropriate place if the person has been released on probation bond or bail. Other mental health examinations may be administered while the person is detained or confined. In addition, the CDMHP may refer the person to the local regional support network for follow-up services or to other services. The CDMHP may also refer the person's family to the appropriate services.

Chemical Dependency Examination and Evaluation. The CDMHP may refer the arrested person to a chemical dependency specialist for examination and evaluation using the criteria in the RCW chapter concerning treatment for alcoholism, intoxication, and drug addiction. The examination may occur at

the facility where the person is being held or at any other appropriate place if the person has been released on probation bond or bail.

Results of Mental Health and Chemical Dependency Examinations. The examining CDMHP and chemical dependency specialist must send the results of their examinations to the court. The court must consider the results when making any determinations about the arrested person. To the extent permitted by law, the CDMHP and the chemical dependency specialist must notify the arrested person's parent or guardian that an examination and evaluation have taken place and provide the results of the examination.

Mandatory Locker Searches. School officials must search a student's locker if they reasonably believe the student illegally possesses a gun on campus.

Court Levels Affected: Superior - Juvenile Division and Limited Jurisdiction.

Court Action: Review/revise juvenile detention policies and procedures with regard to mandatory detention of youth referred to detention, pursuant to possession of a firearm at a school, on school transportation or at a school-sponsored event.

Planned OAC Action: Review if necessary and revise the Desk Manual for Juvenile Court Administration.

Bill Tracker: Mike Curtis

SSB 5274

C 20 L 99
Synopsis as Enacted

Short Title: Allowing a regional transit authority to establish fines for certain civil infractions.

Effective Date: July 25, 1999

Background: Regional transit authorities in Washington currently lack express statutory authority to enforce proof of fare payment of those individuals using transit services. Washington law does allow state and local governments to establish and enforce a system of civil infractions to be composed of minor offenses, noncriminal in nature, subject to the imposition of civil fines.

Summary: Regional transit authorities are authorized to: (1) require proof of fare payment; (2) set a schedule of fines and penalties, not to exceed $250, for failure to pay required fares and failure to depart a train when requested to do so; and (3) employ individuals to monitor fare payment, issue citations for fare nonpayment, and request passengers to leave regional transit authority trains for failure to produce proof of fare payment.

Court Levels Affected: Limited Jurisdiction.

Comments: Regional transit authorities are authorized to: (1) require proof of fare payment; (2) set a schedule of fines and penalties, not to exceed $250, for failure to pay required fares and failure to

depart a train when requested to do so; and (3) employ individuals to monitor fare payment, issue citations for fare nonpayment, and request passengers to leave regional transit authority trains for failure to produce proof of fare payment.

Court Action: None.

Planned OAC Action: Work with the Regional Transit Authorities to obtain a list of offenses and penalty amounts to be added to the JIS/DISCIS law table. Add regional transit authority officers to official person screens on JIS/DISCIS.

Bill Tracker: Bill Fosbre

SB 5301

C 86 L 99
Synopsis as Enacted

Short Title: Modernizing traffic offense processing.

Effective Date: July 25, 1999

Background: In 1979, a number of criminal traffic offenses (such as speeding and vehicle equipment violations) were decriminalized and made into traffic infractions. Not all of the laws related to the processing of traffic offenses were updated to coincide with the decriminalization effort.

Current law requires the judge or court commissioner who adjudicates a traffic ticket to sign every traffic ticket before forwarding it to the Department of Licensing. The judicial officer is subject to removal from the bench if he or she fails to comply with this signature requirement. The signature requirement prevents the court from electronically transferring such information to the department. It is believed that the judge and staff time needed to prepare, sign, and mail the paper copies of the tickets to the department could be saved, as well as the time it takes the department to manually re-enter the information from the tickets into the department's computer system.

RCW 46.61.475 requires a person accused of speeding to be informed of his or her alleged speed and the maximum legal speed where the violation occurred. The statute requires this information to be recorded on the complaint and summons/notice. Because complaints and summons/notice of appearance forms are only used in criminal matters, not traffic infractions, the courts have struggled to interpret this statute. Most courts have interpreted this statute to mean that the speed and speed zone information must be recorded on both the traffic ticket form (now called the Notice of Infraction) and on any hearing notices sent to the defendant. Because the defendant receives a copy of his or her ticket at roadside with the alleged speed and speed zone information on it, the courts believe it is redundant and wasteful to print this information again on the hearing notice.

Current law requires the court to wait 15 days or more prior to issuing a "failure to appear" notice to the Department of Licensing when an individual violates his or her written promise to appear in court in a traffic offense case; however, no such requirement exists for the issuance of a warrant in the same case. A failure to appear notice will prompt the department to send a driver's license suspension notice to the defendant, which will remain in effect until the defendant appears in court. Courts issue the failure to

appear notices and the warrants of arrest at the same time, but the statutes require the courts to hold on to the failure to appear notices for 15 days before sending them to the department. This holding period requires courts to individually track the dates the notices were issued to prevent them from accidentally mailing the notice before the 15 days. Concern exists that manually tracking the date the notice was issued is very cumbersome and labor intensive.

Summary: Courts are allowed to electronically transfer traffic offense disposition information to the Department of Licensing. The requirement that speed and speed zone information be recorded and printed on hearing notice forms is removed. Courts can simultaneously generate and issue the failure to appear notice with the warrant of arrest whenever the person violates his or her written promise to appear in court.

Court Levels Affected: Limited Jurisdiction.

Comments: Judicial officers are no longer required to certify and sign each traffic ticket before mailing to DOL.

Courts are allowed to electronically transfer traffic offense disposition information to the Department of Licensing.

The requirement that speed and speed zone information be recorded and printed on hearing notice forms is removed.

Courts can simultaneously generate and issue the failure to appear notice with the warrant of arrest whenever the person violates his or her written promise to appear in court. The option to change venue to the county seat in traffic offense cases in counties with populations over 125,000 with multiple judicial district court divisions is abolished.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Bill Fosbre

SSB 5304a

C 189 L 99
Synopsis as Enacted

Short Title: Making violations of the liquor code misdemeanor offenses.

Effective Date: July 25, 1999

Background: Keg Registration; Drinking in Public. Washington law requires the seller and purchaser of kegs or other containers containing four gallons or more of malt liquor to complete certain registration requirements prior to the sale. In addition, the kegs or containers themselves must carry certain identification marks. The only penalty provided for a violation is a fine up to $500. No jail time may be imposed.

With certain exceptions, opening a liquor container or consuming liquor in public is a violation of the code. A violation of this law is designated as a misdemeanor, and the only penalty provided for a violation is a fine of up to $100. No jail time may be imposed.

Because no jail time may be imposed for the above offenses, a court may not issue a bench warrant for the arrest of a defendant who fails to appear in court. This has resulted in a significant number of cases languishing indefinitely.

General Penalty Provision. The state's liquor code has a variety of penalty provisions for violations of the code. Violations of provisions that lack their own penalty provisions are covered by a general criminal penalty provision. This general provision provides the following criminal penalties for individual persons: on a first conviction, a fine of up to $500 and imprisonment for up to two months; on a second conviction, imprisonment for up to six months; and on a third conviction, imprisonment for up to one year.

Because of the way this general provision is structured, fines may not be imposed against individuals for second or third convictions. The maximum imprisonment allowed for a third conviction against an individual under the general penalty provision is one year. This maximum is the same as the maximum imprisonment possible for a gross misdemeanor. The maximum fine for a gross misdemeanor is $5,000.

Summary: Keg registration violations and furnishing kegs to minors are gross misdemeanors. Consuming liquor in public is a class 3 infraction which is punishable by a fine of up to $50. The violation of selling liquor to a minor, RCW 66.44.320, is repealed due to the fact it is addressed in another section of law which makes a similar violation a gross misdemeanor.

Court Levels Affected: Limited Jurisdiction.

Comments: (1) Makes violations of the keg registration laws and furnishing a keg to a minor a gross misdemeanor offense, (2) designates consuming liquor in public a class 3 infraction which is punishable by a fine of up to $95 (total penalty including all statutory assessments); and (3) repeals a violation for selling liquor to a minor, which is addressed in another section of law making a similar violation a gross misdemeanor.

Court Action: None.

Planned OAC Action: Update JIS/DISCIS law table. Change drinking in public statute from a non-jailable misdemeanor to $95 civil infraction.

Bill Tracker: Bill Fosbre

SB 5385

C 254 L 99
Synopsis as Enacted

Short Title: Providing an alternative method for dissolution of cultural arts, stadium and convention districts.

Effective Date: July 25, 1999

Background: A cultural arts, stadium and convention district provides cultural arts facilities, convention facilities, and stadiums. Approval by simple majority vote creates the district. The district may include both unincorporated and incorporated areas, but not part of a city or town. The governing body is composed of up to nine elected or appointed officials of the county, cities, port districts, school districts, or community colleges. The boundaries of the district must follow school district or community college boundaries as far as practicable. The activities of the district are funded by: revenue bonds; general obligation bonds; excess voter approved property taxes; and regular property taxes of up to 25 cents per $1,000 of assessed valuation for a six-year period when authorized by 60 percent or more voter approval.

A cultural arts, stadium and convention district may only be dissolved and its affairs liquidated when so directed by a majority of the persons in the district voting on such question.

Summary: An alternative procedure for dissolution of a cultural arts, stadium and convention district is authorized. A petition for an order of dissolution may be submitted to the superior court of a county of the district. The petition must be signed by at least two-thirds of the legislative authorities who have representatives on the district governing body. All signatures must have been collected within 120 days of the date of submission to the court. Dissolution procedures are specified.

Court Levels Affected: Superior.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Rick Neidhardt

SSB 5399a

C 331 L 99
Synopsis as Enacted

Short Title: Changing provisions relating to traffic offenses.

Effective Date: July 25, 1999

Background: The 1998 Legislature enacted ESSB 6166 to increase the penalties for driving while under the influence (DUI). The bill amended one part of the code and added a two-year enhancement

for each prior DUI related offense when the current offense is vehicular homicide while under the influence. The same bill also amended another part of the code to exclude prior DUI related convictions from consideration in the computation of the offender score when the current offense is vehicular homicide while under the influence since, under the bill, each prior DUI conviction requires a two-year sentence enhancement. However, the language in the bill had the unintended effect of preventing consideration of prior, non-DUI related, serious traffic offenses when computing the score for the current offense of vehicular homicide while under the influence. Consequently, an offender convicted of vehicular homicide while under the influence could benefit by having a DUI related conviction in his or her criminal history.

ESSB 6166 directed courts to order people convicted of DUI to drive only a motor vehicle that is equipped with an ignition interlock device. The bill set forth the required time periods for the use of the ignition interlocks in cases where the DUI involved an alcohol concentration (BAC) level of .15 or more, or in second or subsequent DUI convictions. The bill was silent as to the required length of time first time DUI offenders must use an ignition interlock and also those subject to a DUI related deferred prosecution.

Summary: Prior DUI related convictions are not considered when computing the offender score for the current offense of vehicular homicide while under the influence, but a two-year sentence enhancement is added for each prior DUI related offense. Other prior, non-DUI related, serious traffic offenses are included in the offender score when the current offense is vehicular homicide while under the influence.

A person convicted of DUI with a BAC of .15 or more, or in situations where the DUI is the second or subsequent DUI conviction, the court must order the person to drive only a vehicle equipped with an ignition interlock device. In cases where there is no BAC test result because the person refused to take the test, the court must order the person to drive only a vehicle equipped with an ignition interlock device. As a condition of granting a DUI related deferred prosecution petition, the court must order installation of an interlock device when the DUI that gave rise to the deferred prosecution petition involved a BAC of .15 or higher, the person refused the breathalyzer test, or the person is charged with his or her second or subsequent DUI.

The Department of Licensing may waive the $100 fee if the person requesting a hearing before the department regarding administrative license suspension or revocation following an arrest for DUI is an indigent as defined in law.

Court Levels Affected: Superior and Limited Jurisdiction.

Comments: A person convicted of a DUI with a BAC of .15 or more, or in situations where the DUI is the second or subsequent DUI conviction, the court **must** order the person to drive only a vehicle equipped with an ignition interlock device. In cases with a BAC under .15 and no prior convictions, the court **may** order the device installed. In cases where there is no BAC test result because the person refused to take the test, the court **must** order the person to drive only a vehicle equipped with an ignition interlock device.

Court Action: None.

Planned OAC Action: Update DUI Sentencing Grid.

Bill Tracker: Bill Fosbre

E2SSB 5421

C 196 L 99
Synopsis as Enacted

Short Title: Offender Supervision.

Effective Date: July 25, 1999 (However, the new levels of supervision will only apply to crimes committed on or after July 1, 2000.)

Background: The Sentencing Reform Act of 1984 abolished Washington's parole system. Beginning in 1988, however, the Legislature has required DOC to supervise several classes of offenders following release, but has not removed limitations on DOC's ability to effectively supervise offenders in the community. In addition, the existing structure of community supervision is very complex and the terminology that describes it is confusing. Concern exists that the current structure does not reflect either the risks posed by offenders in the community or public expectations of DOC's ability to monitor offenders and protect the public.

Summary: Community supervision for sex offenses, violent offenses, crimes against persons, and felony drug offenses committed after July 1, 2000, is community custody. Conditions of community custody and levels of supervision are based on risk. Stalking, custodial assault, and felony violations of domestic violence protection orders are crimes against persons. The Sentencing Guidelines Commission establishes community custody ranges and must make recommendations to the Legislature by December 31, 1999. The Legislature may adopt or modify the recommendations. If the Legislature does not act, the initial ranges recommended by the commission become law. The commission may propose annual modifications, but modifications become law only if enacted by the Legislature.
The court must sentence offenders subject to community custody to a range of community custody. It may impose conditions of supervision, including affirmative conditions such as rehabilitative treatment, based on reasonable relation to the circumstances of the offense, the risk of recidivism, or community safety. Offenders may not be discharged from community custody before the end of the period of earned release but DOC may discharge an offender between the end of the earned release and the end of the range specified by the court.

When sex offender treatment is imposed, the treatment provider must be certified by the state. There are four exceptions to the certification requirement: the offender lives out of state, there is no certified provider within a reasonable geographic distance from the offender's home, the treatment provider is employed by DOC, or the treatment program meets Department of Health rules and the provider consults with a certified provider. An offender's failure to participate in required treatment is a violation.

The court may also impose conditions on sex offenders beyond the end of the term of community custody. DOC is not required to monitor conditions beyond the end of community custody. Where a sex offender lives in a city or town, the police chief or town marshal, rather than the county sheriff, may verify that the offender lives where he or she is registered to live.

DOC may establish and modify additional conditions based on risk to community safety. DOC must

provide the offender written notice of any modifications to the conditions. DOC may not impose conditions contrary to conditions set by the court and may not contravene or reduce any court-imposed conditions.

DOC must complete risk assessments of offenders using a validated risk assessment tool. When directed by a sentencing court, the initial risk assessment must be completed prior to sentencing and used by the court in sentencing. If not performed prior to sentencing, the initial risk assessment will be completed when an offender is placed in a DOC facility. A risk assessment must also be done prior to release. The results of a risk assessment cannot be based on unconfirmed allegations. DOC has jurisdiction over offenders on community custody status and may enforce the conditions through sanctions for violations. DOC must develop a structure of graduated sanctions for violations up to and including a return to full confinement.

Offenders subject to sanctions for violations have the right to a hearing, unless they waive the right. A violation finding cannot be based on unconfirmed or unconfirmable allegations. Violation hearing officers and CCOs must report through separate chains of command. Due process protections include notice, timelines for hearings, the right to testify or remain silent, to call and question witnesses, and present documentary evidence. The sanction will be overturned if it is not reasonably related to the crime of conviction, or the violation committed, or the safety of the community.

DOC may arrange to transfer the duties of collecting legal financial obligations to county clerks or other entities if the clerks do not assume this responsibility. Post-release supervision for purposes of collecting LFOs will no longer be tolled when the offender is not available for supervision. DOC, in conjunction with the Washington Association of Sheriffs and Police Chiefs (WASPC) and counties, must establish a baseline jail bed utilization rate and negotiate terms of any increase. The rate of reimbursement will be the lowest rate charged for counties with their contract with their respective municipal governments.

The year term of community supervision for unranked felonies becomes a term of community custody. The First Time Offender Waiver becomes a term of community custody and includes conditions of supervision. The term must not exceed one year unless the court orders treatment for between one and two years, in which case supervision ends with treatment.

Except as otherwise prohibited, DOC has the authority to access records maintained by public agencies and may require periodic reports from treatment providers and providers of other required services for the purposes of setting, modifying, or monitoring compliance with the conditions of supervision. DOC must develop and monitor transition and relapse prevention strategies, including risk assessment and release planning, for sex offenders. DOC must also deploy CCOs on the basis of the geographic distribution of offenders and establish a systematic means of assessing the risk to community safety. The Washington State Institute of Public Policy must conduct a study of the effect of the act on recidivism and other outcomes and report annually to the Legislature.

No defense to liability for personal injury or death based solely on availability of funds is created.

Court Levels Affected: Superior.

Comments: This bill makes major changes in the way DOC supervises offenders sentenced under the SRA. The only type of DOC supervision will be "community custody." Except for a few exceptions noted below, only serious offenders (those who commit sex offenses, violent offenses, crimes against

persons and felony drug offenses on or after July 1, 2000) will be subject to community custody.

This bill grants courts the authority to impose conditions of community custody, which may include ***affirmative conditions*** such as rehabilitative treatment.

DOC may also impose its own conditions on an offender as part of community custody. However, DOC may not impose conditions contrary to conditions set by the court and may not reduce conditions imposed by the court.

The sentencing court may request that DOC complete a risk assessment on an offender prior to sentencing. Otherwise, DOC will complete the risk assessment after sentencing.

Offenders subject to community custody must be sentenced to a ***range*** of community custody. The Sentencing Guidelines Commission and the Legislature will establish the ranges. DOC will hear allegations of violations by offenders of their conditions of community custody in administrative hearings, rather than by the courts.

Also of particular interest to the courts is that courts, county clerks or other entities may choose to continue to be responsible for collecting legal financial obligations, if they enter into an agreement with the DOC to do so.

The one-year term of "community supervision" for unranked felonies becomes a term of community custody, instead, for crimes committed on or after July 1, 2000. The First-Time Offender Waiver also becomes a term of community custody for crimes committed on or after July 1, 2000.

Court Action: Become familiar with the new sentencing rules by July 1, 2000.

Planned OAC Action: Amend the Felony Judgment and Sentence forms, particularly paragraphs 4.6, 4.7, and 4.8.

Revise Criminal Benchbooks, as necessary.

Bill Tracker: Lynne Alfasso

SSB 5457

C 91 L 99
Synopsis as Enacted

Short Title: Juvenile Diversion Agreements.

Effective Date: July 25, 1999

Background: Concern exists over juveniles accused of crimes initiating contact with victims or witnesses of crimes they are accused of committing. A diversion agreement is a contract between a juvenile accused of committing an offense and a diversionary unit in which the juvenile agrees to certain conditions in lieu of prosecution.

Summary: A diversion agreement may include a requirement that, upon the request of the victim or witness, the juvenile who entered into the diversion agreement must refrain from any contact with victims or witnesses of offenses committed by the juvenile.

When a respondent declines to enter into a diversion agreement, the courts may impose terms of community supervision that exceed conditions allowed in a diversion agreement.

Court Levels Affected: Superior – Juvenile Division.

Court Action: None.

Planned OAC Action: Update Desk Manual for Juvenile Court Administration.

Revise WPF JU.06.0100 (Advice About Diversion) and JU.06.0120 (Diversion Agreement).

Revise JuCR 6.4 (Advice About Diversion Process).

Bill Tracker: Mike Curtis

ESB 5485

C 393 L 99
Synopsis as Enacted

Short Title: Regulating certain tobacco product manufacturers.

Effective Date: May 18, 1999

Background: On November 23, 1998, Washington State joined 45 other states in settling litigation brought against the tobacco industry for violations of state laws concerning consumer protection and antitrust. In doing so, Washington became part of the so-called Master Settlement Agreement, which had the effect of settling ours and all the states' suits against the industry.

Four of the country's largest tobacco manufacturers signed the agreement, and thus became bound by the following conditions: the companies agreed to significant curbs on their advertising and marketing campaigns; to fund a $1.5 billion anti-smoking campaign; and to open previously secret industry documents and disband industry trade groups. Further, they are prohibited from using cartoon characters in tobacco advertising, from targeting youth in ads and marketing, using billboards and transit advertising, and from selling and distributing apparel, backpacks, and other merchandise which bear brand name logos.

The financial provisions of the Master Settlement Agreement include billions of dollars paid out to the settling states in perpetuity, beginning with up-front payments of more than $12 billion by 2003. Washington State could receive approximately $4.02 billion over 25 years. Annual payments will begin on April 15, 2000, and will result in Washington receiving approximately $323 million by the end of the 1999-2001 biennium.

Settlement negotiations originated with the four major tobacco companies; however, there are tobacco product manufacturers in business now and there could be those in the future who can sell products at a reduced price with no marketing or advertising restrictions because they are not bound by the Master Settlement Agreement.

States are encouraged to pass model statutes that create a reserve fund for nonparticipating manufacturers to pay future claims. The fund would serve as a source of compensation should these companies be found culpable in future litigation, and go bankrupt or out of business, rendering them judgment-proof. Requiring that nonparticipating companies pay into this fund also provides some protection against these companies selling their products at reduced rates, undercutting the market and making huge short-term profits.

Summary: Any tobacco product manufacturer selling cigarettes to consumers in this state, whether directly or through intermediaries described in the bill, is required to either join the Master Settlement Agreement and perform its financial obligations, or place money into a qualified escrow fund. The funds placed in escrow can only be used to pay a judgment or settlement on any claim brought against the company, or to reimburse a manufacturer if an annual payment into this account is greater than the payment required under the Master Settlement Agreement. The amount nonparticipating companies pay into escrow is based on their market share. If at the end of 25 years no funds are released for the two cited reasons, all funds, including interest, are released back to the manufacturer.

Any tobacco product manufacturer that elects to place money into the escrow account must annually certify compliance with the provisions of this act with the Attorney General. The state may bring civil action on behalf of the state against any tobacco product manufacturer that fails to comply.

Court Levels Affected: Superior.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Rick Neidhardt

SSB 5573

C 49 L 99
Synopsis as Enacted

Short Title: Improving criminal history record dispositions.

Effective Date: July 25, 1999

Background: The Washington State Criminal Records Privacy Act and the Criminal Justice Information Act provide for the acquisition, retention, deletion and dissemination of criminal history record information. The policy of the acts, when read together, is to ensure complete, accurate, confidential and secure criminal history.

State and local criminal justice agencies are in the process of updating electronic databases and now have the ability to store prosecutor-filed "charges" pending final disposition. At this time, pending "arrest offenses" less than one year old without final disposition is disseminated without restriction. Law enforcement officials want to be able to disseminate information on criminal charges in the same manner as arrest information.

The current statutory language limits the chief law enforcement officer to forwarding all criminal disposition reports to the prosecuting attorney. However, in counties where an electronic method of disposition reporting has been implemented, it may be the local practice to forward the disposition report for filed felonies directly to the county clerk. For arrests other than felonies, the disposition report is usually forwarded directly to the court of limited jurisdiction.

Summary: The Criminal Records Privacy Act is amended to allow information regarding criminal charges to be disseminated in a similar manner as arrest information. The Criminal Justice Information Act is amended to allow disposition reports that are currently transmitted only to the prosecuting attorney to be also transmitted to the county clerk or appropriate court of limited jurisdiction, whichever has authority.

Court Levels Affected: All.

Comments: This legislation makes two changes in what criminal history information law enforcement can disseminate. The Criminal Records Privacy Act is amended to allow information regarding criminal charges to be disseminated in a similar manner as arrest information. The Criminal Justice Information Act is amended to allow disposition reports that are currently transmitted only to the prosecuting attorney to be also transmitted to the county clerk or appropriate court of limited jurisdiction.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Lynne Alfasso

SSB 5706

C 277 L 99
Synopsis as Enacted

Short Title: Decriminalizing license fraud and establishing a license fraud task force in the Washington State Patrol.

Effective Date: July 25, 1999

Background: Failure to register a vehicle in Washington before operating it on a state highway constitutes a misdemeanor with a fine of no less than $330. Licensing a vehicle in another state to evade any tax or license fee is a gross misdemeanor, punishable by up to one year in the county jail and a fine equal to twice the amount of the delinquent taxes and fees.

Registering an aircraft in another state or registering a vessel in another state or foreign country to avoid the Washington excise tax constitutes a gross misdemeanor. Failure to pay the annual tax imposed on a travel trailer or camper is a misdemeanor.

Failure to pay any excise taxes by the due date will result in a penalty of 5 percent of the amount of the tax. Failure to pay within one month of the due date will result in a penalty of 10 percent of the tax and failure to pay within two months will result in a penalty of 20 percent of the tax.

Summary: The Legislature intends to decriminalize license fraud and impose stronger civil penalties upon residents who do not comply with state vehicle registration laws.

The Washington State Patrol coordinates a License Fraud Task Force. One sergeant coordinates three task force detectives, one Department of Revenue tax discovery agent, and an Assistant Attorney General.

Anyone who fails to register a vehicle before operating it on a state highway is liable for a penalty of $350 for each violation. Individuals who license a vehicle in another state to avoid paying any tax or license fees are liable for a minimum monetary penalty of $1,000 and a maximum penalty of $10,000. Failure to renew an expired registration remains a traffic infraction.
Any individual who fails to pay the aircraft excise tax, the watercraft excise tax, or the trailers and campers excise tax is liable for a minimum monetary penalty of $1,000 and a maximum penalty of $10,000.

If an individual does not pay the State Patrol within 15 days of the notice of the penalty, the Attorney General brings an action in superior court to recover the penalty, administrative fees, and attorney's fees. All penalties recovered must be paid into the state treasury and credited to the State Patrol highway account.

There is a rebuttable presumption of a tax deficiency and intent to avoid the excise taxes if a person failed to properly register or license a motor vehicle, aircraft, watercraft, trailer, or camper.

Court Levels Affected: Superior and District.

Comments: The bill will result in fewer criminal cases in the district courts, but will result in more civil actions in the superior courts. The civil enforcement actions may be brought by the Attorney General in Thurston County Superior Court or the superior court for the county where the violator resides or works. Consequently, the increase in the superior court civil caseload will be more noticeable in Thurston County and in the counties bordering other states.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Rick Neidhardt

SSB 5744a

C 371 L 99
Synopsis as Enacted

Short Title: Child dependency proceedings.

Effective Date: July 25, 1999

Background: Counties have been frustrated at the amount of money they have had to spend in defense costs when they do not control the volume of cases in child dependency and termination proceedings.

Summary: The public defense office must develop a proposal to address the costs and expenses of legal representation for indigent parents, guardians, legal custodians, and children in dependency and termination hearings under Chapter 13.34 RCW. The proposal must address cost issues and strategies and be reported to the Legislature.

Court Levels Affected: Superior - Juvenile Division.

Court Action: None.

Planned OAC Action: None.

Bill Tracker: Mike Curtis

ESSB 5988

C 319 L 99
Synopsis as Enacted

Short Title: Changing provisions relating to truancy.

Effective Date: July 25, 1999

Background: Children aged eight to 17 years old must attend public schools unless they: (1) attend state-approved private schools; (2) receive home-based instruction; (3) attend a state-approved education center; (4) are excused by the school district superintendent under certain circumstances; or (5) are 16 years old and meet certain criteria.

If a child attending a public school has up to five unexcused absences in a month, the school district must try to reduce the absences. Among other things, the district may file a truancy petition or refer the child to a community truancy board. A community truancy board is a group of community members selected by the local school board to resolve truancy issues through an informal process. A truancy board may: (1) recommend methods for improving school attendance; (2) make agreements with truants and parents; or (3) suggest to a school district that truants attend another school.

If a child attending a public school has seven unexcused absences in a month, or ten unexcused absences

during the school year, the school district must file a truancy petition. If the juvenile court schedules a hearing on the petition, it must notify the child, the child's parents, and the school district.

If the court finds that the school district has been unable to reduce the child's absences and that court intervention is necessary to reduce the absences, the court must grant the truancy petition and assume jurisdiction over the child. The court may order the child to attend school, an alternative school, or another education program. The court may also order a student to submit to testing for the use of controlled substances or alcohol. If the child fails to comply with the truancy order, the court may impose detention or community service on the child. The court may also impose a fine or community service on the child's parents.

Summary: Compulsory Attendance. Six- and seven-year-old children are not required to enroll in school or to receive home-based instruction. But if a six- or a seven-year-old child is enrolled in a public school, the child's parent must ensure that the child attends the school, and the child has a duty to attend the school, for the full time the school is in session. Compulsory attendance does not apply to the following six- or seven-year-olds: (1) part-time students receiving ancillary services; (2) students who are formally removed from enrollment and whose parents have not been served with a truancy petition; and (3) students who have been temporarily excused by the school district.

Truant Six- and Seven-Year-Olds. If an enrolled six- or seven-year-old has unexcused absences, the school must take the following actions: (1) inform the parents that the child has failed to attend school; (2) request a conference with the parents to analyze the cause of the absences; (3) take steps to eliminate the absences; and (4) file a truancy petition after seven unexcused absences in a month or ten unexcused absences in a school year. Any truancy petition concerning a six- or a seven-year-old may only be filed against the parent. Six- and seven-year-olds are not required to attend hearings held by the court or a community truancy board. Furthermore, any board agreement concerning six- or seven-year-olds may only include the parent and the school district. Any truancy order concerning a six- or seven-year-old may only be enforced by fining the parent.

Community Truancy Boards. Juvenile courts may establish and operate community truancy boards. A juvenile court may delegate this responsibility to a school district if the district agrees. When a school district files a truancy petition, the juvenile court may refer the case to a community truancy board. If the board receives a referral, it must meet the parties and work out an agreement within 30 days of the referral. The juvenile court may approve the agreement or schedule a hearing. The court may permit the community truancy board to supervise the case. If the community truancy board cannot reach an agreement, the case must be returned to the court. Courts may enforce board agreements by detention or other alternatives, such as community service.

Truancy Petitions. Truancy petitions may be served by certified mail, return receipt requested. But personal service is required if service by mail is unsuccessful or the addressee does not sign the return receipt.

School District Representation at Truancy Hearings. School districts alone are to determine whom represents them at truancy hearings; their representatives need not be attorneys. Court discretion in permitting non-attorney representation is removed.

School Transfers. When a child transfers from one school district to another district, the receiving school district must count the unexcused absences accumulated in the previous district. If a child who is subject to a truancy petition in one county moves to another county, the juvenile court in the receiving

county, upon request of a school district or parent, must assume jurisdiction of the truancy petition.

Grants for Alternative Education Programs. To the extent funds are available, the Superintendent of Public Instruction must provide start-up grants for alternative programs and services that provide instruction for truant, at-risk, and expelled children. The grant applications must contain proposed performance indicators and an evaluation plan to measure the success of the program, and the applicant's plan for maintaining the program and services after the grant period.

Study of Truancy Process. If funds are appropriated, the Superintendent of Public Instruction must contract for an evaluation to be done by the Institute of Public Policy or a similar agency. The evaluation must examine the following: (1) the effectiveness of the petition process and community truancy boards in reducing truancy; (2) the effects of juvenile court action on truants who return to school; and (3) the costs imposed on school districts by the truancy provisions. The cost analysis is to be submitted to the appropriate legislative committees by December 15, 1999, and the remaining evaluation is to be submitted by December 15, 2000.

Court Levels Affected: Superior - Juvenile Division.

Comments: Establishes statutory direction with regard to the operation of community truancy boards and procedures with regard to the interface between the truancy board and the juvenile court.

Court Action: If not already in existence, explore the possibility of establishing community truancy boards. If a community truancy board exists, but is under the operation of the school district, establish a formalized agreement between the juvenile court and the school district, authorizing such.

Planned OAC Action: Review and revise the Juvenile Non-Offender Benchbook and the Desk Manual for Juvenile Court Administration. Review JUVIS and SCOMIS codes to determine the need for any additional codes reflecting the court's entry of an order adopting a truancy board agreement.

Bill Tracker: Mike Curtis