



WASHINGTON
COURTS

SUMMARY
Of Selected
2005 LEGISLATION
Of Interest to the Courts

June 2005

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***“ . . . TO ADVANCE THE EFFICIENT AND
EFFECTIVE OPERATION OF THE
WASHINGTON JUDICIAL SYSTEM”***

AOC Mission Statement

The Administrative Office of the Courts (AOC) was established by the 1957 Legislature and operates under the direction and supervision of the Chief Justice of the Supreme Court, pursuant to Chapter 2.56 RCW. The AOC is organized into four areas:

- ◆ **Administration**
- ◆ **Information Services Division**
- ◆ **Judicial Services Division**
- ◆ **Management Services Division**

2005 Legislative Summary

We are pleased to present a **Summary of Selected 2005 Legislation of Interest to the Courts** and hope it will be useful to implement bills that impact your court. During the 2005 legislative session, the Legislature and Governor enacted 101 bills that affect the courts and are of general interest to the legal community.

Brief descriptions of these measures follow, arranged by court level within each area of law. Designators indicate whether the measure is of primary interest to judges and/or court managers in appellate (A), superior (S), juvenile (J), or district/municipal courts (D/M). Following each bill summary is a section that outlines implementation plans to be undertaken by the Administrative Office of the Courts (AOC) and/or the affected court levels.

Unless otherwise noted at the end of the bill summary, the **effective date of bills is July 24, 2005**. Partial vetoes by the Governor are indicated at the end of the bill summary. For details on vetoes and other bill information, please go the Washington State Legislature’s website at www.leg.wa.gov and enter the bill number under the “Bill Search” heading.

A list of AOC “bill trackers” is provided below. Please feel free to contact the person responsible for the subject area directly if you have questions about a particular bill, or you may call Jeff Hall at 360-357-2131 for general legislative inquiries.

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CIVIL

PROHIBITING DISCLOSURE OF PERSONAL WIRELESS NUMBERS (ALL)

SHB 1185
Chapter 322, Laws 2005

Wireless telephone companies are not to publish subscriber phone numbers in any directories unless subscriber consent is given. There are some exceptions to this consent requirement, such as providing a wireless phone number to a 911 response agency or to a wireless billing agent.

If a company does not comply with the subscriber consent requirement, it is subject to a fine of up to 500 dollars. In addition, the Office of the Attorney General is authorized to send a letter of warning and pursue actions if companies do not comply with the requirement. Finally, an individual whose cell phone number has been released without consent is authorized to bring a civil action and receive damages of at least 500 dollars per violation.

ACCOMMODATIONS FOR DEPENDENT PERSONS ESHB 2126 (ALL) Chapter 381, Laws 2005

Sec. 3 requires that judges and others make every reasonable effort to assure that dependent victims and witnesses are afforded rights enumerated in the bill.

MODIFYING THE UNIFORM HEALTH CARE INFORMATION ACT ESSB 5158 (ALL) Chapter 468, Laws 2005

Adds exceptions to a patient's right to receive records of disclosures of their health care information.

Requires that patient disclosure authorizations regarding health care information contain an expiration date or expiration event. Expands the authority of health care providers to disclose health care information without a patient's authorization.

ENACTING THE REVISED UNIFORM ARBITRATION ACT SHB 1054 (S) (as amended by Senate) Chapter 433, Laws 2005

Replaces the state's existing arbitration statute (RCW Chapter 7.04) with the Revised Uniform Arbitration Act (RUUA). The RUUA is based on model legislation drafted by the National Conference of Commissioners on Uniform State Laws. The RUUA does not depart in major ways from the existing act. It does, however, codify some of the case law that interpreted the earlier UAA, and it goes beyond the UAA in addressing a few new topics, including arbitrator immunity, arbitrators testifying in other proceedings, and consolidation of multiple arbitration proceedings in complex disputes. The bill applies only to agreements to arbitrate, not to mandatory arbitration of superior court cases under RCW Chapter 7.06. A detailed explanation of the uniform legislation can be found at: <http://www.law.upenn.edu/bll/ulc/uarba/arbitrat1213.htm> (the various prefatory notes and comments are especially helpful).

Effective date: January 1, 2006.

COMMERCIAL MOTOR VEHICLE VIOLATIONS (S) HB 1469 Chapter 444, Laws 2005

Changes the hearing procedures for violations of the commercial motor vehicle laws, rules, and orders. If the penalty is not paid

within fifteen days or if an application for remission or mitigation is not made within fifteen days the State Patrol must bring an action in Superior Court under the APA to recover the penalty.

ADDRESSING CONSTRUCTION DEFECT DISPUTES INVOLVING MULTI- UNIT RESIDENTIAL BUILDINGS (S) EHB 1848 (as amended by the Senate) Chapter 456, Laws 2005

Adopts multiple levels of alternative dispute resolution for condominium defect cases. All cases must go to mediation. Any party may then demand arbitration, and the court is involved in appointing arbitrators. Any party may request the appointment of a neutral expert, whose report would be admissible under usual evidentiary rules. An arbitration award may be appealed to superior court, where the appeal is heard as a trial de novo, including the right to a jury upon demand. Any party may make an offer of judgment, which is then used in determining the prevailing party for purposes of awarding attorney fees. (The ADR provisions are limited to condominium litigation, even though other parts of the bill also apply to apartment buildings.)

Courts should consider creating a list of potential arbitrators specific for condominium litigation.

Effective date: August 1, 2005 (the bill applies to lawsuits filed on or after effective date).

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CHANGING PROVISIONS RELATING TO THE UNLAWFUL DETAINER PROCESS UNDER THE RESIDENTIAL LANDLORD- TENANT ACT (S) SSB 5479 Chapter 130, Laws 2005

Requires landlords in unlawful detainer actions to provide tenants with a slightly longer (and more clearly defined) advance notice period for responding to a summons of an unlawful detainer action and for appearing at a show cause hearing. The new time periods provide for a minimum advance notice of 7 days and a maximum of 30 days, instead of 6 and 12 days. The change in the minimum time from six to seven days eliminates a potential trap regarding the computation of time. The bill also allows tenants to respond by mail or fax, and it specifies the information to be included in the summons.

Courts should review procedures for issuing show cause orders and writs of restitution.

CLARIFYING HOW DEMOGRAPHIC FACTORS ARE USED WITH REGARD TO SEXUALLY VIOLENT PREDATORS (S) SSB 5582 Chapter 344, Laws 2005

Restricts the grounds under which a sexually violent predator can establish probable cause for release from civil commitment. Specifically, probable cause is not established merely by showing a change in the person's age, gender, marital status, or any other single demographic factor. The bill is a response to two Court of Appeals opinions: *State v. Young*, 120 Wn.App. 473 (2004) (addressing probable cause based

on the detainee's relatively advanced age); *In re Ward*, 125 Wn.App. 381 (2005) (addressing probable cause based on changes in diagnostic procedures).
Effective date: May 9, 2005

CONCERNING MANDATORY ARBITRATION (S) SB 5733 (as amended by the House) Chapter 472, Laws 2005

Changes the criteria for determining which superior court cases must be sent to mandatory arbitration. Specifically, (1) the ceiling on damages is raised from \$35,000 to \$50,000, and (2) the requirement for using mandatory arbitration is extended to all counties with a population over 100,000 (as compared to 150,000 under current law).

All counties should review their existing procedures and local rules with regard to the higher ceiling on damages. It does not appear that the change in population threshold currently affects any county. The only county with a population between 100,000 and 150,000 is Skagit County, and it already has a mandatory arbitration program. (Cowlitz County is nearing a population of 100,000.)

CREATING THE OMNIBUS TREATMENT OF MENTAL AND SUBSTANCE ABUSE DISORDERS ACT OF 2005 (S) E2SSB 5763 (as amended by conference committee) Chapter 504, Laws 2005

Authorizes, but does not require, counties to create a "therapeutic court" (i.e., a combined mental health and drug court). The original bill *required* all counties to create therapeutic courts, but in the final version, the requirement extends

only to those counties that choose to exercise a new local option to increase the sales tax. Two pilot projects are authorized to "provide integrated crisis response and involuntary treatment for persons with mental illness, chemical dependency, or both". The final version of this year's bill did *not* include provisions actually consolidating the involuntary treatment acts for mental illness and chemical dependency (the original bill did undertake this consolidation, with an effective date of 2009). The Legislature, however, still intends to look into consolidating the two involuntary treatment acts in a future year (see section 101).

*Effective date: July 1, 2005.
(Exception: § 503, creating a local option to increase the sales tax, takes effect July 1, 2006.)*

Partial veto by Governor Gregoire. The partial veto does not apply to the provisions directly affecting the courts.

ADOPTING THE SERVICE MEMBERS' CIVIL RELIEF ACT SHB 2173 (S,D) (as amended by the Senate) Chapter 254, Laws 2005

Provides certain rights and protections in civil proceedings to service members and their dependents during their military service or within 180 days after the termination of their military service. For this act, "service member" is defined narrowly to apply only to residents who are members of the national guard or military reserves, rather than more broadly to all residents who are in military service. The new state act supplements the similar federal act — the Service members' Civil Relief Act, adopted in 2003 — although the federal act is not limited to the national guard or military reserves. Both the state and federal acts

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provide protections relating to default judgments and motions to stay proceedings; the state act also tolls statutes of limitations.

Courts should consider reviewing default judgment procedures.

AOC will review benchbooks for possible revisions.

Effective date: May 3, 2005.

ENACTING THE UNIFORM MEDIATION ACT (S,D) ESSB 5173 Chapter 172, Laws 2005

Adopts the Uniform Mediation Act, which is based on model legislation from the National Conference of Commissioners on Uniform State Legislation. Previously, Washington statutes addressed only a handful of mediation issues, and only in a piece-meal fashion. The act, among other things, establishes when mediation communications are privileged and confidential. A detailed explanation of the uniform legislation can be found at: <http://www.law.upenn.edu/bll/ulc/mediat/2003finaldraft.htm> (the various prefatory notes and comments are especially helpful). For a discussion of the ways in which the uniform legislation was modified to fit Washington law, see the WSBA's summary of the proposed bill in the document accompanying this report (titled *SB 5173 WSBA Summary*).

Effective date: January 1, 2006.

REGULATING COMPUTER SPYWARE (S,D,M) ESHB 1012 Chapter 500, Laws 2005

It is unlawful to transmit spyware, deceptively modify another person's computer settings, and collect personal information by

deceptive keystroke-logging. Technical details of many types of spyware incursions are specified and described.

The Attorney General or certain classes of business victims of spyware attacks may bring actions for injunction and damages up to \$100,000 per violation or actual damages, whichever is greater.

A court may increase damages up to three times the amount of the award, but not to exceed two million dollars. Remedies under the Consumer Protection Act are not affected.

ELECTRONIC MAIL FRAUD E2SHB 1888 (S,D,M) Chapter 378, Laws 2005

This law prohibits a person from soliciting, requesting, or taking any action to induce another person to provide personally identifying information by means of a web page, electronic mail message, or otherwise using the internet by representing oneself, either directly or by implication, to be a business or individual, without the authority or approval of such business or individual.

An injured person may bring a civil action against a person or entity that directly violates this act and seek damages of up to \$500 per violation, or actual damages, whichever is greater.

An internet service provider, an owner of a web page, or a trademark owner may bring a civil action against a person or entity that directly violates this act and seek to enjoin further violations, and may also recover \$5,000 per violation, or actual damages, whichever is greater. In addition, the court may increase the damage award up to three times (up to \$15,000) if the defendant has engaged in a pattern and practice

of engaging in the prohibited activities. The court may also award costs and reasonable attorneys' fees to the prevailing party.

ANTI-HARASSMENT HEARINGS (D,M) HB 1294 Chapter 144, Laws 2005

Requires a prima facie showing of harassment in the petition before a hearing may be set, except for allegation of sexual offenses.

ANTI-HARASSMENT JURISDICTION (D,M) HB 1296 Chapter 196, Laws 2005

Extends jurisdiction for anti-harassment matters to municipal courts as a local option.

CHILD PASSENGER RESTRAINTS (D,M) ESHB 1475 Chapter 132, Laws 2005

Clarifies and amends provisions of RCW 46.61.687 regarding the use of child restraint systems in automobiles.

Effective date: Sec. 1 becomes effective June 1, 2007.

PROBATE/ GUARDIANSHIP

TRUSTS AND ESTATES (S) HB 1125 Chapter 97, Laws 2005

Makes changes regarding the management of trusts and estates including changes affecting the right to inherit, notice to creditors, nomination of guardians for minors, changing trustees, and other provisions. Amends many sections

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in RCW Titles 11, 21 and 22 for those purposes.

VOTING RIGHTS AND GUARDIANSHIP (S) SSB 1876 Chapter 236, Laws 2005

Preserves the right-to-vote of an individual under full guardianship unless the court makes a specific finding that the individual is incompetent for purposes of voting. Requires the court to decide an individual's voting right when a guardianship is established. Amends RCW 11.88.010 for this purpose.

As of January 1, 2006, courts will be required to notify county auditors when an incapacitated person is found to be incompetent for purposes of voting, pursuant to an amendment made to RCW 11.88.010 in 2004 (Ch. 267, Laws 2004).

Courts should decide an individual's voting right whenever a guardianship is established.

Effective January 1, 2006, courts should notify the county auditor whenever an incapacitated person is found to be incompetent for purposes of voting.

FAMILY & JUVENILE

MENTAL HEALTH TREATMENT FOR MINORS (S) SHB 1058 Chapter 371, Laws 2005

Amends and adds new sections to RCW 71.34. Provides that parental authorization is required for inpatient treatment of a minor under the age of thirteen. Provides that a provider may not refuse to treat a minor solely on the basis that the minor has not consented to treatment.

DISSOLUTION OF MARRIAGE AND PREGNANCY (S) SHB 1171 Chapter 55, Laws 2005

Amends RCW 26.09.030. Provides that court shall not use a party's pregnancy as the sole basis for denying or delaying entry of decree of dissolution of marriage. Provides that granting decree of dissolution when party is pregnant does not affect further proceedings under the Uniform Parentage Act, Chapter 26.26 RCW.

YOUTHFUL OFFENDERS TRIED AS ADULTS (S) EHB 1187 Chapter 437, Laws 2005

Amends RCW 9.94A.540 and creates a new section. Provides that mandatory minimum terms of total confinement shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i). Applies only to crimes committed on or after effective date.

EXPANDING INFORMED CONSENT TO MEDICAL CARE FOR MINORS (S) SHB 1281 Chapter 440, Laws 2005

Amends RCW 7.70.065 and creates a new section. Provides that informed consent to health care on behalf of a minor patient may be given by the appointed guardian, legal custodian, person authorized by the court for a child in out-of-home placement under RCW 13.32 or RCW 13.34, parents, individual to whom parents have given written authorization, and a competent adult representing him/herself to be a relative responsible for the health care of such minor or a competent adult who has signed a declaration under penalty of perjury stating so. Provides immunity to health care provider relying on declaration.

PROCEDURES FOR TRANSFER OF JUVENILE PROCEEDINGS (S) SB 1661 Chapter 165, Laws 2005

Amends RCW 13.40.060. Provides that court may transfer proceeding to county where juvenile resides, following disposition for the purposes of supervision and enforcement of the disposition order, provided that originating county shall retain venue for establishing restitution order, and then may transfer venue over modification and enforcement of restitution to new county. Provides procedures for transfer of legal and social documents, and for clerk's and juvenile probation department's maintenance of legal financial obligation. Provides that venue may not be transferred if a civil judgment has already been established.

Court should implement venue transfer procedures and LFO collection procedures.

DISPOSITION IN JUVENILE COURT FOR CERTAIN ADULT JURISDICTION OFFENSES SHB 2061 (S) Chapter 238, Laws 2005

Requires a case that was automatically transferred to adult court be returned to juvenile court for disposition if the juvenile is convicted of an offense that was not one requiring automatic transfer of jurisdiction, or if the juvenile was convicted of a lesser included offense.

Courts should review disposition and jurisdiction procedures.

AOC will review juvenile court forms for possible changes.

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AUTOMATIC TRANSFER OF JURISDICTION FROM JUVENILE COURT (S)
HB 2064
Chapter 290, Laws 2005

Amends RCW 13.04.030. Clarifies that juvenile must be sixteen or seventeen years old on the date the alleged offense is committed for automatic transfer of jurisdiction to adult criminal court.

JUVENILE OFFENDER MENTAL HEALTH DISPOSITION (S)
SHB 2073
Chapter 508, Laws 2005

Amends RCW 13.40.167. Removes minimum (15 weeks) and maximum (65 weeks) commitment ranges for mental health disposition alternative and clarifies offenses making offender ineligible for mental health disposition alternative. Provides that costs incurred by juvenile court for mental health and chemical dependency evaluations, treatment and supervision shall be paid by JRA, subject to funding appropriations

CPS/CWS TASK FORCE (S)
SHB 2156
Chapter 430, Laws 2005

Creates a task force on child safety to review issues pertaining to health, safety, and welfare of children receiving services from child protective services and child welfare services. Representative from SCJA will serve as task force member. Preliminary report is due December 31, 2005; final report is due September 1, 2006. See also ESSB 5872 for similar task force.

SCJA to appoint a representative.

SERVICE BY PUBLICATION IN ACTIONS FOR ESTABLISHING/MODIFYING PARENTING PLANS AND NONPARENTAL CUSTODY (S)
SB 5053
Chapter 117, Laws 2005

Amends RCW 4.28.100. Clarifies causes of action for service by publication and includes actions for establishing/modifying parenting plans, and for nonparental custody actions where child is in physical custody of petitioner.

AOC will review pattern forms for changes.

LIE DETECTOR TESTS FOR JUVENILE COURT EMPLOYMENT APPLICANTS (S)
SB 5501
Chapter 265, Laws 2005

Amends RCW 49.44.120. Provides that prospective employees of juvenile court services agency of any county may be required to take a lie detector or similar test.

Review and change existing employee application procedures as appropriate.

TRAINING OF CHILDREN'S ADMINISTRATION STAFF RE ABUSE OR NEGLECT OF OLDER CHILDREN (S)
ESSB 5583
Chapter 345, Laws 2005

Adds new sections to Chapter 26.44 RCW. Provides, within existing resources, for curriculum development and additional training of Children's Administration staff re screening referrals, assessing risk, and providing services for children ages 11 – 18.

CPS/CWS JOINT TASK FORCE (S)
ESSB 5872
Chapter 474, Laws 2005

Creates joint task force to make recommendations regarding structure of children's administration and improvements in outcomes for families and children. Family court judge jointly appointed by legislative committee chairs will serve on task force. Report due December 1, 2005. See also SHB 2156 for similar task force.

SJCA to recommend family court judge as a member of the task force.

CHILD ABUSE AND NEGLECT DEFINITIONS AND INVESTIGATIONS (Justice and Raiden Act) (S)
ESSB 5922
Chapter 512, Laws 2005

Amends RCW 13.34.050, RCW 13.34.138 RCW 26.44.015, RCW 26.44.020, RCW 74.13.031, adds new section to chapter 26.44 RCW, and creates new sections. Provides that parent, guardian or legal custodian shall be informed of any allegations of child abuse or neglect made against them. Provides that child's in-home placement or return to home shall be contingent upon parents' compliance with court orders, case plan and substance abuse treatment. Redefines "abuse or neglect" and "negligent treatment or maltreatment" under circumstances to cause harm to child's health, welfare, OR safety, and to include provisions for chronic neglect. Provides that court shall give great weight to parent's substance abuse in evaluating cases of alleged neglect. Redefines "imminent harm" in RCW 13.34.050 to include parent's failure to perform basic parental duties as a result of substance abuse.

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Partial Veto: Sections 7 and 8 were vetoed by Governor Gregoire.

AOC will review juvenile court forms for possible changes.

Effective Date: January 1, 2007.

SERVICES FOR CHILDREN OF INCARCERATED PARENTS (S,D,M)
HB 1426
Chapter 403, Laws 2005

Provides that Department of Corrections and Department of Social and Health Services shall create an oversight committee to develop plan for services to support children of incarcerated parents. Oversight committee will include courts' representative from with decision-making authority. Report to legislature is due January 1, 2006 and plan is due by June 30, 2006.

Each judges' association should designate a representative to the oversight committee.

MANDATORY REPORTING OF CHILD ABUSE OR NEGLECT
ESSB 5308 (S,D,M)
Chapter 417, Laws 2005

Amends RCW 26.44.030. Adds provision to require those in supervisory capacity with nonprofit or for-profit organizations that work with children to report reasonably suspected child abuse or neglect caused by a person under his/her supervision.

SEXUAL MISCONDUCT WITH MINOR (S,D,M)
SSB 5309
Chapter 262, Laws 2005

Amends RCW 9A.44.093 and .096 to provide that a foster parent who has or knowingly causes another person to have sex with his or her foster child is guilty of either first-

degree sexual misconduct with a minor (minor is under the age of 16), a felony, or second-degree sexual misconduct with a minor (minor is age 16 or older), a gross misdemeanor.

YOUTH COURTS (S,D,M)
SB 5809
Chapter 73, Laws 2005

Amends RCW 3.72.010. Clarifies conditions for youth participating in youth courts sited in courts of limited jurisdiction for traffic infractions. Clarifies youth courts and student courts may also operate under Chapter 13.40 RCW and RCW 28A.300.420.

CRIMINAL

ENHANCED FISH AND WILDLIFE PENALTIES (ALL)
EHB 1696
Chapter 406, Laws 2005

Expands the crime of unlawful recreational fishing in the first degree to include fishing for or possessing a species of fish that is listed as endangered or threatened.

Allows flexibility in the types of security posted to reclaim seized property.

Increases the penalties for the unlawful hunting of big game.

Creates a fish and wildlife reward account; all penalty assessments under 77.15.420 will be deposited into the account. (These were previously deposited in the PSEA.)

AOC will modify JIS accounting codes.

DNA TESTING (S)
SHB 1014
Chapter 5, Laws 2005

Eliminates sunset provisions originally established for convicted persons to request postconviction DNA testing. Under this Act, any person sentenced to imprisonment for a felony conviction may submit a written motion directly to the court of conviction (instead of the Office of Public Defense) requesting postconviction DNA testing. If the motion submitted to the court meets the statutory requirements the court (instead of the prosecutor) must grant the motion to request DNA testing.

Upon a written request to the court, the court may in its discretion appoint legal counsel solely to prepare and present a motion for postconviction DNA testing for an indigent person serving a term of imprisonment. A motion for appointment of counsel must comply with all procedural requirements established by court rule. Amends RCW 10.73.170 for purposes of the act.

Effective date: March 9, 2005.

SUBSTANCE ABUSE TREATMENT (S)
ESSHB 2015
Chapter 460, Laws 2005

Creates a new residential chemical dependency treatment-based alternative Drug Offender Sentencing Alternative (DOSA) program in addition to the original prison-based DOSA, where a nonviolent offender with a substance abuse addiction can be sentenced to community custody along with supervised residential chemical dependency treatment. The residential chemical dependency treatment-based alternative is only available to an offender if the midpoint of his or her

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standard sentence range is twenty-four months or less.

Authorizes courts to sentence a nonviolent offender with a substance abuse addiction to either the current prison-based DOSA or the new residential chemical dependency treatment-based alternative.

Prohibits an offender from participating in any DOSA program if he or she has been convicted of a violent offense in the last 10 years or a sex offense at any time.

A motion for a DOSA sentence may be made by the court, the offender, or the state.

Requires the court to order an examination report along with a treatment plan if it is determined that an offender is eligible for a DOSA sentence.

Authorizes the courts to bring a DOSA offender back into court at any time to evaluate the offender's progress in treatment or to determine whether any of the conditions of the sentence have been violated.

Requires the court to schedule a termination hearing for three months prior to the expiration of the offender's residential chemical dependency DOSA sentence.

Courts: This act applies to sentences imposed on or after the effective date of the act.

Effective Date: October 1, 2005.

EXCEPTIONAL SENTENCES SB 5477 (S) Chapter 68, Laws 2005

Amends the Sentencing Reform Act with regard to sentences outside the standard sentence range. The list of aggravating factors used to justify an upward

departure from the standard sentence range is made exclusive. The aggravating factors list is expanded. Four aggravating factors, all based on questions of law, may be used to impose a sentence above the standard range without findings of fact by a jury. The remaining twenty-five aggravating factors pose questions of fact that must be submitted to a jury.

At any time prior to trial or entry of a guilty plea, the state may give notice that it is seeking a sentence above the standard sentence range. A judge may no longer independently seek a sentence above the standard sentence range. The court then makes an initial determination regarding whether the evidence allegedly supporting a sentence above the standard sentence range can be admitted during the trial for the underlying offense or whether: (1) the evidence is not part of the evidence required to prove the crime; (2) the evidence is not otherwise admissible; and (3) admission of the evidence would be unfairly prejudicial at trial. If the evidence is not admitted at the trial for the underlying offense and the defendant is found guilty, a separate sentencing departure hearing is conducted using the same jury. The state has the burden of proving, beyond a reasonable doubt, the existence of one or more aggravating factors. The jury verdict must be unanimous. To impose a sentence above the standard sentence range, the court must then find that the factors constitute substantial and compelling reasons justifying the exceptional sentence and must set forth those reasons in written findings and conclusions of law.

The list of mitigating factors justifying a downward departure remains illustrative and the process for determining whether a mitigated

sentence is appropriate remains unchanged. Either party or the court may initiate proceedings for a mitigated sentence and the court determines, by a preponderance of the evidence, whether substantial and compelling reasons exist to impose a sentence below the standard sentence range.

The Sentencing Guidelines Commission is directed to study and draft proposed legislation addressing judicial discretion issues under the Sentencing Reform Act. The study and proposed legislation must be submitted to the legislature by December 1, 2005.

This act was the legislature's response to the U.S. Supreme Court's decision in *Blakely v. State of Washington* (2004.)

AOC will work with the Pattern Jury Instructions Committee to develop any new jury instructions that may be needed to implement this act.

AOC will work with the Pattern Forms Committee to revise plea and judgment forms to implement this act.

Effective date: April 15, 2005.

ELECTRONIC MONITORING SYSTEM (S,D,M,J) HB 1136 Chapter 435, Laws 2005

The Washington Association of Sheriffs and Police Chiefs (WASPC) must conduct a study on electronic monitoring in every state. The study must analyze each state's activity regarding electronic monitoring.

The Department of Corrections (DOC) must work with the WASPC to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody.

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Between January 1, 2006, and December 31, 2006, the DOC must endeavor to place at least one hundred low-risk community custody violators on the electronic monitoring program per day if there are at least that many low-risk offenders who qualify for the electronic monitoring program.

Local governments, their subdivisions and employees, the DOC and its employees, and the WASPC and its employees are immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith.

FIREARMS/INSANITY SHB 1687 (S,D,M,J) Chapter 453, Laws 2005

Makes a verdict of not guilty by reason of insanity the equivalent of a guilty verdict for purposes of making a person ineligible to possess a firearm. Provides that a person found not guilty by reason of insanity who is seeking restoration of possession rights must meet the same eligibility requirements as would have applied had the person been found guilty of the crime. Requires anyone who has been involuntarily committed to a mental hospital to show by clear, cogent, and convincing evidence that he or she is not a danger to others if the record shows by a preponderance of the evidence that the person has been violent in the past and is likely to be violent in the future.

Amends RCW 9.41.040, 71.05.390 and 71.34.200 for purposes of this Act.

The courts must ensure that court records disclosure policy for involuntary commitment records conforms to the changes to RCW

71.05 and 71.34 that permit disclosure of certain involuntary commitment records to law enforcement officers and prosecuting attorneys for the purposes of this Act.

The courts must provide notice to individuals who are found not guilty by reason of insanity (NGRI) of crimes specified in the statute that they are ineligible to possess a firearm until that right is restored at a later date.

AOC will review forms with the Pattern Forms Committee to determine if additional notification language is necessary for persons found NGRI of specified crimes.

CHILD WITNESSES (S,D,M,J) SHB 1837 Chapter 455, Laws 2005

Expands RCW 9A.44.150, which allows child victims to testify via closed-circuit television, to include child witnesses who are not victims under certain circumstances.

OFFENDERS WHO ARE STUDENTS (S,D,M,J) HB 2101 Chapter 380, Laws 2005

Revises the registration requirements for sex offenders. Requires a registered sex offender to notify the sheriff if he or she is planning to enroll at a public or private school, requires the sheriff to promptly notify the school, and requires the principal of the school to notify certain persons.

AOC will review the criminal Plea and Judgment and Sentence forms with the Pattern Forms Committee to determine the changes that need to be made to comply with the act.

COMMUNITY PROTECTION ZONES (S,J) SHB 1147 Chapter 436, Laws 2005

Establishes community protection zones (CPZ) around public and private schools. A CPZ has a radius of 880 feet from the school.

- Prohibits certain sex offenders from living in the zones.

- Establishes a Joint Task Force to examine issues of community safety and the management of sex offenders in the community.

Amends several sections of RCW Chapter 9.94A for purposes of the act.

The court must prohibit an offender who is convicted of a first "two strikes" sex offense against a minor victim from residing in a community protection zone while on community custody. In addition, the DOC may not approve a residence location for such offenders if the proposed residence is in a community protection zone.

AOC will review plea and judgment and forms with the Pattern Forms Committee to determine whether any changes need to be made to implement the act.

Expires: July 1, 2006.

WITHHOLDING DRIVING PRIVILEGES (S,D,M) SHB 1854 Chapter 288, Laws 2005

Legislative response to City of Redmond v. Moore. The Department of Licensing will provide an administrative review of a suspension order upon request. Review will be limited to whether court records identify the correct person and whether the information transmitted by the court accurately

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describes the court's action. Information received from the court is presumed accurate subject to challenge by the person subject to suspension.

Sec. 3 provides that the court shall mark the license of a person convicted for an offense for which suspension is mandatory.

Sec. 8 provides for time payment agreements where the court finds the offender is not immediately able to pay the monetary obligation. The court may assess the lesser of \$10 per infraction or \$25 per payment plan. The court can contract out administration of payment plans.

This section applies to obligations that became due within the later of one year from either the effective date of the act or of the date the obligation initially became due and payable. Community restitution, where available, may be substituted.

Effective date: July 1, 2005.

AOC will create an accounting code for the fee.

DRIVERS' LICENSE SUSPENSIONS (S,D,M) SSB 5644 Chapter 269, Laws 2005

When license suspension is required due to an implied consent violation, the Department of Licensing will stay the suspension of a person's driver's license if he or she notifies the department of the intent to seek a deferred prosecution. The duration of the stay is not longer than 150 days after the date charges are filed or two years after the date of the arrest for driving under the influence of alcohol or any drug, whichever time period is shorter.

AOC will amend penalties on the law table.

SUPERVISION OF OFFENDERS WHO TRAVEL OR TRANSFER (D,M) ESHB 1402 Chapter 400, Laws 2005

Washington is a signatory to the Interstate Compact on Adult Offender Supervision (ICAOS). The compact has recently been extended to cover offenders sentenced for gross misdemeanors by limited jurisdiction courts. This bill enables extension of the compact.

If an offender who meets Compact criterion requests transfer to another state for supervision, the sending court/probation department incurs obligations to determine eligibility and to provide the Department of Corrections (DOC) with information required to process the request. Some liability protection is included in the bill.

If accepted, and supervision is transferred, the sending court has no further supervisory authority over that offender while they are being supervised by another state. If the offender returns to Washington prior to expiration of the probation term, the sending court would re-assume supervision.

DOC has indicated it will assume supervision of offenders transferred from other states.

Court action: An education session will be held at the DMCJA spring conference.

AOC action: A link to a bench book covering ICAOS has been posted on Inside Courts:

<http://www.interstatecompact.org/legal/benchbook.pdf>

VEHICLE IMMOBILIZATION ESB 5966 (D,M) Chapter 88, Laws 2005

Prohibits a property owner from immobilizing a vehicle that does not belong to the property owner. Makes violation a gross misdemeanor.

NEW & AMENDED CRIMES

SLANDER OF A WOMAN SB 5148 (ALL) Chapter 13, Laws 2005

Repeals the misdemeanor crime of slander of a woman.

THEFT OF LIVESTOCK (S) SSB 5290 Chapter 419, Laws 2005

Amends RCW 9A.56.080 to provide that theft of a goat is included in the crime of "theft of livestock in the first degree," a class B felony.

Amends RCW 4.24.320 to include "goats" in the definition of livestock found in that section, which provides that persons who sustain damages as a result of injury to livestock may sue for treble punitive damages and attorneys' fees, as well as actual damages.

CONTROLLED SUBSTANCES HB 1072 (S,J) Chapter 218, Laws 2005

Amends the Uniform Controlled Substances Act to include the "salts, isomers, or salts of isomers" of controlled substances with respect to manufacturing, delivering, and possessing with intent to manufacture a controlled substance classified as a Schedule I or II narcotic drug, a controlled substance classified in Schedule I V , a m p h e t a m i n e ,

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methamphetamine, ephedrine, pseudoephedrine, and pressurized ammonia gas (anhydrous ammonia).

Amends the offense of endangerment with a controlled substance to include a person who knowingly or intentionally permits a child or dependent adult to be exposed to the "salts, isomers, or salts of isomers" of methamphetamine, or ephedrine, pseudoephedrine, or anhydrous ammonia, that are being used in the manufacture of methamphetamine.

Amends RCW Chapter 69.50 for purposes of the act.

AOC will work with the Pattern Forms Committee to revise plea and judgment forms to implement act.

ANIMAL CRUELTY (S,J) **HB 1304** **Chapter 481, Laws 2005**

Expands the definition of animal cruelty in the first degree, a felony, to include a person who starves, dehydrates, or suffocates an animal, causing the animal substantial pain and considerable suffering or death.

Expands the crime of animal fighting and raises the crime of animal fighting from a gross misdemeanor to a class C felony.

AOC will add the new felony of animal fighting to the JIS law table.

ASSAULT OF A PEACE OFFICER (S,J) **SHB 1934** **Chapter 458, Laws 2005**

Includes assault of a peace officer with a projectile stun gun within the definition of third degree assault, a Class C felony, but gives it a

seriousness level equivalent to assault in the second degree. Establishes a Projectile Stun Gun Study Committee to review the sale and use of projectile stun guns within Washington.

INMATES POSSESSING WEAPONS (S,J) **HB 5242** **Chapter 361, Laws 2005**

Expands the definition of "weapon" as it relates to objects that an offender who is serving time in a county or local correctional institution (or is otherwise subject to the control, custody or supervision of the correctional institution) is prohibited from knowingly possessing or having under his or her control.

Reclassifies the knowing possession or control of any prohibited weapon by an inmate in a county or local institution from a class B felony to a class C felony.

AOC will revise the JIS law table with new classification of felony for this offense, from "B" to "C."

AOC will add to the law table.

TRAFFIC CONTROL SIGNAL PRE-EMPTION DEVICES (S,D,M) **SHB 1113** **Chapter 183, Laws 2005**

Sec. 3 creates misdemeanor for possession of a signal pre-emption device.

Sec. 4 creates a gross misdemeanor for use, sale, or purchase of signal preemption devices.

Sec. 5 creates a C felony for an accident causing property damage that is a result of using a signal pre-emption device.

Sec. 6 creates a B felony for an accident causing substantial bodily

harm that is a result of using a signal pre-emption device.

Sec. 7 creates a B felony an accident resulting in death that is a result of using a signal pre-emption device.

AOC will add the offenses to the law tables.

SALE OF EPHEDRINE, PSEUDOEPHEDRINE AND PHENYLPROPANOLAMINE (S,D,M) **ESHB 2266** **Chapter 388, Laws 2005**

Modifies existing law as to actionable quantities.

Effective dates:

Section 8 — immediately

Section 2 — October 1, 2005

Sections 1, 3 thru 7, 9 and 10 — January 1, 2006

ELECTION REFORM (S,D,M) **ESSB 5499** **Chapter 243, Laws 2005**

Increases the penalty for intentionally voting more than once to a C felony; recklessly or negligently voting more than once is a class 1 civil infraction.

AOC will amend penalties on the law table.

FAILURE TO SUMMON ASSISTANCE (D,M) **SHB 1236** **Chapter 209, Laws 2005**

Creates a misdemeanor for failing to summon assistance if the offender was present at commission of the crime, knows the victim has suffered substantial bodily injury, and could reasonably summon assistance.

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EXCAVATING NEAR TRANSMISSION PIPELINES

ESHB 1539 (D,M)
Chapter 448, Laws 2005

Creates a misdemeanor for excavating within 35 feet of a transmission pipeline without an excavation confirmation code. Provides a civil penalty in addition to criminal penalties.

Creates a misdemeanor for intentionally providing a false excavation code.

AOC will add to law table.

IGNITION INTERLOCK (D,M) HB 1872

Chapter 200, Laws 2005

Creates a gross misdemeanor for tampering, or soliciting tampering with ignition interlock devices.

Creates a gross misdemeanor for knowingly assisting another in tampering with an ignition interlock device.

AOC will add to the law table.

WASTE TIRE CLEANUP SHB 2085 (D,M)

Chapter 354, Laws 2005

RCW 70.95.510 levies a fee on the retail sale of tires.

Sec. 4 makes it a gross misdemeanor for a seller to not pay collected fees into the waste tire removal account on the date due.

Sec. 4 also makes it a misdemeanor for a tire buyer to fail to pay the fee or the seller to refuse to collect the fee.

Effective date: July 1, 2005.

AOC will add to the law table.

INFRACTIONS

COMMERCIAL FEED (D,M)
SSB 5190
Chapter 40, Laws 2005

Makes it a gross misdemeanor to distribute adulterated ruminant feed that is unsafe under 21 USC 348, §409.

**MOTOR VEHICLE
COMPRESSION BRAKES
HB 1002 (D,M)**
Chapter 320, Laws 2005

Creates an offense and sets penalties for vehicles over 10,000 pounds gross weight exceeding prescribed decibel levels when using compression brakes. Penalties are \$250 for first offense, \$500 for second and \$750 for three or more.

AOC will add to the law table.

**OPERATION OF OFF ROAD
VEHICLES ON NON-HIGHWAY
ROADS (D,M)**
EHB 1003
Chapter 213, Laws 2005

Creates a traffic infraction for operating an off road vehicles on non-highway roads without a helmet; with exceptions.

Sec. 4 allows operation of off road vehicles on non-highway roads and parking areas serving designated off road vehicle areas.

Effective date: July 1, 2005.

Partial veto: Section 8.
AOC to add infraction to law table.

HOV TOLL LANE PILOT (D,M)
SHB 1179
Chapter 312, Laws 2005

Creates an HOV lane pilot project (State Route 167). Makes violation

of lane restrictions an infraction.

Effective dates: Sec 5, immediately. Sec. 6, June 30, 2005. Sec. 8, July 1, 2006.

AOC will add to the law table.

DISABLED PARKING (D,M)
SHB 1711
Chapter 390, Laws 2005

Parking spaces for persons with disabilities do not have to be marked by a notice with specific language stating that a disabled parking permit is required. The signs may include additional language indicating the amount of the monetary penalty for parking in the space without a valid permit.

**FAILURE TO YIELD TO
EMERGENCY VEHICLES
SSB 5038 (D,M)**
Chapter 413, Laws 2005

Adds a new section in Chapter 46.61 requiring motorists approaching emergency vehicles using audible or visual signals to change lanes or slow down and proceed with due caution.

Increases the penalty for violation of RCW 46.61.210(1) to \$500 for each offense.

AOC will add the new section to the law table. AOC will change penalty for RCW 46.61.210(1) in the law table.

**AUTOMATED TRAFFIC
SAFETY CAMERAS (D,M)**
ESSB 5060
Chapter 167, Laws 2005

Allows for use of automated traffic safety cameras to enforce stoplight, railroad crossings, and school zones violations upon enactment of a local ordinance.

Violations are attributed to the

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vehicles' registered owner and are processed as parking tickets and will not appear on driving records. Penalties may not exceed the amount the jurisdiction imposes for other parking violations.

Court Action: For jurisdictions that opt to use automated traffic safety cameras, the court may need to add local parking laws, as well as hearing types for parking calendars. If the court chooses to add a new jurisdiction, the court needs to contact AOC Customer Services to create the jurisdiction entry; then the court can associate the jurisdiction to the court and do DCXT for that new jurisdiction. Review the Parking Case Filing and other parking related topics in the JIS Online Manual: <http://inside.courts.wa.gov/index.cfm?fa=cntlManuals.showJisPage&manualid=userman§ionid=203&older=CaseInit&file=parkingfile>.

AOC Action: As requested by individual courts, the AOC will create new jurisdictions entries, as well as Parking User Code (PRKUSRCD) table entries for new jurisdictions. **Revised 06/21/05.**

COURT FUNDING & FEES

ADMINISTERING THE STATE-FUNDED CIVIL REPRESENTATION OF INDIGENT PERSONS (ALL) HB 1747 Chapter 105, Laws 2005

Moves the administration and oversight of state-funded civil legal services from the Department of Community, Trade, and Economic Development to a newly created independent agency of the judicial branch called the Office of Civil Legal Aid. Creates a Civil Legal Aid Oversight Committee, made up of four legislators and other

appointed members. AOC will facilitate and coordinate establishment of the oversight committee and appointment of the director with the Supreme Court and Access to Justice Board. Provide office space and administrative support.

Effective date: July 1, 2005.

REVISING TRIAL COURT FUNDING PROVISIONS (ALL) 2ESSB 5454 Chapter 457, Laws 2005

Increases numerous filing and miscellaneous court fees.

Creates the equal justice sub-account in the PSEA funded with the state's portion of the increased filing fees.

Appropriates funds from the equal justice sub-account for the 2005-07 biennium as follows:

- \$5.0 million to the Office of Public Defense for parents' representation in dependency and termination actions.
- \$2.3 million to the Office of Public Defense for trial court level criminal indigent defense support including \$1.0 million to conduct a pilot project.
- \$3.0 million to the Office of Civil Legal Aid.
- \$2.4 million to the Administrative Office of the Courts to distribute to counties and qualifying cities for District and qualified elected municipal court judges' salaries.

Requires counties and qualifying cities to establish local trial court improvement accounts funded in an amount equal to that received from the state for payment of district and municipal court judges' salaries.

Dedicates fifty percent of the revenue to the state from the

increase in filing fees for district and qualified elected municipal court judges' salaries beginning in the 2007-09 biennium.

Municipal Courts: City certification of qualification for receipt of funds for judges' salaries per AOC procedures.

District and Municipal Court Presiding Judges: Certification of quarterly projected salary expenditures beginning in September, 2005 per AOC procedures.

Certified Cities and all Counties: Adoption of local ordinance establishing local trial court improvement account.

Juvenile Courts: Contact and/or respond to Office of Public Defense action implementing expansion of parent's representation program.

AOC will update statewide systems to reflect increase in filing and other miscellaneous fees and remittance of funds to appropriate accounts and sub-accounts. Distribute necessary documentation and system changes to trial courts.

Develop and disseminate procedures required to implement partial state payment of district and qualified elected municipal court judges' salaries.

DOMESTIC VIOLENCE PREVENTION ACCOUNT (S) ESHB 1314 Chapter 374, Laws 2005

Imposes a \$30 filing fee for first filers in dissolution, separation or validity of marriage matters. \$24 goes to a state DV protection account; \$6 is retained by the county for community-based services for DV victims.

AOC will create JIS codes and accounting procedures.

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RECORDS CONCERNING SEX OFFENDER (S,D,M,J)

HB 2223

Chapter 202, Laws 2005

A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

Courts should amend fee schedules for court records so law enforcement is not charged for specified records.

COSTS OF INCARCERATION (S,D,M)

SSB 5461

Chapter 263, Laws 2005

Amends RCW 9.94A.760 to provide that the costs of incarceration that a superior court may order a convicted offender to pay at a rate of fifty dollars per day for prison time, and to pay actual costs, up to one hundred dollars per day, for time spent in the county jail.

Amends RCW 10.01.160 to provide that the costs of incarceration that a court of limited jurisdiction may impose on a convicted offender shall not exceed the actual costs of incarceration and shall not exceed one hundred dollars.

Courts should impose costs of incarceration, as appropriate.

AOC will work with the Pattern Forms Committee to revise plea and judgment forms to implement this act.

JUDICIAL ELECTIONS

ELIMINATING DROP IN INSPECTION OF CAMPAIGN ACCOUNTS (ALL)

HB 1130

Chapter 184, Laws 2005

The requirement that a political committee's books be open for inspection for two consecutive hours on the eighth day prior to an election is removed. The seven day period during which inspection is available by appointment is changed to an eight day period.

ALLOWING CANDIDATES TO FILE WITH THE SECRETARY OF STATE (ALL)

SB 1132

Chapter 221, Laws 2005

A candidate for the state Legislature, the court of appeals, or the superior court may file a declaration of candidacy with either the Secretary of State or the county auditor if the district in which the candidate is running is composed of voters from only one county. If the candidate files with the Secretary of State, the filing fee must be sent to the county auditor. For purposes of the rest of the election laws, the candidate is deemed to have filed with the county auditor, even if he or she actually filed with the Secretary of State.

SURPLUS FUNDS OF CANDIDATES (ALL)

SSB 5140

Chapter 153, Laws 2005

State campaign finance law expressly limits what can be done with surplus campaign funds. Surplus funds cannot be transferred to another candidate or political committee. Surplus funds can be returned to the contributor, used to reimburse a candidate's personal account, transferred to a

political party or committee, donated to a charitable organization, deposited in the state general fund, held for a future election, or used for non-reimbursed expenses of public office. Specific requirements apply to each of these uses.

The oral history, state library, and archives account and the legislative international trade account are included among the allowed uses of surplus campaign funds.

Effective date: May 13, 2005

CREATING AN ADDITIONAL SUPERIOR COURT POSITION (S)

HB 1112

Chapter 95, Laws 2005

Increases the number of Superior Court Judges in Skagit County from three to four.

The county legislative authority must document its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute by January 1, 2007 or the authorization for the position will lapse.

INSTANT RUNOFF VOTING—PILOT PROJECT (S,D,M)

HB 1447

Chapter 153, Laws 2005

Creates a pilot project to examine the use of instant runoff voting for non-partisan office. Participation is voluntary.

Participation in the pilot is voluntary; it could impact judicial elections in a county that opts in to the pilot.

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CREATING AN ADDITIONAL DISTRICT COURT POSITION HB 1202 (D) Chapter 91, Laws 2005

Increases the number of District Court judges in Kitsap County from three to four. Increases the number of District Court judges in Thurston County from two to three. Reauthorizes the District Court judge position created for Clark County in Chapter 97, Laws of 2003.

The county legislative authority must document its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position pursuant to RCW 3.34.025.

SALARIES

AUTHORIZING COMPENSATION FOR PART-TIME JUDGES SERVING AS A JUDGE PRO-TEM (ALL) HB 1262 Chapter 142, Laws 2005

Allows a part-time judge to be compensated for sitting as a judge pro-tempore when the judge sits as a judge pro-tempore during work hours for which the judge is not also being compensated as a part-time judge.

Courts should ensure proper documentation of work hours when compensating a part-time judge for sitting as a judge pro tempore.

TERMINALLY ILL AND RETIREMENT PAYMENTS SSB 5497 (ALL) Chapter 142, Laws 2005

A member of PERS 2/3, TRS 2/3, or SERS 2/3 may voluntarily be

removed from membership in the pension plan if: (1) the medical adviser certifies that the member has a terminal illness with a life expectancy of five years or less; and (2) the Director agrees with the recommendation of the medical adviser.

Members who are removed from the retirement system continue their employment but do not make retirement contributions and do not accumulate additional service credit in the retirement plan.

Effective date: April 21, 2005.

CHANGING REQUIREMENTS FOR ISSUING SALARY WARRANTS FOR JUDGES HB 1024 (S) Chapter 182, Laws 2005

Repeals language in RCW 2.56.040 requiring superior court judges to sign an affidavit stating they have complied with the requirements of RCW 2.56.040 and RCW 2.56.050 prior to receiving a salary warrant.

Courts should discontinue the practice of signing affidavits after effective date.

OTHER

REORGANIZING PUBLIC DISCLOSURE LAW (ALL) HB 1133 Chapter 274, Laws 2005

The public records provisions in chapter 42.17 are recodified and reorganized as new sections in Title 42, to be cited as the Public Records Act. Exemptions from disclosure are reorganized into separate sections and, where possible, grouped by discrete subjects. Statutes referencing chapter 42.17 are changed to

reference the new chapter. No exemptions are modified, deleted, or added.

Effective date: July 1, 2006.

ETHICS COMPLAINTS (ALL) SB 5046 Chapter 116, Laws 2005

Makes procedural changes to investigation and dismissal of ethics complaints.

IDENTITY THEFT POLICE REPORTS (ALL) SSB 5939 Chapter 366, Laws 2005

Requires all police and sheriff's departments to provide, at consumer's request, a copy of any police report filed by consumer, evidencing consumer's claim to be a victim of identity theft pursuant to RCW 9.35.020.

OFFICE OF PUBLIC DEFENSE HB 2028 (A) Chapter 111, Laws 2005

The Director of the OPD is appointed by the Washington Supreme Court. The Director is supervised by an 11-member advisory committee consisting of judicial representatives, legislators, attorneys, and lay people.

During an appointee's term on the advisory committee, the appointee has not been able to be an appellate judge.

Under the provisions of this bill, an appointee of the OPD advisory committee may serve as a pro tem appellate court judge.

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ENHANCING VOTER REGISTRATION RECORDKEEPING (S) SB 5743 Chapter 246, Laws 2005

Clarifies the information and identification required, amends the procedures for voter registration, amends and adds provisions related to convicted felons and other types of disqualified voters. Provisions relevant to the courts include:

Restoration of Rights: Requires county clerks, when a felony offender has completed all the requirements of his or her sentence, to immediately transmit this information to the Secretary of State along with information about the county where the conviction occurred and the county that is the last known residence of the offender. (The Secretary of State is to maintain such records as part of the elections data base.) The Secretary of State is required to transmit information about the restoration of the former felon's voting rights to the county auditor where the conviction took place and, if different, the county where the felon was last known to reside.

Database Comparison and Coordination: Provides for the Secretary of State to review and update records of all registered voters on the statewide voter registration database. The database must be coordinated with the AOC's database [i.e., the JIS] and screened against other state agency databases to aid in the cancellation of felons' voter registration. Other appropriate state agencies including the AOC, must be included in a quarterly comparison of lists in order to identify felons and delete them from the statewide voter registration list and database. The Secretary of State must screen its database against the statewide databases of other appropriate state agencies to

identify persons who declined to serve on juries because of non-citizenship and persons determined to be legally incompetent to vote.

Notifications: Adds requirement for courts to require convicted felony defendants to sign a statement acknowledging that the right to vote has been lost, the voter registration will be cancelled, and procedures for restoration of the right to vote. Adds to the notice requirements when a convicted felon's registration is cancelled, the requirement that canceling authority include in the notice an explanation of the requirements for restoring the right to vote.

The penalty for the crime of unqualified voter registration is changed from a misdemeanor to a class C felony.

Court Action: Implement procedures for defendants to sign a statement acknowledging that the right to vote has been lost, the voter registration will be cancelled, and procedures for restoration of the right to vote.

Implement procedures, when a felony offender has completed all the requirements of his or her sentence, to immediately transmit this information to the Secretary of State along with information about the county where the conviction occurred and the county that is the last known residence of the offender.

AOC Action: Work with the Secretary of State to automate data exchanges required.

Effective date: January 1, 2006.

JURY SOURCE LISTS HB 1769 (S,D) Chapter 199, Laws 2005

Allows counties with more than one superior court facility to divide the jury source list into jury assignment

areas. AOC is responsible for assigning and adjusting boundaries based on US census data.

AOC will respond to requests for boundary assignment.

REGULATING STORAGE OF SEX OFFENDER RECORDS SHB 1337 (S,D,M) Chapter 227, Laws 2005

If a record transferred to the WASPC for permanent retention is sealed at the time of transfer or becomes sealed after the transfer, it must be retained in a way that ensures the record is clearly marked as sealed. Records marked as sealed are only accessible to: (1) criminal justice agencies that would otherwise have access to a sealed copy of the document; (2) the end-of-sentence review committee for the purpose of end-of-sentence review for sex offenders; and (3) system administrators for the purpose of system administration and maintenance. The WASPC is permitted to destroy paper and electronic records of any offender verified as deceased.

ADDING KIDNAPPING TO THE STATEWIDE REGISTERED OFFENDER WEB SITE HB 1338 (S,D,M) Chapter 228, Laws 2005

The WASPC has also developed, using federal grants and other resources, a public accessible web site with information on all level II and level III sex offenders in the state. Information on kidnapping offenders, as allowed by law, is included on the WASPC web site.

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EMPLOYEE INFORMATION DISCLOSURE—EMPLOYER IMMUNITY (S,D,M) HB 1625 Chapter 103, Laws 2005

Adds a new section to RCW Chapter 4.24 providing that an employer who discloses information about a former or current employee to a prospective employer or employment agency at the request of the employer or employment agency is presumed to be acting in good faith and is immune from civil liability for the disclosure if the information relates to the following: (1) the employee's ability to perform his or her job; (2) the employee's diligence, skill, or reliability in carrying out job duties; or (3) illegal or wrongful acts committed by the employee when related to job duties.

The presumption of good faith may be rebutted by clear and convincing evidence that the information disclosed was knowingly false, deliberately misleading, or made with reckless disregard for the truth. Advised the employer advised to keep a written record of the identity of persons or entities to whom the disclosure is made for a period of two years. If a written record is made, the record must be included in the employee's personnel file, and the employee has a right to inspect the record.

PROTECTING PUBLIC EMPLOYEE PERSONAL INFORMATION (S,D,M) HB 1694 Chapter 284, Laws 2005

Amends the Public Disclosure Act to exempt from public records disclosure, when it held by any public agency in personnel records, public employment related records, volunteer rosters, or mailing lists, the following: the personal wireless telephone numbers, personal e-

mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency or the dependents of such employees or volunteers.

PROTECTING PUBLIC EMPLOYEE PERSONAL INFORMATION (S,D,M) SB 6043 Chapter 368, Laws 2005

Requires agencies that own computerized data to notify state residents whose "personal information was, or is reasonably believed to have been, acquired by an unauthorized person." Agency is as defined in the PDA - RCW 42.17.020:

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

Personal information means an individual's name in combination with SSN, driver's license number, or financial account number. Direct written or electronic notice based on digital certificates is required unless the cost to provide notice exceeds \$250,000, the number of affected data subjects exceeds 500,000 or the agency does not have sufficient contact information. Then email notice, notice on an agency's website or notice to "major statewide media" are permitted.

PROVIDING INDIGENT DEFENSE SERVICES (S,D,M) 2SHB 1542 Chapter 157, Laws 2005

Authorizes the Office of Public Defense to disburse appropriated funds to counties and cities for public defense services; provides that 90 percent of those funds will go to eligible counties on a formula basis, and 10 percent will go to no more than five eligible cities on a grant basis; and establishes standards for the delivery of public defense services. The bill is null and void unless a specific appropriation is made in the omnibus operating budget act.

The omnibus appropriations act (SB 6090, section 113) provides that the Office of Public Defense, may, at its discretion, implement 2SHB 1542 within appropriated fund.

REVISING PUBLIC DISCLOSURE LAW (S,D,M) HB 1758 Chapter 483, Laws 2005

Amends the Public Disclosure Act in response to the Supreme Court's decision in Hangartner v. City of Seattle, 151 Wn.2d 439 (2004). Prohibits agencies from denying public records requests because they are overly broad. Allows agencies to respond to requests on a partial or installment basis; to ask for a deposit or charge per installment for public records requests; and to cease fulfilling a request if an installment is not picked up by the requestor. Requires the Attorney General to adopt a model rule on public records disclosure. Requires agencies to appoint and publicly identify a public records officer. Changes the venue for certain public records-related suits against counties. Imposes a one year statute of limitations for certain public records-related suits.

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REMOVING BARRIERS TO TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

**2ESSB 5213 (S,D,M)
Chapter 174, Laws 2005**

Removes felony drug use or possession conviction as barrier to eligibility for Temporary Assistance to Needy Families (TANF).

Effective date: September 1, 2005.

BACKGROUND CHECKS

**SSB 5899 (S,D,M)
Chapter 421, Laws 2005**

If a background check is requested for non-criminal justice purposes, the WSP is required to disseminate all conviction data. The bill eliminates the requirement that, before forwarding the information to the requester in certain cases, the WSP redact all information that is not related to convictions relating to crimes against children, crimes relating to drugs, and crimes relating to financial exploitation.

Criminal history information that is disseminated by the Washington State Patrol may contain information on pending charges relating to crimes against a person, as defined in RCW 9.94A.411.

When the WSP disseminates conviction record information in response to a request under RCW 43.43.832, it must notify the recipient that the information does not include information on civil adjudications, administrative findings, or disciplinary board final decisions and that all such information must be obtained from the courts and licensing agencies. In addition, the notice must state that the conviction record that is being disseminated includes information on pending charges relating to only crimes against a person as defined in RCW 9.94A.411. Finally, the notice must state that an arrest is not a conviction or a finding of guilt.

The requirement that disciplinary board final decisions and information regarding dependency matters and domestic relations cases be sent to the WSP is eliminated.

Rather than asking applicants if they have been convicted of certain crimes, businesses requesting background checks must require disclosure of whether the applicant has been convicted of any crime or if there have been findings against them in civil adjudications involving domestic violence, abuse, sexual abuse, neglect, exploitation, or financial exploitation of a child or a vulnerable adult.

Prosecuting attorneys must inform the WSP about guilty pleas and convictions of certain crimes. The WSP must then inform the Office of Superintendent of Public Instruction, which will then determine if such persons hold a teaching certificate or similar permit.

The secretary of the Department of Social and Health Services (DSHS) is authorized to establish rules and set standards when considering conviction records and information on certain civil adjudications.

COMMISSION ON JUDICIAL CONDUCT MEMBERSHIP (M) SB 5433

Chapter 15, Laws 2005

Allows municipal court judges to serve as members of the Commission on Judicial Conduct. Requires a constitutional amendment to implement (see SJR 8207).

COMMISSION ON JUDICIAL CONDUCT MEMBERSHIP (M) SJR 8207

Requires voter approval

Allows municipal court judges to serve as members of the Commission on Judicial Conduct. Requires a constitutional amendment to implement (see SB 5433).

CHANGING PROVISIONS RELATING TO THE ADMINISTRATIVE OFFICE OF THE COURTS (AOC)

HB 1668

Chapter 282, Laws 2005

Renames the agency "Administrative Office of the Courts"; replaces references in statute to the "weighted caseload analysis" for determining judicial need to "objective workload analysis"; removes the requirement that the Supreme Court appoint the State Court Administrator from a list of five names provided by the governor; and allows employees of the administrative office of the courts to provide pro bono legal services and legal services to family members, as long as the legal services do not interfere with official duties.



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