

0020.160.001
TAR/srf
11/10/93

Recovery of Emergency Services
Costs from persons convicted
of DWI

ORDINANCE NO. 1753

ORIGINAL

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, AMENDING SECTION 10.14.050 OF THE REDMOND MUNICIPAL CODE REGARDING PENALTY FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS; ADDING SUBSECTION 10.14.030(G) AND AMENDING SECTION 10.14.010 AND 10.14.020 TO ESTABLISH THE TIME FRAME FOR BREATH TESTING; ADDING SECTION 9.01.065 ESTABLISHING COSTS THAT MAY BE RECOUPED FOR PROSECUTION OF CRIMES; CONTAINING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the 1993 Washington State Legislature established an additional fee to be added to the State's penalty for violation of driving while under the influence of intoxicants, and provided for recoupment of several other costs for the prosecution of general crimes, and

WHEREAS, the City's cost of enforcing the criminal and traffic provisions of its municipal code is increasing at a rapid rate, and

WHEREAS, the 1993 State Legislature has also expanded and specifically defined the time limits within which a breath test would be accepted as evidence, and

WHEREAS, the City's enforcement of its criminal and traffic code would be greatly enhanced and specifically benefited by the adoption of the State provisions for the preservation of general peace, health and welfare, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. Reimbursement of Costs. A new Section
9.01.065 entitled Reimbursement of Costs, is hereby created and
added to the Redmond Municipal Code and shall read as follows:

9.01.065 Reimbursement of Costs.

A. State Statutes Adopted by Reference. The
following state statutes as they now
appear or are hereinafter amended are
hereby adopted by reference:

1. RCW 9.92.130 Compel in-custodies to
work
2. RCW 9.94A.030 Definitions of terms
as used in Chapter RCW 9.94A
3. RCW 9.95.210 Costs - what
constitutes - restitution imposed as
term of probation
4. RCW 10.01.160 Costs - what
constitutes - payment by convicted
defendant
5. RCW 10.01.170 Payment within
specified time or installments
6. RCW 10.01.180 Fine or costs -
default in payment contempt of court
7. RCW 10.46.190 Reimbursement of jury
fee
8. RCW 10.64.015 Judgment to include
costs - exception
9. RCW 10.64.080 Judgments as lien on
realty
10. RCW 10.64.120 Misdemeanant assess-
ments (probation)
11. RCW 10.64.130 Payment of misde-
meanant incarceration costs

12. RCW 10.70.010 Commitment until fines/costs are paid
13. RCW 38.52.010 Definitions of terms as used in Chapter RCW 38.52
14. RCW 38.52.430 Recovery of costs from convicted person - alcohol or drug caused emergency response

B. Court to order reimbursement.

1. The court may require a convicted defendant to pay costs. For the purpose of this section, whenever the court has levied a fine or assessed costs against a corporation or incorporated association, the person or persons authorized to make disbursements from the assets of said organization shall be deemed to be the defendant.
2. Costs shall include all costs and expenses authorized to be recouped by law and specifically incurred by the City in prosecuting the defendant. These shall include but not be limited to the expense of providing the defendant with assistance of counsel (Recoupment), any witness fees and mileage incurred, any costs in providing an interpreter, filing fees and appellate costs and any other costs determined by the court to have been incurred by the city and properly subject to recoupment.
3. A person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under or being in physical control of a vehicle while under the influence of intoxicating liquor or any drug, RMC 10.14.010, RMC 10.14.020; (2) operating an aircraft under the

influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel while under the influence of alcohol or drugs, RCW 88.12.100; (4) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is liable for the expense of an emergency response by a public agency to the incident.

The expense of an emergency response is a charge against the person liable for expenses under this section. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

In no event shall a person's liability under this section for the expense of an emergency response exceed one thousand dollars for a particular incident.

If more than one public agency makes a claim for payments from an individual for an emergency response to a single incident under the provisions of this section, and the sum of the claims exceeds the amount recovered, the division of the amount recovered shall be determined by an interlocal agreement consistent with the requirements of chapter 39.34 RCW.

- C. Unless otherwise specified, the provisions of this section shall apply to any person who is convicted of violating any criminal provision contained in this code. This shall specifically include but not be limited to those individuals convicted of a criminal violation of Title 9 or Title 10 of this code, and a

conviction for negligent driving, to the extent that such, investigation, prosecution and/or conviction involves any of the costs listed herein.

Section 2. Section 10.14.010 of the Redmond Municipal Code is hereby amended to read as follows:

10.14.010 Driving While Under the Influence of Intoxicating Liquor or Drug--What Constitutes. A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within the City:

(a) And the ^{driver's error} person has .08 grams or more of alcohol per 200 liters of breath within two hours after driving, as shown by analysis of the person's breath made under RMC 10.14.030; or

(b) And the person has .08 percent or more by weight of alcohol in the person's blood within two hours after driving, as shown by analysis of the person's blood made under RMC 10.14.030; or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of the State of Washington shall not constitute a defense against any charge of violating this section.

(e) It is an affirmative defense to a violation of subsection (1)(a) and (b) of this section which the defendant must provide by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the

defendant's alcohol concentration to be .08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

Section 3. Section 10.14.020 of the Redmond Municipal Code is hereby amended to read as follows:

10.14.020 Actual Physical Control of Motor Vehicle While Under the Influence of Intoxicating Liquor or Drug--What Constitutes--Defenses. A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within the City:

(a) And the person has .08 grams or more of alcohol per 210 liters of breath within two hours after being in actual physical control of a motor vehicle, as shown by analysis of the person's breath made under RMC 10.14.030; or

(b) And the person has .08 percent or more by weight of alcohol in the person's blood within two hours after being in actual physical control of a motor vehicle, as shown by analysis of the person's blood made under RMC 10.14.030; or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. No person may be convicted under this section if prior to being pursued by a law enforcement

officer, the person has moved the vehicle safely off the roadway.

(e) It is an affirmative defense to a violation of subsection (1)(a) and (b) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of a motor vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be .08 or more within two hours after being in actual physical control of a motor vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

Section 4. Subsection 10.14.030(G) is hereby created and added to the Redmond Municipal Code to read as follows:

10.14.030 Persons Under Influence of Intoxicating Liquor or Drug--Evidence--Tests--Information Concerning Tests.

(G) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had .08 grams or more of alcohol per 210 liters of breath or .08 percent or more of alcohol in the person's blood pursuant to RMC Sections 10.14.010(a), (b), and RMC 10.14.020(a), (b), and may be used as evidence that a person was under the influence of or affected by intoxicating liquors or any drug pursuant to RMC Sections 10.14.010(c), (d) and RMC 10.14.020(c), (d).

Section 5. Section 10.14.050 of the Redmond Municipal Code is hereby amended to read as follows:

10.14.050 Penalties--Driving While Under the Influence--Victim's Panel. Every person who is convicted of violating RMC 10.14.010 or 10.14.020 shall be punished as provided in RCW

46.61.515 and RCW 46.61.5151 as they now read or hereafter may be amended for violations of RCW 46.61.502 and RCW 46.61.504. In addition to the penalties provided in the state statutes listed, every person convicted of violating RMC 10.14.010 or 10.14.020 shall be required to attend a driving while under the influence--victim's panel.

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 7. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

CITY OF REDMOND


MAYOR ROSEMARIE IVES

ATTEST/AUTHENTICATED:


CITY CLERK, DORIS SCHAIBLE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: 

FILED WITH THE CITY CLERK: December 2, 1993
PASSED BY THE CITY COUNCIL: December 7, 1993
SIGNED BY THE MAYOR: December 7, 1993
PUBLISHED: December 12, 1993
EFFECTIVE DATE: December 17, 1993
ORDINANCE NO. 1753

3. Malfeasance in office

Mayor of city of second class operating under commission form of government who conspired to introduce and protect gambling in city and to dissuade prosecuting attorney from discharging duties was guilty of "violation of official oath" and "malfeasance" in office within constitutional and statutory provisions for forfeiture of office. *State ex rel. Knabb v. Frater* (1939) 198 Wash. 675, 89 P.2d 1046.

4. Necessity of judgment and sentence

Nominee for state senator could not be relieved of his office, his right to vote, or his position on his party's ticket until trial court entered judgment and sentence confirming jury's verdict in federal criminal prosecution. *Kilsap County Republican Central Committee v. Huff* (1980) 94 Wash.2d 802, 620 P.2d 986.

5. Effect of appeal

Appeal of mayor of city of second class operating under commission form of government from conviction of conspiring to violate gambling laws of state did not stay ouster proceeding brought against mayor predicated on conviction. *State ex rel. Knabb v. Frater* (1939) 198 Wash. 675, 89 P.2d 1046.

6. Probation

Person who had previously plead guilty to felony charge was not disqualified to hold public office under this statute where, following plea of guilty and pursuant to the deferred sentence statute (§ 9.95.240), trial court had entered order deferring sentence and

granting probation; found successful probation; permitted withdrawal of plea of guilty; entered plea of not guilty; dismissed information; and released defendant from all penalties and disabilities. *Matsen v. Kaiser* (1968) 74 Wash. 2d 231, 443 P.2d 843.

7. Reversal of conviction

County commissioner who was convicted of grand larceny and was ousted from office was not entitled upon reversal of judgment of conviction to reinstatement in his former office. *State ex rel. Guthrie v. Chapman* (1936) 187 Wash. 327, 60 P.2d 245.

8. Restoration of civil rights

Authority of convict to whom civil rights have been restored to run for public office. *Op.Atty.Gen.* 1937-38, p. 374.

9. Quo warranto proceeding

Quo warranto proceeding is merely ancillary to and in aid of, and not condition precedent to, immediate forfeiture and vacancy created in office when office holder is convicted of felony. *Simmons, In re* (1964) 65 Wash.2d 88, 395 P.2d 1013.

Public officer is afforded due process of law, on forfeiting his office because of felony conviction pursuant to this statute, by quo warranto proceeding judicially determining that officer was convicted of felony and, hence, has not met qualifications to permit his further continuance in office. *State ex rel. Carroll v. Simmons* (1962) 61 Wash.2d 146, 377 P.2d 421.

9.92.130. City jail prisoners may be compelled to work

When a person has been sentenced by any municipal or district judge in this state to a term of imprisonment in a city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' labor upon the streets, public buildings, and grounds of such city.

Enacted by Code 1881, § 2075. Amended by Laws 1987, ch. 202, § 144.

Historical Note

Laws 1987, ch. 202, § 144, substituted "municipal or district judge" for "justice of the peace in a city"; and deleted "and to wear an ordinary ball and chain,

while performing such labor" from the end of the section.

Intent—Laws 1987, ch. 202: See Historical Note following § 2.04.190.

institution, serving three or more counties, and having for their purpose the education and training of rural youth in matters of rural living.

Passed the House March 3, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

CHAPTER 164

[Substitute House Bill 1389]

OFFENDER WORK CREWS—PERFORMANCE OF CIVIC IMPROVEMENT TASKS

Effective Date: 7/25/93

AN ACT Relating to work crews for offenders; and ~~repealing and amending~~ RCW 9.94A.030. Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each ~~repealed and amended to read as follows:~~

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period

of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit ((+)) of any controlled substance or counterfeit

substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means: (a) Murder in the first degree, homicide by abuse, murder in the second 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

(b) 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 under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(33) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(34) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. ~~((The civic improvement tasks shall be performed on public property or on private property owned or operated by nonprofit entities, except that for emergency purposes only, work crews may perform snow removal on any private property.))~~ The civic improve-

ment tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county or the state are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (29) of this section are not eligible for the work crew program.

(35) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

(36) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (i) Successfully completing twenty-one days in a work release program, (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon: (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns

or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

Passed the House March 13, 1993.

Passed the Senate April 8, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

CHAPTER 165

(House Bill 1150)

REGULATION OF COUNSELLORS—REPEAL OF SUNSET PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to repealing the sunset provisions for the regulation of counselors; and repealing RCW 18.19.910 and 18.19.911.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The following acts or parts of acts are each repealed:

- (1) RCW 18.19.910 and 1990 c 297 s 13 & 1987 c 512 s 25; and
- (2) RCW 18.19.911 and 1990 c 297 s 14 & 1987 c 512 s 26.

Passed the House February 24, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor April 30, 1993.

Filed in Office of Secretary of State April 30, 1993.

CHAPTER 166

(House Bill 1227)

MEAT INSPECTION ACT—APPLICATION OF ADULTERATION AND MISBRANDING PROVISIONS TO EXEMPT RETAIL MEAT DEALERS

Effective Date: 7/25/93

AN ACT Relating to misbranding and adulteration; and amending RCW 16.49A.600 and 16.74.570.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 16.49A.600 and 1971 ex.s. c 108 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the provisions of this chapter (~~including licensing and those requiring inspection of the slaughter of meat-food animals and the preparation of carcasses or parts thereof, meat or~~

~~meat-food products~~)) shall not apply to operations of the types traditionally and usually conducted by a retail meat dealer at retail stores and restaurants, when conducted at any retail store or restaurant or similar type establishment for sale in normal retail quantities or service of such articles to ultimate consumers at such establishment. Normal retail quantities or service of such articles to consumers shall be as defined in ~~((regulations))~~ rules adopted under the provisions of this chapter.

(2) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to operations that are exempted under this section.

Sec. 2. RCW 16.74.570 and 1969 ex.s. c 146 s 65 are each amended to read as follows:

(1) The director shall, by ~~((regulation))~~ rule and under such conditions as to sanitary standards, practices, and procedures as he or she may prescribe, exempt from specific provisions of this chapter—

(a) ~~((retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up and/or packaging of poultry products on the premises where such sales to consumers are made;~~

(b)) for such period of time as the director determines that it would be impracticable to provide inspection and the exemption will aid in the effective administration of this chapter, any person engaged in the processing of poultry or poultry products for intrastate commerce and the poultry or poultry products processed by such person: PROVIDED, That no such exemption shall continue in effect on and after February 18, 1970; and

~~((c))~~ (b) persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws, to the extent that the director determines necessary to avoid conflict with such requirements while still effectuating the purposes of this chapter.

(2)(a) The director shall, by ~~((regulation))~~ rule and under such conditions, including sanitary standards, practices, and procedures, as he or she may prescribe, exempt from specific provisions of this chapter—

(i) the slaughtering by any person of poultry of his or her own raising, and the processing by him or her and transportation of the poultry products exclusively for use by him or her and members of his or her household and his or her nonpaying guests and employees; and

(ii) the custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation of the poultry products exclusively for use, in the household of such owner, by him or her and members of his or her household and his or her nonpaying guests and employees: PROVIDED, That the director may ~~((promulgate))~~ adopt such rules ~~((and regulations))~~ as are necessary to prevent the commingling of inspected and uninspected poultry and poultry products.

(6) The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

~~((7) No taxing district may levy under this section more than twenty-five cents per thousand dollars of assessed value of property if reductions under RCW 84.52.010(2) are made for the year within the boundaries of the taxing district.))~~

Passed the House April 25, 1993.

Passed the Senate April 25, 1993.

Approved by the Governor May 13, 1993.

Filed in Office of Secretary of State May 13, 1993.

CHAPTER 338

(Engrossed Substitute House Bill 1922)

WORK ETHIC BOOT CAMP PILOT PROGRAM

Effective Date: 7/1/93

AN ACT Relating to creation of a work ethic boot camp; reenacting and amending RCW 9.94A.030, adding new sections to chapter 72.09 RCW; adding a new section to chapter 9.94A RCW; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that high crime rates and a heightened sense of vulnerability have led to increased public pressure on criminal justice officials to increase offender punishment and remove the most dangerous criminals from the streets. As a result, there is unprecedented growth in the corrections populations and overcrowding of prisons and local jails. Skyrocketing costs and high rates of recidivism have become issues of major public concern. Attention must be directed towards implementing a long-range corrections strategy that focuses on inmate responsibility through intensive work ethic training.

The legislature finds that many offenders lack basic life skills and have been largely unaffected by traditional correctional philosophies and programs. In addition, many first-time offenders who enter the prison system learn more about how to be criminals than the important qualities, values, and skills needed to successfully adapt to a life without crime.

The legislature finds that opportunities for offenders to improve themselves are extremely limited and there has not been adequate emphasis on alternatives to total confinement for nonviolent offenders.

The legislature finds that the explosion of drug crimes since the inception of the sentencing reform act and the response of the criminal justice system have resulted in a much higher proportion of substance abuse-affected offenders in the state's prisons and jails. The needs of this population differ from those of other offenders and present a great challenge to the system. The problems are

exacerbated by the shortage of drug treatment and counseling programs both in and outside of prisons.

The legislature finds that the concept of a work ethic camp that requires the offender to complete an appropriate and balanced combination of highly structured and goal-oriented work programs such as correctional industries based work camps and/or class I and class II work projects, drug rehabilitation, and intensive life management work ethic training, can successfully reduce offender recidivism and lower the overall cost of incarceration.

It is the purpose and intent of sections 1 and 3 through 6 of this act to implement a regimented work ethic camp that is designed to directly address the high rate of recidivism, reduce upward spiraling prison costs, preserve scarce and high cost prison space for the most dangerous offenders, and provide judges with a tough and sound alternative to traditional incarceration without compromising public safety.

Sec. 2. RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence

conditions imposed by a court pursuant to this chapter or RCW 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof, and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a), (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit (4th) of any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana, and except as provided in (b) of this subsection, who

previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second 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

(b) 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 under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9A.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(33) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

((33)) (34) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

((34)) (35) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall be performed on public property or on private

property owned or operated by nonprofit entities, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (29) of this section are not eligible for the work crew program.

~~((35))~~ (36) "Work ethic camp" means an alternative incarceration program designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work, ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(37) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

~~((36))~~ (38) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (i) Successfully completing twenty-one days in a work release program, (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon: (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

NEW SECTION. Sec. 3. The department of corrections shall establish one work ethic camp. The secretary shall locate the work ethic camp within an already existing department compound or facility, or in a facility that is scheduled to come on line within the initial implementation date outlined in this section. The facility selected for the camp shall appropriately accommodate the logistical and cost-effective objectives contained in sections 1 and 3 through 6 of this act. The department shall be ready to assign inmates to the camp one hundred twenty days after the effective date of this act. The department shall establish the work ethic camp program cycle to last from one hundred twenty to one hundred eighty days. The department shall develop all aspects of the work ethic camp program including, but not limited to, program standards, conduct standards, educational components including general education development test achievement, offender incentives, drug rehabilitation program parameters, individual and team work goals, techniques for improving the offender's self-esteem, citizenship skills for successful living in the community, measures to hold the offender accountable for his or her behavior, and the successful completion of the work ethic camp program granted to the offender based on successful attendance, participation, and performance as defined by the secretary. The work ethic camp shall be designed and implemented so that offenders are continually engaged in meaningful activities and unstructured time is kept to a minimum. In addition, the department is encouraged to explore the integration and overlay of a military style approach to the work ethic camp.

NEW SECTION. Sec. 4. A new section is added to chapter 9.94A RCW to read as follows:

(1) An offender is eligible to be sentenced to a work ethic camp if the offender:

- (a) Is sentenced to a term of total confinement of not less than twenty-two months or more than thirty-six months;
- (b) Is between the ages of eighteen and twenty-eight years; and

(c) Has no current or prior convictions for any sex offenses or violent offenses.

(2) If the sentencing judge determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard range and may recommend that the offender serve the sentence at a work ethic camp. The sentence shall provide that if the offender successfully completes the program, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp confinement to three days of total standard confinement. The court shall also provide that upon completion of the work ethic camp program, the offender shall be released on community custody for any remaining time of total confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless the department determines that the offender has physical or mental impairments that would prevent participation and completion of the program, or the offender refuses to agree to the terms and conditions of the program.

(4) An inmate who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing judge and shall be subject to all rules relating to earned early release time.

(5) The length of the work ethic camp program shall be at least one hundred twenty days and not more than one hundred eighty days. Because of the conversion ratio, earned early release time shall not accrue to offenders who successfully complete the program.

(6) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training.

***NEW SECTION. Sec. 5. The work ethic camp program shall employ one hundred percent of all inmates. The employment options available for inmates shall include meaningful work opportunities that provide the offender with real-world skills that help the offender find employment when he or she successfully completes the work ethic camp program. The department shall include in the work ethic camp program, without limitation, class I, class II, and class IV correctional programs. No more than thirty-five percent of the total inmate population in the facility shall be employed in class III correctional industries programs in the first year and thereafter ten percent less per year until a maximum of ten percent of the inmates are working in this employment class. In addition, work options shall also include department-supervised work crews as defined by the department. These work crews shall have the ability to work on public roads conducting litter control, minor emergency repair or other minor tasks that do not negatively impact employment opportunities for people with developmental disabilities contracted through the operation of**

sheltered workshops as defined in RCW 82.04.385, or have a negative impact on the local labor market or local business community as assessed by the department correctional industries advisory board of directors. The department shall establish, to the extent possible, programs that will positively impact our natural environment such as, but not limited to, recycling programs and minor environmental cleanup programs. If the department is directed by the legislature to increase the percentage of inmates employed in correctional industries programs, inmates employed through work ethic camps shall not be counted towards this total percentage.

**Sec. 5 was vetoed, see message at end of chapter.*

NEW SECTION. Sec. 6. The work ethic camp program established in sections 1 and 3 through 6 of this act shall be considered a pilot alternative incarceration program and remain in effect until July 1, 1998. The department and the office of financial management shall monitor and analyze the effectiveness of the work ethic camp program and complete a final outcome evaluation study by January 15, 1998. The study shall include: The recidivism rates of successful program graduates, analysis of the overall program costs, the ability to maintain public safety, and any other pertinent data established by the department. The department may encourage interested universities to participate in studies that will enhance the effectiveness of the program.

The department of corrections shall seek the availability of federal funds for the planning, implementation, evaluation, and training of staff for work ethic camp programs, substance abuse programs, and offender education programs.

NEW SECTION. Sec. 7. Sections 1, 3, 5, and 6 of this act are each added to chapter 72.09 RCW.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

Passed the House April 20, 1993.

Passed the Senate April 13, 1993.

Approved by the Governor May 13, 1993, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 13, 1993.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 5, Engrossed Substitute House Bill No. 1922 entitled:

"AN ACT Relating to creation of a work ethic boot camp;"

Engrossed Substitute House Bill No. 1922 directs the Department of Corrections to create a work ethic camp within an existing or soon to be completed Department of

Corrections facility. This program of education and training for offenders should reduce recidivism and increase public safety.

Section 5 of Engrossed Substitute House Bill No. 1922 directs the Department to employ 100 percent of all program inmates in Class I, II and IV correctional industries jobs programs, with limited employment allowed for Class III industries. The Department does not currently have Class I and II programs available at potential camp sites and therefore cannot comply with the requirements of this section within the timeline set out in the bill.

Additionally, section 5 imposes limitations on the employment level allowed for Class III industries such as food service, sanitation, maintenance and clerical support. While I agree with the goal of meaningful work experience, the limitations on Class III industries may prove too restrictive, forcing the Department to pay staff overtime or hire outside contractors to perform functions traditionally assigned to inmates.

While I have vetoed section 5 for the reasons stated above, the intent of Engrossed Substitute House Bill No. 1922 will be carried out. The Department of Corrections is committed to the establishment of a successful and productive camp under this bill and to work with the legislature on the further development of the work ethic camp program.

With the exception of section 5, Engrossed Substitute House Bill No. 1922 is approved.

CHAPTER 339

[Substitute Senate Bill 5066]

TRUSTEES—LIMITATIONS ON POWERS

Effective Date: 7/25/93

AN ACT Relating to limiting the powers of a trustee; amending RCW 11.97.010; adding new sections to chapter 11.98 RCW; and adding new sections to chapter 11.95 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 11.97.010 and 1985 c 30 s 38 are each amended to read as follows:

The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104 RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in sections 2 through 12 of this act. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment.

NEW SECTION. Sec. 2. Due to the inherent conflict of interest that exists between a trustee and a beneficiary of a trust, unless the terms of a trust refer specifically to sections 2 through 6 of this act and provide expressly to the contrary, the powers conferred upon a trustee who is a beneficiary of the trust,

other than the trustor as a trustee, and other than the decedent's spouse or the testator's spouse where the spouse is the trustee of a trust for which a marital deduction is or was otherwise allowed or allowable, whether or not an appropriate marital deduction election was in fact made, cannot be exercised by the trustee to make:

(1) Discretionary distributions of either principal or income to or for the benefit of the trustee, except to provide for the trustee's health, education, maintenance, or support as described under section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section;

(2) Discretionary allocations of receipts or expenses as between principal and income, unless the trustee acts in a fiduciary capacity whereby the trustee has no power to enlarge or shift a beneficial interest except as an incidental consequence of the discharge of the trustee's fiduciary duties; or

(3) Discretionary distributions of either principal or income to satisfy a legal support obligation of the trustee.

A proscribed power under this section that is conferred upon two or more trustees may be exercised by the trustees that are not disqualified under this section. If there is no trustee qualified to exercise a power proscribed under this section, a person described in RCW 11.96.070 who is entitled to seek judicial proceedings with respect to a trust may apply to a court of competent jurisdiction to appoint another trustee who would not be disqualified, and the power may be exercised by another trustee appointed by the court. Alternatively, another trustee who would not be disqualified may be appointed in accordance with the provisions of the trust instrument if the procedures are provided, or as set forth in RCW 11.98.039 as if the office of trustee were vacant, or by a nonjudicial dispute resolution agreement under RCW 11.96.170.

NEW SECTION. Sec. 3. If a trustee is a beneficiary of the trust and the trust instrument confers the power to make distributions of principal or income for the trustee's health, education, support, or maintenance as described in section 2041 or 2514 of the Internal Revenue Code and the applicable regulations adopted under that section, then a trust provision purporting to confer "absolute," "sole," "complete," "conclusive," or a similar discretion relating to the exercise of such trustee powers shall be disregarded in the exercise of the power, and the power may then only be exercised reasonably and in accordance with the ascertainable standard as set forth in section 2 of this act and this section. A person who has the right to remove or to replace a trustee does not possess nor may the person be deemed to possess by virtue of having that right the powers of the trustee who is subject to removal or replacement.

NEW SECTION. Sec. 4. Sections 2 through 6 of this act do not raise any inference that the law of this state prior to the effective date of this act was different than under sections 2 through 6 of this act. Further, sections 2 through 6 of this act do not raise an inference that prior to the effective date of this act a trustee's exercise or failure to exercise a power described in sections 2 through

Passed the House April 20, 1993.
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CHAPTER 251

(Substitute House Bill 10511)

ALCOHOL OR DRUG CAUSED EMERGENCY RESPONSE—RECOVERY OF COSTS FROM CONVICTED PERSON

Effective Date: 7/25/93

AN ACT Relating to emergency management; amending RCW 9.95.210 and 38.52.010; reenacting and amending RCW 9.94A.030; adding a new section to chapter 38.52 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that a public agency incurs expenses in an emergency response. It is the intent of the legislature to allow a public agency to recover the expenses of an emergency response to an incident involving persons who operate a motor vehicle, boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or a drug, or the combined influence of an alcoholic beverage and a drug. It is the intent of the legislature that the recovery of expenses of an emergency response under this act shall supplement and shall not supplant other provisions of law relating to the recovery of those expenses.

NEW SECTION. Sec. 2. A new section is added to chapter 38.52 RCW to read as follows: (6011001 601138.52.010)

A person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under the influence of intoxicating liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel while under the influence of alcohol or drugs, RCW 88.12.100; (4) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is liable for the expense of an emergency response by a public agency to the incident.

The expense of an emergency response is a charge against the person liable for expenses under this section. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

In no event shall a person's liability under this section for the expense of an emergency response exceed one thousand dollars for a particular incident.

If more than one public agency makes a claim for payment from an individual for an emergency response to a single incident under the provisions of this section, and the sum of the claims exceeds the amount recovered, the division of the amount recovered shall be determined by an interlocal agreement consistent with the requirements of chapter 39.34 RCW.

Sec. 3. RCW 9.95.210 and 1992 c 86 s 1 are each amended to read as follows:

In granting probation, the court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

In the order granting probation and as a condition thereof, the court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the court shall require the payment of the penalty assessment required by RCW 7.68.035. The court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, (3) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required, (4) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation, ~~(and)~~ (5) to contribute to a county or interlocal drug fund, and (6) to make restitution to a public agency for the costs of an emergency response under section 2 of this act, and may require bonds for the faithful observance of any and all conditions imposed in the probation. The court shall order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow implicitly the instructions of the secretary. If the probationer has been ordered to make restitution, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by

probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

Sec. 4. RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each ~~renacted and amended to read as follows:~~

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(2) "Commission" means the sentencing guidelines commission.

(3) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody, in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to the provisions in section 2 of this act.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(12)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" shall always include juvenile convictions for sex offenses and shall also include a defendant's other prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(13) "Department" means the department of corrections.

(14) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(15) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process

to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(16) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.40(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(17) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(18) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(19) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(20)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug or the selling for profit of any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction except for adjudications of sex offenses.

(21) "Nonviolent offense" means an offense which is not a violent offense.

(22) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(23) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention as defined in this section.

(24) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(25) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(26) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(27) "Serious violent offense" is a subcategory of violent offense and means: (a) Murder in the first degree, homicide by abuse, murder in the second 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

(b) 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 under (a) of this subsection.

(28) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(29) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.190 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127; or

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(30) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(31) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(32) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(33) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(34) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall be performed on public property or on private property owned or operated by nonprofit entities, except that, for emergency purposes only, work crews may perform snow removal on any private property. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized under contract by a county are eligible to participate on a work crew.

Offenders sentenced for a sex offense as defined in subsection (29) of this section are not eligible for the work crew program.

(35) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

(36) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, assault of a child in the third degree, unlawful imprisonment as defined in RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program.

(a) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender: (i) Successfully completing twenty-one days in a work release program, (ii) having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary, (iii) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (iv) having no prior charges of escape, and (v) fulfilling the other conditions of the home detention program.

(b) Participation in a home detention program shall be conditioned upon: (i) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (ii) abiding by the rules of the home detention program, and (iii) compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

Sec. 5. RCW 38.52.010 and 1986 c 266 s 23 are each amended to read as follows:

As used in this chapter:

(1) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural or man-made, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(2) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(3) "Political subdivision" means any county, city or town.

(4) "Emergency worker" means any person who is registered with a local emergency management organization or the department of community development and holds an identification card issued by the local emergency management director or the department of community development for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(5) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(6)(a) "Emergency or disaster" as used in all sections of this chapter except section 2 of this act shall mean an event or set of circumstances which: ((f)) (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or ((f)) (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(b) "Emergency" as used in section 2 of this act means an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in section 2 of this act.

(7) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural or man-made disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

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(8) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor.

(9) "Director" means the director of community development.

(10) "Local director" means the director of a local organization of emergency management or emergency services.

(11) "Department" means the department of community development.

(12) "Emergency response" as used in section 2 of this act means a public agency's use of emergency services during an emergency or disaster as defined in subsection (6)(b) of this section.

(13) "Expense of an emergency response" as used in section 2 of this act means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, fire fighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(14) "Public agency" means the state, and a city, county, municipal corporation, district, or public authority located, in whole or in part, within this state which provides or may provide fire fighting, police, ambulance, medical, or other emergency services.

Passed the House April 19, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.

CHAPTER 252

(Engrossed Substitute House Bill 1089)

AIR QUALITY OPERATING PERMITS—FEES AND REVISED PROVISIONS

Effective Date: 7/25/93

AN ACT Relating to fee structures of the air quality stationary source permit programs, amending RCW 70.94.015, 70.94.030, 70.94.151, 70.94.152, and 70.94.161; and adding new sections to chapter 70.94 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.94.015 and 1991 c 199 s 228 are each amended to read as follows:

(1) The air pollution control account is established in the state treasury. All receipts collected by or on behalf of the department from RCW 70.94.151(2), and receipts from nonpermit program sources under RCW 70.94.152(1) and section 8(7) of this act, and all receipts from RCW 70.94.650, 70.94.660, 82.44.020(3), and 82.50.405 shall be deposited into the account. Moneys in the

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Whenever a state officer or employee is charged with a criminal offense arising out of the performance of an official act which was fully in conformity with established written rules, policies, and guidelines of the state or state agency, the employing agency may request the attorney general to defend the officer or employee. If the agency finds, and the attorney general concurs, that the officer's or employee's conduct was fully in accordance with established written rules, policies, and guidelines of the state or a state agency and the act performed was within the scope of employment, then the request shall be granted and the costs of defense shall be paid by the requesting agency: PROVIDED, HOWEVER, If the agency head is the person charged, then approval must be obtained from both the attorney general and the state auditor. If the court finds that the officer or employee was performing an official act, or was within the scope of employment, and that his actions were in conformity with the established rules, regulations, policies, and guidelines of the state and the state agency, the cost of any monetary fine assessed shall be paid from the tort claims revolving fund. [1975 1st ex.s. c 144 § 1.]

10.01.160 Costs—What constitutes—Payment by defendant—Procedure—Remission. (1) The court may require a convicted defendant, or defendant granted a deferred prosecution under chapter 10.05 RCW, to pay costs.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a convicted defendant to pay. Costs for administering a deferred prosecution may not exceed one hundred fifty dollars.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170. [1991 c 247 § 4; 1987 c 363 § 1; 1985 c 389 § 1; 1975-'76 2nd ex.s. c 96 § 1.]

*Commitment for failure to pay fine and costs: RCW 10.70.010, 10.82.030.
Defendant liable for costs: RCW 10.64.015.*

Fine and costs—Collection procedure, commitment for failure to pay, execution against defendant's property: Chapter 10.82 RCW.

10.01.170 Fine or costs—Payment within specified time or installments. When a defendant is sentenced to pay a fine or costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence the fine or costs shall be payable forthwith. [1975-'76 2nd ex.s. c 96 § 2.]

Payment of fine and costs in installments: RCW 9.92.070.

10.01.180 Fine or costs—Default in payment—Contempt of court—Enforcement, collection procedures. (1) A defendant sentenced to pay a fine or costs who defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW. The court may issue a warrant of arrest for his appearance.

(2) When a fine or assessment of costs is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or costs from those assets, and his failure to do so may be held to be contempt.

(3) If a term of imprisonment for contempt for nonpayment of a fine or costs is ordered, the term of imprisonment shall be set forth in the commitment order, and shall not exceed one day for each twenty-five dollars of the fine or costs, thirty days if the fine or assessment of costs was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

(4) If it appears to the satisfaction of the court that the default in the payment of a fine or costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or costs or the unpaid portion thereof in whole or in part.

(5) A default in the payment of a fine or costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or costs has actually been collected. [1989 c 373 § 13; 1975-'76 2nd ex.s. c 96 § 3.]

Severability—1989 c 373: See RCW 7.21.900.

Fine and costs—Collection procedure, commitment for failure to pay, execution against defendant's property: Chapter 10.82 RCW.

10.01.190 Prosecutorial powers of attorney general. In any criminal proceeding instituted or conducted by the attorney general, the attorney general and assistants are deemed to be prosecuting attorneys and have all prosecutorial powers vested in prosecuting attorneys of the state of Washington by statute or court rule. [1981 c 335 § 4.]

Purpose—1981 c 335: See RCW 43.10.230.

10.01.200 Registration of sex offenders—Notice to defendants. The court shall provide written notification to any defendant charged with a sex offense of the registration requirements of RCW 9A.44.130. Such notice shall be

1881 § 1097; 1854 p 120 § 122; RRS § 2167. Formerly RCW 10.61.010, part.] [SLC-RO-11]

Where doubt as to degree, conviction of lowest: RCW 10.58.020.

10.61.006 Other cases—Included offenses. In all other cases the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he is charged in the indictment or information. [1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123; RRS § 2168. Formerly RCW 10.61.010, part.] [SLC-RO-11]

10.61.010 Conviction of lesser crime. Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty. [1909 c 249 § 11; RRS § 2263. FORMER PARTS OF SECTION: (i) 1891 c 28 § 75; Code 1881 § 1097; 1854 p 120 § 122; RRS § 2167, now codified as RCW 10.61.003. (ii) 1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123; RRS § 2168, now codified as RCW 10.61.006.] [SLC-RO-11]

10.61.035 Conviction or acquittal—Several defendants. Upon an indictment or information against several defendants any one or more may be convicted or acquitted. [1891 c 28 § 37; Code 1881 § 1022; 1873 p 228 § 205; 1869 p 243 § 200; RRS § 2073. Formerly RCW 10.61.030, part.]

Rules of court: This section superseded in part by CrR 6.16. See comment after CrR 6.16.

Discharging defendant to give evidence: RCW 10.46.110.

10.61.060 Reconsideration of verdict. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider the verdict; and if after such reconsideration they return the same verdict it must be entered, but it shall be good cause for new trial. When there is a verdict of acquittal the court cannot require the jury to reconsider it. [1891 c 28 § 78; Code 1881 § 1100; 1873 p 239 § 261; 1854 p 121 § 125; RRS § 2170.]

Chapter 10.64

JUDGMENTS AND SENTENCES

Sections

- 10.64.015 Judgment to include costs—Exception.
- 10.64.025 Detention of defendant.
- 10.64.027 Conditions of release.
- 10.64.060 Form of sentence to penitentiary.
- 10.64.070 Recognizance to maintain good behavior or keep the peace.
- 10.64.075 Breach of recognizance conditions.
- 10.64.080 Judgments a lien on realty.
- 10.64.100 Final record—What to contain.
- 10.64.110 Fingerprint of defendant in felony convictions.
- 10.64.120 Referral assessments.

Rules of court: Judgments and sentencing—CrR 7.1 through 7.4.

[Title 10 RCW—page 32]

Ordinance No. 1753

*Assessments required of other convicted persons
offender supervision: RCW 9.94A.270.
parolees: RCW 72.04A.120.*

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. I § 14.

10.64.015 Judgment to include costs—Exception. When the defendant is found guilty, the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise. [Code 1881 § 1104; 1873 p 241 § 272; 1854 p 121 § 129; RRS § 2187. Formerly RCW 10.64.010, part.]
Requiring defendant to pay costs—Procedure: RCW 10.01.160, 10.01.170, chapter 10.82 RCW.

10.64.025 Detention of defendant. A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released. Any bail bond that was posted on behalf of a defendant shall, upon the defendant's conviction, be exonerated. [1989 c 276 § 2.]

Severability—1989 c 276: See note following RCW 9.95.062.

10.64.027 Conditions of release. In order to minimize the trauma to the victim, the court may attach conditions on release of a defendant under RCW 10.64.025 regarding the whereabouts of the defendant, contact with the victim, or other conditions. [1989 c 276 § 5.]

Severability—1989 c 276: See note following RCW 9.95.062.

10.64.060 Form of sentence to penitentiary. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at any one time; and in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order. [Code 1881 § 1127; 1873 p 243 § 285; 1854 p 124 § 149; RRS § 2208.]

Indeterminate sentences: Chapter 9.95 RCW.

Sentencing, 1981 act: Chapter 9.94A RCW.

10.64.070 Recognizance to maintain good behavior or keep the peace. Every court before whom any person shall be convicted upon an indictment or information for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize. [1891 c 28 § 83; Code 1881 § 1121; 1873 p 242 § 279; 1854 p 123 § 143; RRS § 2202. FORMER PART OF SECTION: Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203, now codified as RCW 10.64.075.]

10.64.075 Breach of recognizance conditions. In case of the breach of the conditions of any such recogni-

(1992 Ed.)

zance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace. [Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203. Formerly RCW 10.64.070, part.]

10.64.080 Judgments a lien on realty. Judgments for fines in all criminal actions rendered, are, and may be made liens upon the real estate of the defendant in the same manner, and with like effect as judgments in civil actions. [Code 1881 § 1111; RRS § 2188.]

10.64.100 Final record—What to contain. The clerk of the court shall make a final record of all the proceedings in a criminal prosecution within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment or information, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders, or decision, and bill of exceptions. [1891 c 28 § 85; Code 1881 § 1134; 1873 p 245 § 292; 1854 p 125 § 156; RRS § 2224.]

10.64.110 Fingerprint of defendant in felony convictions. Following June 15, 1977, there shall be affixed to the original of every judgment and sentence of a felony conviction in every court in this state and every order adjudicating a juvenile to be a delinquent based upon conduct which would be a felony if committed by an adult, a fingerprint of the defendant or juvenile who is the subject of the order. When requested by the clerk of the court, the actual affixing of fingerprints shall be done by a representative of the office of the county sheriff.

The clerk of the court shall attest that the fingerprints appearing on the judgment in sentence, order of adjudication of delinquency, or docket, is that of the individual who is the subject of the judgment or conviction, order, or docket entry. [1977 ex.s. c 259 § 1.]

10.64.120 Referral assessments. (1) Every judge of a court of limited jurisdiction shall have the authority to levy a monthly assessment not to exceed fifty dollars for services provided whenever a person is referred by the court to the probation department for evaluation or supervision services. The assessment may also be made by a sentencing judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court.

(2) It shall be the responsibility of the probation services office to implement local procedures approved by the court of limited jurisdiction to ensure collection and payment of such fees into the general fund of the city or county treasury.

(3) Revenues raised under this section shall be used to fund programs for probation services and shall be in addition to those funds provided in RCW 3.62.050. [1991 c 247 § 3; 1982 c 207 § 4.]

Chapter 10.66

DRUG TRAFFICKERS—OFF-LIMITS ORDERS

Sections

10.66.005	Findings.
10.66.010	Definitions.
10.66.020	When order may be issued.
10.66.030	Hearing—Summons.
10.66.040	Ex parte temporary order—Hearing—Notice.
10.66.050	Additional relief—PADT area.
10.66.060	Bond or security.
10.66.070	Appearance of party.
10.66.080	Notice of order to law enforcement agency.
10.66.090	Penalties.
10.66.100	Additional penalties.
10.66.110	Jurisdiction.
10.66.120	Venue.
10.66.130	Modification of order—Notice to law enforcement agency.
10.66.900	Severability—1989 c 271.

10.66.005 Findings. The legislature finds that drug abuse is escalating at an alarming rate. New protections need to be established to address this drug crisis which is threatening every stratum of our society. Prohibiting known drug traffickers from frequenting areas for continuous drug activity is one means of addressing this pervasive problem. [1989 c 271 § 213.]

10.66.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Applicant" means any person who owns, occupies, or has a substantial interest in property, or who is a neighbor to property which is adversely affected by drug trafficking, including:

(a) A "family or household member" as defined by RCW 10.99.020(1), who has a possessory interest in a residence as an owner or tenant, at least as great as a known drug trafficker's interest;

(b) An owner or lessor;

(c) An owner, tenant, or resident who lives or works in a designated PADT area; or

(d) A city or prosecuting attorney for any jurisdiction in this state where drug trafficking is occurring.

(2) "Drug" or "drugs" means a controlled substance as defined in chapter 69.50 RCW or an "imitation controlled substance" as defined in RCW 69.52.020.

(3) "Known drug trafficker" means any person who has been convicted of a drug offense in this state, another state, or federal court who subsequently has been arrested for a drug offense in this state. For purposes of this definition, "drug offense" means a felony violation of chapter 69.50 or 69.52 RCW or equivalent law in another jurisdiction that involves the manufacture, distribution, or possession with intent to manufacture or distribute, of a controlled substance or imitation controlled substance.

(4) "Off-limits orders" means an order issued by a superior or district court in the state of Washington that enjoins known drug traffickers from entering or remaining in a designated PADT area.

(5) "Protected against drug trafficking area" or "PADT area" means any specifically described area, public or private, contained in an off-limits order. The perimeters of a PADT area shall be defined using street names and

processors. In making appointments, the director shall solicit nominations from organizations representing these groups state-wide.

(2) The purpose of the board is to provide advice to the director regarding livestock identification programs administered under this chapter and regarding brand inspection fees and related licensing fees. The director shall consult the board before adopting, amending, or repealing a rule under this chapter or altering a fee under RCW 16.58.050, 16.58.130, 16.65.030, or 16.65.090. If the director publishes in the state register a proposed rule to be adopted under the authority of this chapter or a proposed rule setting a fee under RCW 16.58.050, 16.58.130, 16.65.030, or 16.65.090 and the rule has not received the approval of the advisory board, the director shall file with the board a written statement setting forth the director's reasons for proposing the rule without the board's approval.

(3) The members of the advisory board serve three-year terms. However, the director shall by rule provide shorter initial terms for some of the members of the board to stagger the expiration of the initial terms. The members serve without compensation. The director may authorize the expenses of a member to be reimbursed if the member is selected to attend a regional or national conference or meeting regarding livestock identification. Any such reimbursement shall be in accordance with RCW 43.03.050 and 43.03.060.

Sec. 11. RCW 16.57.410 and 1989 c 286 s 25 are each amended to read as follows:

(1) No person may act as a registering agency without a permit issued by the department. The director may issue a permit to any person or organization to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the director. Application for such permit, or the renewal thereof by January 1 of each year, shall be on a form prescribed by the director, and accompanied by the proof of registration to be issued, any other documents required by the director, and a fee of one hundred dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the director, if requested by the director.

(3) Individual identification symbols shall be inspected as required for brands under RCW 16.57.220 and 16.57.380 (~~and 16.57.390~~). Any horse presented for inspection and bearing such a symbol, but not accompanied by proof of registration and certificate of permit, shall be sold as provided under RCW 16.57.290 through 16.57.330.

(4) The director shall adopt such rules as are necessary for the effective administration of this section pursuant to chapter 34.05 RCW.

NEW SECTION. Sec. 12. RCW 16.57.390 and 1974 c.s. c 38 s 2 are each repealed.

Passed the Senate April 19, 1993.

Passed the House April 6, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

CHAPTER 355

(Engrossed Substitute Senate Bill 5452)

INCARCERATION COSTS—PAYMENT BY MISDEMEANANT

Effective Date: 7/25/93

AN ACT Relating to payment for costs of incarceration, and adding a new section to chapter 10.64 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 10.64 RCW to read as follows:

Once a defendant has been convicted of a misdemeanor or gross misdemeanor, unless the defendant has been found by the court, pursuant to RCW 10.101.020, to be indigent, the court may require the defendant to pay for the cost of incarceration at a rate of up to fifty dollars per day of incarceration. Payment of other court ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail shall be remitted to the county or city for criminal justice purposes.

Passed the Senate April 17, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

CHAPTER 356

(Substitute Senate Bill 54711)

NONPROFIT CORPORATIONS—REVISIONS

Effective Date: 7/1/93

AN ACT Relating to nonprofit corporations; amending RCW 24.03.046, 24.03.047, 24.03.055, 24.03.240, 24.03.302, 24.03.345, 24.03.370, 24.03.386, 24.03.395, 24.03.400, 24.03.410, 24.06.046, 24.06.047, 24.06.050, 24.06.055, 24.06.275, 24.06.290, 24.06.380, 24.06.415, 24.06.440, 24.06.445, and 24.06.455; adding a new section to chapter 24.06 RCW, providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

(b) Is convicted of a second or subsequent violation of this chapter, is guilty of a class C felony. [1989 c 271 § 223.]

10.66.100 Additional penalties. Any person who willfully disobeys an off-limits order issued under this chapter shall be subject to criminal penalties as provided in this chapter and may also be found in contempt of court and subject to penalties under *chapter 7.20 RCW. [1989 c 271 § 222.]

*Reviser's note: Chapter 7.20 RCW was repealed by 1989 c 373 § 28. For later enactment, see chapter 7.21 RCW.

10.66.110 Jurisdiction. The superior courts shall have jurisdiction of all civil actions and all felony criminal proceedings brought under this chapter. Courts of limited jurisdiction shall have jurisdiction of all misdemeanor and gross misdemeanor criminal actions brought under this chapter. [1989 c 271 § 224.]

10.66.120 Venue. For the purposes of this chapter, an action may be brought in any county in which any element of the alleged drug trafficking activities occurred. [1989 c 271 § 225.]

10.66.130 Modification of order—Notice to law enforcement agency. Upon application, notice to all parties, and a hearing, the court may modify the terms of an off-limits order. When an order is terminated, modified, or amended before its expiration date, the clerk of the court shall forward, on or before the next judicial day, a true copy of the amended order to the law enforcement agency specified in the order. Upon receipt of an order, the law enforcement agency shall promptly enter it into an appropriate law enforcement information system. [1989 c 271 § 226.]

10.66.900 Severability—1989 c 271. See note following RCW 9.94A.310.

Chapter 10.70

COMMITMENTS

(Formerly: Commitments and executions)

Sections

- 10.70.010 Commitment until fine and costs are paid.
- 10.70.020 Mittimus upon sentence to imprisonment.
- 10.70.140 Aliens committed—Notice to immigration authority.
- 10.70.150 Aliens committed—Copies of clerk's records.

Execution of death sentence: Chapter 10.95 RCW.

10.70.010 Commitment until fine and costs are paid. When the defendant is adjudged to pay a fine and costs, the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law. [Code 1881 § 1119; 1873 p 242 § 277; 1854 p 123 § 141; RRS § 2200.]

Commitment for failure to pay fine and costs—Execution against defendant's property: RCW 10.82.030.

Stay of execution for sixty days on recognizance: RCW 10.82.020, 10.82.025.

(1992 Ed.)

Ordinance No. 1753

10.70.020 Mittimus upon sentence to imprisonment. When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, who shall execute it accordingly. [Code 1881 § 1126; 1873 p 243 § 284; 1854 p 124 § 148; RRS § 2207.]

10.70.140 Aliens committed—Notice to immigration authority. Whenever any person shall be committed to a state correctional facility, the county jail, or any other state or county institution which is supported wholly or in part by public funds, it shall be the duty of the warden, superintendent, sheriff or other officer in charge of such state or county institution to at once inquire into the nationality of such person, and if it shall appear that such person is an alien, to immediately notify the United States immigration officer in charge of the district in which such penitentiary, reformatory, jail or other institution is located, of the date of and the reasons for such alien commitment, the length of time for which committed, the country of which the person is a citizen, and the date on which and the port at which the person last entered the United States. [1992 c 7 § 29; 1925 ex.s. c 169 § 1; RRS § 2206-1.]

10.70.150 Aliens committed—Copies of clerk's records. Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing any alien to any state or county institution which is supported wholly or in part by public funds, it shall be the duty of the clerk of such court to furnish without charge a certified copy of the complaint, information or indictment and the judgment and sentence and any other record pertaining to the case of the convicted alien. [1925 ex.s. c 169 § 2; RRS § 2206-2.]

Chapter 10.73

CRIMINAL APPEALS

Sections

- 10.73.010 Appeal by defendant.
- 10.73.040 Bail pending appeal.
- 10.73.090 Collateral attack—One year time limit.
- 10.73.100 Collateral attack—When one year limit not applicable.
- 10.73.110 Collateral attack—One year time limit—Duty of court to advise defendant.
- 10.73.120 Collateral attack—One year time limit—Duty of department of corrections to advise.
- 10.73.130 Collateral attack—One year time limit—Applicability.
- 10.73.140 Collateral attack—Subsequent petitions.
- 10.73.900 Severability—1989 c 395.

Effect of appellate review by defendant: RCW 9.95.060, 9.95.062.

10.73.010 Appeal by defendant. Appeal by defendant, see Rules of Court.

10.73.040 Bail pending appeal. In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken

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consistent with the purposes of the community and urban forestry program under this chapter.

NEW SECTION. Sec. 11. A new section is added to chapter 76.15 RCW to read as follows:

The department shall encourage urban planting of tree varieties that are site-appropriate and provide the best combination of energy and water conservation, fire safety and other safety, wildlife habitat, and aesthetic value. The department may provide technical assistance in developing programs in tree planting for energy conservation in areas of the state where such programs are most cost-effective.

Passed the Senate March 17, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

CHAPTER 205

(Senate Bill 5290)

FREE HOSPITALS—SALES AND USE TAX EXEMPTIONS

Effective Date: 5/6/93

AN ACT Relating to retail sales and use taxes; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales to free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals.

(2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use by free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals.

(2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 4, 1993.

Passed the House April 13, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

CHAPTER 206

(Engrossed Senate Bill 5768)

ARCHITECT OR ENGINEER SERVICES AT EMERGENCY SCENE—IMMUNITY

FROM CIVIL LIABILITY

Effective Date: 7/25/93

AN ACT Relating to architectural and engineering inspection services at an emergency scene; amending RCW 38.52.010; and adding a new section to chapter 38.52 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 38.52.010 and 1986 c 266 s 23 are each amended to read as follows:

As used in this chapter:

(1) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural or man-made, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(2) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(3) "Political subdivision" means any county, city or town.

(4) "Emergency worker" means any person, including but not limited to an architect registered under chapter 18.43 RCW, who is registered with a local emergency management organization or the department of community development and holds an identification card issued by the local emergency management director or the department of community development for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(5) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(6) "Emergency or disaster" as used in this chapter shall mean an event or set of circumstances which: (a) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (b) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(7) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural or man-made disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

(8) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor.

(9) "Director" means the director of community development.

(10) "Local director" means the director of a local organization of emergency management or emergency services.

(11) "Department" means the department of community development.

NEW SECTION. Sec. 2. A new section is added to chapter 38.52 RCW to read as follows:

For purposes of the liability of an architect or engineer serving as a volunteer emergency worker, the exemption from liability provided under RCW 38.52.195 extends to all damages, so long as the conditions specified in RCW 38.52.195 (1) through (5) occur.

Passed the Senate April 18, 1993.

Passed the House April 15, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.

CHAPTER 207

[Senate Bill 5791]

CHILD SUPPORT ORDERS—REVISION OF REQUIRED CONTENTS

Effective Date: 7/25/93

AN ACT Relating to mandatory provisions in child support orders; and amending RCW 26.23.050.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 26.23.050 and 1991 c 367 s 39 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the superior court shall include in all superior court orders which establish or modify a support obligation:

(a) A provision which orders and directs that the responsible parent make all support payments to the Washington state support registry;

(b) A statement that a notice of payroll deduction may be issued or other income withholding action under chapter 26.18 RCW or chapter 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and

(c) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child.

(2) The court may order the responsible parent to make payments directly to the person entitled to receive the payments or, for orders entered on or after July 1, 1990, direct that the issuance of a notice of payroll deduction or other income withholding actions be delayed until a support payment is past due if the court approves an alternate payment plan. The parties to the order must agree to such a plan and the plan must contain reasonable assurances that payments will be made in a regular and timely manner. The court may approve such a plan and modify or terminate the payroll deduction or other income withholding action at the time of entry of the order or at a later date upon motion and agreement of the parties. If the order directs payment to the person entitled to receive the payments instead of to the Washington state support registry, the order shall include a statement that the order may be submitted to the registry if a support payment is past due. If the order directs delayed issuance of the notice of payroll deduction or other income withholding action, the order shall include a statement that such action may be taken, without further notice, at any time after a support payment is past due. The provisions of this subsection do not apply if the department is providing public assistance under Title 74 RCW.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the responsible parent shall make all support payments to the Washington state support registry. All administrative orders shall also state that a notice of payroll deduction may be issued, or other income withholding action taken without further notice to the responsible parent at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

on the motion of the defendant supported by affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it; and also the name and place of residence of the witness or witnesses; and the substance of the evidence expected to be obtained, and if the prosecuting attorney admit that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper the continuance shall not be granted. [Code 1881 § 1077; 1877 p 206 § 7; RRS § 2135.]

10.46.085 Continuances not permitted in certain cases. When a defendant is charged with a crime which constitutes a violation of RCW 9A.64.020 or chapter 9.68, 9.68A, or 9A.44 RCW, and the alleged victim of the crime is a person under the age of eighteen years, neither the defendant nor the prosecuting attorney may agree to extend the originally scheduled trial date unless the court within its discretion finds that there are substantial and compelling reasons for a continuance of the trial date and that the benefit of the postponement outweighs the detriment to the victim. The court may consider the testimony of lay witnesses and of expert witnesses, if available, regarding the impact of the continuance on the victim. [1989 c 332 § 7.]

Finding—1989 c 332: "The legislature finds that treatment of the emotional problems of child sexual abuse victims may be impaired by lengthy delay in trial of the accused and the resulting delay in testimony of the child victim. The trauma of the abusive incident is likely to be exacerbated by requiring testimony from a victim who has substantially completed therapy and is forced to relive the incident. The legislature finds that it is necessary to prevent, to the extent reasonably possible, lengthy and unnecessary delays in trial of a person charged with abuse of a minor." [1989 c 332 § 6.]

10.46.110 Discharging defendant to give evidence. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a codefendant. The order of discharge is a bar to another prosecution for the same offense. [Code 1881 § 1092; 1873 p 237 § 253; 1854 p 120 § 117; RRS § 2162.]

Conviction or acquittal—Several defendants: RCW 10.61.035.

10.46.190 Liability of convicted person for costs—Jury fee. Every person convicted of a crime or held to bail to keep the peace shall be liable to all the costs of the proceedings against him, including, when tried by a jury in the superior court, a jury fee as provided for in civil actions, and when tried by a jury before a committing magistrate, twenty-five dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines. The jury fee, when collected for a case tried by the superior court, shall be paid to the clerk, to be by him applied as the jury fee in civil cases is applied. [1977 ex.s. c 248 § 1; 1977 ex.s. c 53 § 1; 1961 c 304 § 8; Code 1881 § 2105; 1869 p 418 § 3; RRS § 2227.]

Disposition of fines and costs: Chapter 10.82 RCW.

Jury

fees: RCW 4.44.110, 36.18.020.
in district court: RCW 10.04.050.
trials by: Chapter 10.49 RCW.

10.46.200 Costs allowed to acquitted or discharged defendant. No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment is found against him, or for want of prosecution, shall be liable for any costs or fees of any officer or for any charge of subsistence while he was in custody, but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases. [Code 1881 § 1168; 1877 p 207 § 10; 1854 p 129 § 177; RRS § 2236.]

10.46.210 Taxation of costs on acquittal or discharge—Generally—F frivolous complaints. When any person shall be brought before a court or other committing magistrate of any county, city or town in this state, having jurisdiction of the alleged offense, charged with the commission of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city or town for or in which the said complaint is triable, but if the court or other magistrate trying said charge, shall decide the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law. [1987 c 202 § 168; Code 1881 § 2103; 1869 p 418 § 1; RRS § 2225.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.46.220 Cost bills in felony cases—Certification. In all convictions for felony, whether capital or punishable by imprisonment in the penitentiary, the clerk of the superior court shall forthwith, after sentence, tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the county in which the trial was had. After which the judge of the superior court shall allow and approve such bill or so much thereof, as is allowable by law. The clerk of the superior court shall thereupon, under his hand, and under the seal of the court, certify said triplicate cost bills, and shall file one with the papers of cause, and shall transmit one to the administrator for the courts and one to the county auditor of the county in which said felony was committed. [1979 c 129 § 1; 1883 p 35 § 1; Code 1881 § 2106; RRS § 2228.]

10.46.230 Cost bills in felony cases—Payment. Upon the receipt of the cost bill, as provided for in the preceding section, the county auditor shall draw warrants for the amounts due each person, as certified in said cost bill, which warrants shall be paid as other county warrants are paid. On receipt of the certified copy of said cost bill, the administrator for the courts shall examine and audit said bill and allow the payment by the state of statutorily required

having general effect. [1982 c 35 § 198; 1947 c 165 § 21; Rem. Supp. 1947 § 10964-101. Formerly RCW 14.04.210.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Notice of meetings: Chapter 42.30 RCW.

47.68.220 Operating aircraft recklessly or under influence of intoxicants or drugs. It shall be unlawful for any person to operate an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air or on the ground or water, in a careless manner so as to endanger the life or property of another. In any proceeding charging careless or reckless operation of aircraft in violation of this section, the court in determining whether the operation was careless or reckless may consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics. [1947 c 165 § 22; Rem. Supp. 1947 § 10964-102. Formerly RCW 14.04.220.]

47.68.230 Aircraft and airman certificates required. It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit or license issued by the United States, if such certificate, permit or license is required by the United States, and a current registration certificate issued by the secretary of transportation, if registration of the aircraft with the department of transportation is required by this chapter. It shall be unlawful for any person to engage in aeronautics as an airman in the state unless he has an appropriate effective airman certificate, permit, rating or license issued by the United States authorizing him to engage in the particular class of aeronautics in which he is engaged, if such certificate, permit, rating or license is required by the United States and a current airman's registration certificate issued by the department of transportation as required by RCW 47.68.233.

Where a certificate, permit, rating or license is required for an airman by the United States or by RCW 47.68.233, it shall be kept in his personal possession when he is operating within the state. Where a certificate, permit or license is required by the United States or by this chapter for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state and shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors. Such certificates shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official or employee of the department of transportation authorized pursuant to this chapter to enforce the aeronautics laws, or any official, manager or person in charge of any airport, or upon the reasonable request of any person. [1987 c 220 § 1; 1979 c 158 § 205; 1967 ex.s. c 68 § 2; 1967 ex.s. c 9 § 7; 1949 c 49 § 11; 1947 c 165 § 23; Rem. Supp. 1949 § 10964-103. Formerly RCW 14.04.230.]

Transfer of aircraft registration program: "All powers, duties, and functions as well as all reports, documents, surveys, books, records, files, papers, or written material of the department of licensing pertaining to aircraft registration are transferred to the department of transportation. All

existing contracts and obligations shall remain in full force and shall be performed by the department of transportation." [1987 c 220 § 10.]

Severability—1987 c 220: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 220 § 12.]

Purpose—1967 ex.s. c 68: "The purpose of this act is to correct inconsistencies in amendment to section 23, chapter 165, Laws of 1947 and RCW 14.04.230, occasioned by two amendments to the same section by two different bills neither of which took cognizance of the other." [1967 ex.s. c 68 § 1.] This applies to RCW 47.68.230 (formerly RCW 14.04.230) and to 1967 ex.s. c 68 § 3 which repealed 1967 c 207 § 1 which also amended RCW 47.68.230 (formerly RCW 14.04.230).

Federal airman certification: 52 U.S. Stat. at Large 1008, 49 U.S.C. 1952 ed. § 552.

Federal certification of aircraft: 52 U.S. Stat. at Large 1009, 49 U.S.C. 1952 ed. § 553.

Federal licensing of aircraft and airmen required: RCW 14.16.020, 14.16.030.

47.68.233 Registration of pilots—Certificates—Fees—Exemptions—Use of fees. The department shall require that every pilot who is a resident of this state and every nonresident pilot who regularly operates any aircraft in this state be registered with the department. The department shall charge an annual fee not to exceed ten dollars for each registration. All registration certificates issued under this section shall be renewed annually during the month of the registrant's birthdate.

The registration fee imposed by this section shall be used by the department for the purpose of (a) search and rescue of lost and downed aircraft and airmen under the direction and supervision of the secretary and (b) safety and education.

Registration shall be effected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and in connection therewith shall prescribe requirements for the possession and exhibition of the certificates.

The provisions of this section do not apply to:

(1) A pilot who operates an aircraft exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia;

(2) A pilot registered under the laws of a foreign country;

(3) A pilot engaged exclusively in commercial flying constituting an act of interstate or foreign commerce;

(4) A person piloting an aircraft equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a bona fide prospective purchaser.

Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties incident thereto. [1987 c 220 § 2; 1984 c 7 § 355; 1983 c 3 § 143; 1967 c 207 § 2. Formerly RCW 14.04.233.]

Severability—1987 c 220: See note following RCW 47.68.230.

Severability—1984 c 7: See note following RCW 47.01.141.

is also committed during such period and is of the same provision as the previous violations.

(2) A violation designated in this chapter as a civil infraction shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court pursuant to chapter 7.84 RCW.

Sec. 7. RCW 88.12.020 and 1933 c 72 s 2 are each amended to read as follows:

~~((Every person operating or driving a motor propelled boat or vessel on any waters in the state shall drive the same in a careful and prudent manner at a))~~
A person shall not operate a vessel in a negligent manner. For the purposes of this section, to "operate in a negligent manner" means operating a vessel in disregard of careful and prudent operation, or in disregard of careful and prudent rates of speed that are no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, size of the lake or body of water, freedom from obstruction to view ahead, effects of vessel wake, and so as not to unduly or unreasonably endanger life, limb, property or other rights of any person entitled to the use of such waters. Except as provided in section 6 of this act, a violation of this section is an infraction under chapter 7.84 RCW.

Sec. 8. RCW 88.12.100 and 1990 c 231 s 3 and 1990 c 31 s 1 are each reenacted and amended to read as follows:

(1) It shall be unlawful for any person to operate a vessel in a ((negligent)) reckless manner. ~~((For the purpose of this section, to "operate in a negligent manner" shall be construed to mean the operation of a vessel in such manner as to endanger or be likely to endanger any persons or property or to operate at a rate of speed greater than will permit the operator in the exercise of reasonable care to bring the vessel to a safe stop.))~~

~~((A person is guilty of operating a vessel while under the influence of intoxicating liquor or any drug if the person operates a vessel within this state while))~~ It shall be a violation for a person to operate a vessel while under the influence of intoxicating liquor or any drug. A person is considered to be under the influence of intoxicating liquor or any drug if:

(a) The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 46.61.506; or

(b) The person has 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. A person cited under this subsection may upon request be given a breath test for breath alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting officer shall administer field sobriety tests when circumstances permit.

(3) ~~((For the purposes of this section, "vessel" means any watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.))~~

~~((4) For the purpose of this section, "vessel operator" means a person who is in actual physical control of a vessel.))~~

~~((5))~~ A violation of this section is a misdemeanor, punishable ~~((by up to ninety days in jail and by a fine of not more than one thousand dollars))~~ as provided under RCW 9.92.030. In addition, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

Sec. 9. RCW 88.12.330 and 1988 c 36 s 73 are each amended to read as follows:

(1) Every ~~((peace))~~ law enforcement officer of this state and its political subdivisions has the authority to enforce this chapter. Law enforcement officers may enforce recreational boating rules adopted by the commission. Such law enforcement officers include, but are not limited to, county sheriffs, officers of other local law enforcement entities, wildlife agents of the department of wildlife and fisheries patrol officers of the department of fisheries, through their directors, the state patrol, through its chief, ~~((county sheriffs, and other local law enforcement bodies, shall assist in the enforcement))~~ and state park rangers. In the exercise of this responsibility, all such officers may stop and board any ~~((watercraft))~~ vessel and direct it to a suitable pier or anchorage ~~((for boarding))~~ to enforce this chapter.

(2) ~~((A person, while operating a watercraft on any waters of this state, shall not knowingly flee or attempt to elude a law enforcement officer after having received a signal from the law enforcement officer to bring the boat to a stop.))~~ This chapter shall be construed to supplement federal laws and regulations. To the extent this chapter is inconsistent with federal laws and regulations, the federal laws and regulations shall control.

NEW SECTION. Sec. 10. A new section is added to chapter 88.12 RCW to read as follows:

In addition to the equipment standards prescribed under this chapter, the commission shall adopt rules specifying equipment standards for vessels. Except where the violation is classified as a misdemeanor under this chapter, violation of any equipment standard adopted by the commission is an infraction under chapter 7.84 RCW.

NEW SECTION. Sec. 11. A new section is added to chapter 88.12 RCW to read as follows:

46.61.5195 Disguising alcoholic beverage container.

(1) It is a traffic infraction to incorrectly label the original container of an alcoholic beverage and to then violate RCW 46.61.519.

(2) It is a traffic infraction to place an alcoholic beverage in a container specifically labeled by the manufacturer of the container as containing a nonalcoholic beverage and to then violate RCW 46.61.519. [1984 c 274 § 3.]

Ignition interlocks: RCW 46.20.710 through 46.20.750.

46.61.520 Vehicular homicide—Penalty. (1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:

(a) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502; or

(b) In a reckless manner; or

(c) With disregard for the safety of others.

(2) Vehicular homicide is a class B felony punishable under chapter 9A.20 RCW. [1991 c 348 § 1; 1983 c 164 § 1; 1975 1st ex.s. c 287 § 3; 1973 2nd ex.s. c 38 § 2; 1970 ex.s. c 49 § 5; 1965 ex.s. c 155 § 63; 1961 c 12 § 46.56.040. Prior: 1937 c 189 § 120; RRS § 6360-120. Formerly RCW 46.56.040.]

Effective date—1991 c 348: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 348 § 5.]

Severability—1973 2nd ex.s. c 38: See note following RCW 69.50.101.

Severability—1970 ex.s. c 49: See note following RCW 9.69.100.

Ignition interlocks: RCW 46.20.710 through 46.20.750.

Suspension or revocation of license upon conviction of vehicular homicide or assault resulting from operation of motor vehicle: RCW 46.20.285, 46.20.291.

46.61.522 Vehicular assault—Penalty. (1) A person is guilty of vehicular assault if he operates or drives any vehicle:

(a) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and this conduct is the proximate cause of serious bodily injury to another.

(2) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

(3) Vehicular assault is a class C felony punishable under chapter 9A.20 RCW. [1983 c 164 § 2.]

Ignition interlocks: RCW 46.20.710 through 46.20.750.

46.61.524 Vehicular homicide, assault—Evaluation, treatment of drug or alcohol problem. (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b) shall, as a condition of community supervision imposed under RCW 9.94A.383 or community placement imposed under RCW 9.94A.120(8), complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, as defined under RCW 46.61.516 that

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has been approved by the department of social and health services. This report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in this act requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.

(2) As provided for under RCW 46.20.285, the department shall revoke the license, permit to drive, or a nonresident privilege of a person convicted of vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522. The department shall determine the eligibility of a person convicted of vehicular homicide under RCW 46.61.520(1)(a) or vehicular assault under [RCW] 46.61.522(1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility or probation department, and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. [1991 c 348 § 2.]

***Reviser's note:** This act [1991 c 348] consisted of the amendment of RCW 9.94A.030 and 46.61.520 and the enactment of this section. The amendment of RCW 9.94A.120 was vetoed by the governor.

Effective date—1991 c 348: See note following RCW 46.61.520.

46.61.525 Operating motor vehicle in a negligent manner—Penalty—Exception. It shall be unlawful for any person to operate a motor vehicle in a negligent manner. For the purpose of this section to "operate in a negligent manner" shall be construed to mean the operation of a vehicle in such a manner as to endanger or be likely to endanger any persons or property: PROVIDED HOWEVER, That any person operating a motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent shall not be guilty of negligent driving.

The offense of operating a vehicle in a negligent manner shall be considered to be a lesser offense than, but included in, the offense of operating a vehicle in a reckless manner, and any person charged with operating a vehicle in a reckless manner may be convicted of the lesser offense of operating a vehicle in a negligent manner. Any person violating the provisions of this section will be guilty of a misdemeanor: PROVIDED, That the director may not revoke any license under this section, and such offense is not punishable by imprisonment or by a fine exceeding two hundred fifty dollars. [1979 ex.s. c 136 § 86; 1967 c 32 § 69; 1961 c 12 § 46.56.030. Prior: 1939 c 154 § 1; RRS § 6360-118 1/2. Formerly RCW 46.56.030.]

Rules of court: Negligent driving cases—CrRLJ 3.2.