2015 Criminal Case Law Update[1]

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BIOGRAPHY: Keith A. Echterling (WSBA #39343) is currently an Assistant City Attorney with the City of Tacoma, WA and has been employed with the City since July of 2008. Since January of 2015 he has split his time between prosecutorial duties in the Prosecution Division and advising the Tacoma Police Department in his capacity as a Legal Advisor to the Department. In addition, he routinely assists the State of Washington, Pierce County as a Special Deputy Prosecuting Attorney, and has done so since 2009. He has also had the opportunity to assist the City of Lakewood as a Special Prosecutor. Prior to his employ as a prosecutor, Mr. Echterling was in private practice as a criminal defense attorney in Spokane, WA. He has tried a multitude of cases and has appeared in district, municipal, and superior courts across the state. Mr. Echterling obtained his Bachelor's degree from the University of Washington and his J.D., *cum laude* from Gonzaga University School of Law.

[1] The cases selected herein are not intended to serve as a comprehensive compilation of *all* cases published in the relevant time frame. Rather, the compilation is meant to serve as an analytical tool and the cases themselves are intended to serve as a selective reference guide to assist the practitioner in developing areas of the law and are meant to supplement, not supplant, the practitioner's own careful analysis of relevant and recent case law.

TERRY STOPS AND TRAFFIC STOPS

State v. Rubio, 185 Wn.App. 387, 340 P.3d 993; (Div. III, 2015), *rev. den.* 183 Wn.2d 1004 (2015). **Warrantless Seizure and Exigent Circumstances.**
Facts: Officer responded to a call reporting a physical domestic violence situation. He contacted the defendant in the apartment that was the source of the incident. The suspect and victim had not been located. The officer identified the defendant, determined he had warrants, and transported him to jail where drugs were found in the defendant's sock. The defendant challenged his warrantless seizure, but his motion to suppress was denied and he was convicted. The defendant then appealed.
Held: While the defendant was seized, he was not *unreasonably* seized without a warrant in this case due to exigent circumstances. Division III cited the three-part test for when an officer may seize a witness under exigent circumstances, which is: (1) the officer has reasonable cause to believe a crime involving danger or forcible injury to persons was just committed near where the witness is located; (2) the officer has reasonable cause to believe the person seized has "knowledge of material aid in the investigation"; and (3) the seizure is reasonably necessary to identify the person or to obtain an account of the crime. The Court found that this three-part test was met because the officer had information about a crime that had just occurred at that apartment that involved injury to a person, the officer had reasonable cause to believe persons in the apartment had information that would help the investigation, and obtaining the defendant's identification was necessary to determine the defendant's true identity (while the warrant check was necessary to verify he was who he claimed to be). Division III affirmed the trial court and found the seizure of the defendant was reasonable under the exigent circumstances exception to the warrant requirement.

State v. Jones, 186 Wn.App. 786, 347 P.3d 483 (Div. I, 2015) **Traffic Stop and *Prado*[2]**
Facts: After the defendant crossed the fog line three separate times, he was pulled over for erratic lane travel. A rifle was recovered from his truck and he was charged with unlawful possession of a firearm. He challenged the stop, the court denied his suppression motion, he was found guilty at a bench trial and appealed. Of note, there was no evidence at the suppression hearing that the officer stopped the defendant because she believed he was impaired, nor was there any evidence regarding her training and experience in detecting impaired drivers.
Held: The State's evidence failed to justify the traffic stop in this case under RCW 46.61.140(1) and *State v. Prado*, 145 Wn.App. 646, 186 P.3d 1186 (Div. I, 2008). Here, like in *Prado*, the State relied on RCW 46.61.140(1), the lane travel statute that requires drivers to drive in the marked lane "as nearly as practicable". Division I discussed the *Prado* decision and explained that the as nearly as practicable discussion is not a simple math tally of how many times a tire crosses the line, but rather it is a totality of the circumstances test which includes factors like the presence of other traffic and danger posed to other vehicles. Importantly, the trial court record did not support the contention that the stop was based on a reasonable suspicion of criminal activity (as opposed to probable cause that a traffic infraction occurred). Also, there was no evidence of any dangerous driving or other infractions committed. Under these facts, the defendant's driving did not violate the lane travel statute and the State did not justify the warrantless seizure of the defendant. The evidence of the firearm should have been suppressed. Reversed and remanded.

[2] *State v. Prado*, 145 Wn.App. 646, 186 P.3d 1186 (Div. I, 2008).

State v. Huffman, 185 Wn.App. 98, 340 P.3d 903 (Div. I, 2014) **DUI Stop and *Prado*[3].**
Issue: Is the probable cause to stop a driver for a single crossing of a centerline?
Facts: Ms. Huffman was pulled over for weaving in her lane, jerking back from the centerline of State Route 9 and crossing that same centerline. She was arrested for DUI and argued under *Prado* there was not a reasonable, articulable suspicion that she violated RCW 46.61.140 by crossing the centerline once. The trial court agreed and suppressed the evidence, but the superior court reversed because Ms. Huffman did commit an infraction by crossing the centerline which violated RCW 46.61.100. Division I affirmed the superior court.
Law and Analysis: The court compared RCW 46.61.100 (requiring drivers to drive on the right) and RCW 46.61.140 (requiring drivers to stay within a single lane "as nearly as practicable"). Ultimately the court declined to import that "as nearly as practicable" language from .140 into .100 and found the statutes were neither ambiguous nor inharmonious as they accomplished different objectives.
Held: Officer was justified in stopping Ms. Huffman because she crossed the centerline and the "as nearly as practicable" language from .140 is inapplicable to .100. *Prado* is limited to its facts and it only involved a violation of RCW 46.61.140. Affirmed and remanded for trial.

State v. Z.U.E., 352 P.3d 796 No. 89894-4 (2015), *En Banc*. **Informants and reasonable suspicion sufficient for *Terry* stop**. (9-0 decision, but two Justices disagree with parameters of the totality of the circumstances test discussed in the Majority).
Brief Facts: multiple 911 callers called to report a shirtless man carrying a gun through a park. One named 911 caller reported a 17 year old female had handed a gun to the shirtless man; that 911 caller, Dawn, gave a detailed description of the girl's appearance and clothing. Only two of the callers provided their names and contact information. Officers arrived on scene, but could not locate a bald, shirtless man and did not witness anyone with a gun. They did see a vehicle in the area with one passenger that matched the description of the girl by the 911 caller Dawn. Z.U.E. was detained after being tazed due to be being non-cooperative and marijuana was discovered on his person.
Issue: Did informant's tips (*i.e.,* 911 callers) give the officers reasonable suspicion to detain the occupants of the vehicle?
Held: "The appropriate constitutional analysis for a stop precipitated by an informant is a review of the reasonableness of the suspicion under the totality of the circumstances." *Z.U.E.* at 801. The Washington Supreme Court found the factors of the Aguilar/Spinelli test (veracity and factual basis) to be helpful to the reliability inquiry, but noted that they are not necessary elements. The Court will analyze whether a tip from an informant is sufficiently reliable to justify an investigatory detention. "Absent circumstances sufficiently establishing the reliability of the tip, the officers must be able to independently corroborate" one of two things: (1) presence of criminal activity OR (2) confirmation that the informant's tip information was reliably obtained. *Id.* at 802 (citing case law). Certain crimes and situations require immediate action on the part of law enforcement and may warrant less stringent reliability to permissibly detain an individual. For instance, "[d]runk drivers pose a threat to everyone on the road, and officers must be able to take action to prevent a potentially imminent accident." *Id.* at 803 (citing to *Navarette v. California*, 134 S. Ct. 1683 (2014)[4]). The facts of this case did not establish reasonable

[3] *Id.*
[4] A federal case decided under the Fourth Amendment, not the more stringent standards of Article I, Sec. 7 of the Washington Constitution, though the case was positively referenced by Washington's Supreme Court in discussing exigency and reasonable suspicion.

suspicion sufficient to justify a *Terry* stop of the vehicle. This case also presented no exigency sufficient to warrant a less stringent reliability requirement prior to detention.

State v. Howerton, 187 Wn.App. 357, 348 P.3d 781 (Div. I, 2015). **Indicia of reliability and totality of the circumstances test.**
This is a citizen informant 911 tip case that came out while review of *Z.U.E.* (*supra*) was still pending before the Washington Supreme Court. Division I correctly analyzed the "indicia of reliability" test in determining whether a citizen informant's tip provided a reasonable suspicion sufficient to justify a brief investigatory detention under *Terry*. Div. I used the "totality of the circumstances" test (later endorsed by the Supreme Court of Washington in *Z.U.E.*) and considered the "veracity" and "basis of knowledge" prongs of the *Aguilar/Spinelli* test as relevant, but not as necessary factors, in weighing the tip's "indicia of reliability". In this case, a neighbor called 911 immediately after viewing a man enter a parked vehicle across the street from her home. She provided her name, address, phone number and indicated she was willing to talk further with the police. She provided a description of the perpetrator and a description of the vehicle involved. The description of the crime, the perpetrator, and the fact that the 911 caller was an eyewitness (which is not always the case) was communicated to the Deputy (by Dispatch) who detained the defendant. The reported facts supported a reasonable suspicion for the Deputy to detain the defendant.

Rodriguez v. United States, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015). **Scope of Traffic Stop and the Traffic Stop "Mission".**
Issue: Can police officers extend the duration of a routine traffic stop once the traffic stop mission is completed to conduct a dog sniff, absent reasonable suspicion to do so?
Facts: Defendant vehicle stopped for infraction of driving on the shoulder. Officer identified the driver and passenger, ran them for warrants and license status, and issued the driver a warning ticket. However, even though the "mission" was completed, the officer continued to detain the driver to await backup and conduct a non-consensual sweep of the exterior of the vehicle with the narcotics canine. Unsurprisingly, the officer located methamphetamine in the vehicle. The 8th Circuit held that the intrusion on the defendant's liberty was *de minimis* and therefore not unreasonable under the 4th Amendment to the US Constitution.
Held: Absent reasonable suspicion, once the officer completes the traffic infraction mission the 4th Amendment prohibits additional pro-longed detention of a motorist for the purposes of conducting a dog sniff. A traffic stop is analogous to a *Terry*[5] stop and the duration of that stop must be no longer than reasonably necessary to effectuate the purpose of the stop, *i.e.,* the traffic enforcement mission. An officer who stops a motorist for a traffic infraction is constitutionally permitted to conduct all reasonably related inquiries, like identifying the driver, running the driver for warrants and license status, issuing the driver a ticket or warning, and checking the vehicle's registration and insurance status. However, once the traffic infraction mission is completed, the detention must end, *unless* the officer has reasonable suspicion to continue the detention (*i.e.,* the officer develops reasonable suspicion of criminal conduct during the course of his or her interaction with a stopped driver).
No Bonus Time: An officer is not permitted to expeditiously discharge the duties of a traffic stop in order to wrap up all inquiries quickly enough to have "bonus time" to conduct unrelated criminal investigations.

[5] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

State v. Fuentes, 183 Wn.2d 149, 352 P.3d 152 (consolidated with *State v. Sandoz*, No. 90270-4)(2015, *En Banc*. ***Terry* stop and totality of circumstances case.**[6]

Basics: A *Terry* stop is a valid exception to the general requirement under the 4th Amendment to the US Constitution and Art. I, Sec. 7 of the Washington Constitution that a seizure requires a warrant. To be valid, a *Terry* stop must be based on reasonable suspicion that the person is, or is about to be, engaged in criminal activity. The officer must be able to point to specific and articulable facts that make the suspicion reasonable. The seizure cannot be based merely on a hunch (even if subsequently the hunch is confirmed). A court will review the reasonableness of an officer's suspicion by viewing the totality of the circumstances. The Court addressed the *Terry* stop issue in two related cases and ultimately found individualized reasonable suspicion justified the seizure of one defendant, but not the other.

Sandoz: The Court held that individualized reasonable suspicion was not sufficiently present to justify the seizure of Mr. Sandoz. The Court reviewed each fact that the officer relied upon and ultimately concluded that those facts did not add up to a constitutionally sufficient basis to justify the seizure of Mr. Sandoz. Important to note is that Mr. Sandoz was a passenger in an illegally parked Jeep; the Court noted that the Officer was justified in contacting the driver of that Jeep, but he could not, without reasonable suspicion connecting the passenger Mr. Sandoz to criminal activity, seize the defendant. The Court ultimately concluded that the officer relied on a "hunch" when he stopped the defendant; this was insufficient to substantiate a *Terry* stop.

Fuentes: However, officers did have a reasonable suspicion that Ms. Fuentes was engaged in criminal activity and therefore the seizure of Ms. Fuentes was constitutionally permissible under *Terry*. In this case, officers had observed a series of short-stay foot traffic to an apartment they knew housed an individual who dealt drugs. Police had executed a warrant 11 months prior on the apartment and found drugs, had information indicating the apartment occupant was still dealing drugs, and saw short-stay foot traffic consistent with narcotics activities occurring at the apartment. They then saw Ms. Fuentes carry a bag into the house, stay a short amount of time, and leave with the bag perceptibly having less content. Under the totality of the circumstances, these facts gave the officers reasonable suspicion that Ms. Fuentes was engaged in illegal narcotics activity and therefore they were justified in detaining her. The Court pointed out that the officers were *not* required to dispel all possibilities of innocent conduct; the facts gave rise to a reasonable suspicion of criminal conduct, individually particularized to Ms. Fuentes.

Dissent: Concurs with the finding that the State did not meets its burden to show reasonable suspicion to detain Mr. Sandoz, but would also hold there was a lack of reasonable suspicion to detain Ms. Fuentes and dissents from the Majority's holding to the contrary.

State v. Flores, 351 P.3d 189 (Div. III, 2015). **Detention and search of companion of person engaged in criminal activity.**

Facts: Defendant Flores was walking with a person whom law enforcement was seeking to arrest. An officer ordered both men to stop, place their hands on their heads, and kneel to the ground. Defendant Flores' companion was arrested. Subsequently, an officer ordered Flores to walk backwards to the sound of his voice; while doing so, Flores informed the officer that his companion (Powell) had given him a gun. Flores was detained and the gun was recovered from his person. Flores was a felon. He was charged with unlawful possession of a firearm in the first degree, and successfully moved to suppress the evidence of the firearm at the trial court level. The trial court agreed that the officers lacked grounds under Washington law to detain Flores.

Issue: When can officers seize and search a companion of an arrestee?

[6] This case pre-dated *Z.U.E., supra*, by approximately two months.

Held: Washington does not have a clear delineation for within which warrant exception detention and search of an arrestee companion can occur; Division III posits that "[p]erhaps the companion search should fall under the exigent circumstances exception or be its own exemption category." *Flores*, 351 P.3d at 194. While arrestee companions do no automatically lose the protections of the constitution merely by associating with a criminal, officers may constitutionally detain such person if there is an "objective rationale" based upon safety concerns for the officer or other citizens. This is less than the *Terry* stop "reasonable suspicion" needed to constitutionally detain a person suspected of criminal activity. "When officers do not have an articulable suspicion that an individual is armed or dangerous and have nothing to independently connect such person to illegal activity, a search of the person is invalid under article I, section 7." *Id.* at 195. Division III analyzes the frisking of a companion of an arrestee in the context of a passenger in a vehicle and considered the passenger cases controlling and held that the scope of the detention of Flores exceeded the constitutionally permissible bounds. Division III affirmed the trial court's suppression of evidence and dismissal of the charge.
Scope: The responding officer was justified in seizing Flores to secure the scene of his companion's arrest. However, after the companion was arrested, there was nothing else to indicate Flores was engaged in criminal activity or was a threat to officers; therefore, his *continued* detention was constitutionally impermissible.
Interesting Quote: "The [warrant exceptions and application rules] principles should teach us that in close calls challenged evidence should be suppressed." *Id.* at 194.

SEARCH RELATED CASES

State v. Vanness, 186 Wn.App. 148, 344 P.3d 713 (Div. I, 2015) **Warrantless Search of personal property.**
Facts: Defendant Vanness was arrested on outstanding warrants. At the time of his arrest, he had a backpack on his person. The officer removed that backpack, cuffed Vanness, and then, with another officer present, the first officer searched the backpack. He found knives and a locked combination box. The defendant did not provide consent to search the locked box. The officer used a screwdriver to pry the box open a small amount and saw items related to drugs. He closed the box and subsequently obtained a warrant to open and search the box in full, in which he found drugs and drug paraphernalia. The defendant was convicted at trial.
Issue: While warrantless searches are presumed unreasonable, did an exception to the warrant requirement (incident to arrest or inventory) provide the legal authority to open the locked box in the first instance?
Held: The incident to arrest and inventory exceptions to the warrant requirement do not save the unconstitutional initial search of the locked box, which also renders all subsequently discovered evidence under the obtained warrant fruit of the poisonous tree. Reversed and remanded.
Law: The court reviewed the historical antecedents of the search incident to arrest exception, including items closely associated with the defendant. Division I pointed out "the Washington Supreme Court's determination that the justification for a search incident to arrest [officer safety and evidence preservation] does not apply to locked containers separated from the arrestee's person." *Vanness*, 186 Wn.App. at 161. The court determined that there was no evidence of an officer safety issue, nor was there any indication that evidence of the crime of arrest could be found in the box because the defendant was arrested on outstanding warrants. Lastly, the inventory exception did not apply as there was no showing of "manifest necessity" and the search would be at odds with *State v. Dugas*, 109 Wn.App. 592, 36 P.3d 577 (2001), which

concluded a search of a closed container in an arrestee's jacket was an unreasonable inventory search.

State v. Witherrite, 184 Wn.App. 859, 339 P.3d 992 (Div. III, 2014), *rev. den.* 182 Wn.2d 1026 (2015). ***Ferrier* and Vehicle Searches.**
Facts: After a traffic stop of the defendant, a deputy sheriff sought consent from her to search her vehicle informing her that she could stop or limit the search, but he didn't inform her of her right to refuse consent. Drugs and drug evidence were found, she was charged, moved to suppress arguing that *Ferrier* warnings were necessary, was convicted and appealed.
Held: "The cited history of *Ferrier* and our court's treatment of the home as most deserving of heightened protection under our constitution leads us to conclude that *Ferrier* warnings need not be given prior to obtaining consent to search a vehicle. While it is undoubtedly best practice to give the full *Ferrier* warnings before any consent search in order to foreclose argument such as this one, nothing in our constitution requires those warnings other than in the 'knock and talk' situation." *Witherrite*, 184 Wn.App.at 864. Affirmed.
Concurrence: Agreed that under the current law *Ferrier* warnings were not required for this vehicle search. However, the Concurrence would extend the reach of *Ferrier* outside of the home and would extend the situations to which *Ferrier* should apply.

State v. Jeffrey & Sandra Weller, 185 Wn.App. 913, 344 P.3d 695 (Div. II, 2015, part published opinion), *rev. den.* 183 Wn.2d 1010 (2015). **Community Caretaking and Plain View Exceptions to the Warrant Requirement.**
Facts: During a welfare check of the Wellers' children (the officers did not have a warrant), two officers went to a garage with two of the children to have privacy in speaking with them. While there, one officer spotted a board that the children identified as an instrument of their abuse. The defendants were charged with various counts and the trial court denied their motion to suppress evidence of the board. After they were convicted and given exceptional sentences, they appealed.
Held: In the published portion of the opinion, Division II held that the trial court did not err in concluding that the officers were legally justified in entering the garage without a warrant under the community caretaking function and that the warrantless seizure of the board was permissible under the plain view exception to the warrant requirement. The community caretaking function exception has two separate components: (1) rendering emergency aid; or (2) routine health and safety check (thought the court notes that the degree of separateness in case law is less than clear). Division II decided this case only on the Health and Safety Check portion of the community caretaking function. The Health and Safety Check requires proof that (i) the officer subjectively believed someone needed help; (ii) it was reasonable to believe there was this need for assistance; and (iii) the place search was reasonably associated with the need for assistance. The court must also balance the competing interests in privacy vs. need for community caretaking function. Here, Division II found this test clearly satisfied as the evidence supported the finding that the officers were there to check on the welfare of the children in response to a CPS complaint and the privacy interests of the Wellers' were outweighed by the need to ensure the children's health and safety. Because the officers were legally present in the garage then, their seizure of the board was justified as there was evidence from which the officers could reasonably conclude that the board was evidence of a crime (*i.e.,* the children told the officers they were beaten with a board, the children were searching the garage for it, and they immediately confirmed the board to be the instrument of abuse when the officer discovered it

from her lawful vantage point). The conviction were affirmed, but the case was remanded for resentencing to address whether the court would have imposed the same exceptional sentences based only upon one aggravating factor, as the reviewing court found the second aggravating factor was not a valid basis for the imposition of an exceptional sentence in this case.
Unpublished Portion: Dealt with issues relating to alleged charging document deficiencies, evidence sufficiency challenges, and Sandra Weller's Statement of Additional Grounds (SAG), all of which were rejected.

State v. Samalia, 186 Wn.App. 224, 344 P.3d 722 (Div. III, 2015), *review granted by State v. Samalia*, --- P.3d ---- (2015). **Abandoned Cell Phone leads to Suspect ID—Voluntary Abandonment as Warrant Exception.**
Facts: Defendant was stopped driving a stolen vehicle, from which he exited, disobeyed the officer's direction to return to the vehicle, and then fled, ultimately evading capture. The officer returned to the vehicle and found a cell phone in it. That phone was used to contact a third-party, from whose phone the defendant's name was obtained. The officer used that name to obtain a police booking photo, from which he identified defendant as the driver of the stolen vehicle. The defendant unsuccessfully moved to suppress the identification evidence at trial and appealed.
Held: While information contained on a cell-phone is considered to be protected private affairs information under Article I, Section 7 a warrantless search may be permitted by exceptions to the general rule that a warrant is required. Here, two such exceptions applied: (1) searching of voluntarily abandoned property; and (2) exigent circumstances in pursuing a fleeing subject. Under the abandoned property exception, the court looked at whether the defendant had a reasonable subjective expectation of privacy still in the abandoned property. Critical in this determination is the status of the location within which the property was found. Here, the defendant fled from a stolen vehicle, which evidenced his intent of abandonment and therefore the status of the area searched (unattended stolen vehicle) showed abandonment. Therefore, the defendant had no privacy interest in the vehicle or the contents. Also, under these facts, the defendant's manifested intent was one of abandonment, so no warrant was required. Additionally, the court discussed the attenuated use (the dissent points out that the attenuation doctrine has not been expressly adopted in Washington, but has been applied) of the cell phone to obtain the identification information and ultimately held that there was no error in denying the suppression motion under these facts.
Dissent: Would hold that law enforcement must generally obtain a warrant to search a cell phone, even one that has been left in a place where there is no privacy interest for the owner, considering the type of material contained on modern cell phones and Washington's search and seizure jurisprudence under Article I, Section 7. The dissent also criticizes the majority's lack of explanation regarding the attenuation doctrine in that it failed to identify any other independent source of information that was not directly obtained from the use of the cell phone that led to the defendant's identification.

State v. Martines, --- P.3d ---, 2015 WL 5076693, No. 90926-1 (2015), *En Banc*. **Search of blood drawn pursuant to warrant in DUI case.**
Facts: Drug and alcohol DUI case where warrant was issued authorizing extraction of the defendant's blood based on probable cause to suspect defendant was under the influence. Warrant did not specifically authorize *testing* of the blood sample subsequent to its extraction. The Court of Appeals found that lack of testing language fatal. The Washington Supreme Court held otherwise. (The Supreme Court also addressed the defendant's contingent issue of probable cause specifically related to testing for drug intoxication).

Held: A "warrant authorizing the testing of a blood sample for intoxicants does not require separate findings of probable cause to suspect drug and alcohol use so long as there is probable cause to suspect intoxication that may be caused by alcohol, drugs, or a combination of both." *Martines* at *6. The Court went on to "hold that the search warrant authorized testing Martines's blood sample for intoxicants because it authorized a blood draw to obtain evidence of DUI." *Id.*
Important Language: "A warrant authorizing a blood draw necessarily authorizes blood testing, consistent with and confined to the finding of probable cause." *Id.* at *5.

State v. Wisdom, 187 Wn.App. 652, 349 P.3d 953 (Div. III, 2015). **Search of shaving kit bag on seat of truck.**
Facts: Defendant arrested for being in possession of a stolen truck. He was handcuffed and put in the cruiser and post-*Miranda* tells the Deputy he had meth on the front seat of the truck. The Deputy locates a toiletry bag on the front seat, and from the outside, sees it contains money. Without a warrant he unzips the unlocked container and finds a "cornucopia of pharmacopeia" inside. The State relies on the search incident to arrest exception and the inventory exception to the warrant requirement to justify the search. The trial court denies the motion to suppress and the defendant appeals. Division III reverses holding that neither the search incident to arrest exception nor the inventory exception to the warrant requirement justified the search in this case.
Held: Division III's majority found it inappropriate to address the standing issue, but ultimately describes the law relating to constitutional standing and gives the impression that the majority would hold (had the issue been raised and briefed) that the defendant did have standing to challenge the search (remember, the truck was *stolen*). More importantly, the majority held that the search incident to arrest exception did not apply to the warrantless search of the shaving kit in this case because the defendant was already detained in the back of the police vehicle, he could not access the shaving kit, and there were no circumstances warranting alarm for officer safety or evidence destruction present in this case sufficient to rendering obtaining a warrant unnecessary. The court reaffirmed the desirability of obtaining the warrant as the "authority of law" required by Art. I, Sec. 7.[7] Moreover, the search was not saved by the inventory exception as the inventorying of the vehicle's contents did not require the deputy to open the closed container (*i.e.,* the zipped-up shaving kit bag). The court instructed that the bag should have been listed as one unit on the inventory sheet and a warrant should then have been obtained to search the kit. The court cited with approval the proposition that if a closed container is located during an inventory search, absent an indication that it has dangerous contents, an officer cannot search that container absent consent [or a warrant].[8]
Dissent: Would hold the defendant lacked standing to challenge the search; automatic standing doctrine did not apply to this case; inventory search properly includes unlocked, but closed container in the vehicle (but not in the trunk); and proposed new rule that if police can see money or valuable property in an unlocked container they have a right to inventory that container.

State v. Brock, --- P.3d ----, 2015 WL 5164669, No. 90751-0 (2015)[9]. **Scope of search incident to arrest exception to the warrant requirement** (specifically what is the scope of "immediately preceding arrest" when analyzing a search of an arrestee's personal item, like a

[7] WASHINGTON STATE CONSTITUTION, ARTICLE I, SEC. 7.
[8] *But see State v. Brock*, below.
[9] Washington Supreme Court decision; 8-1.

purse or backpack, under the "time of arrest" rule portion of the search incident to arrest exception to the warrant requirement).
Facts: Officer contacted defendant during a *Terry* stop, separated a backpack from the defendant's person, and ultimately arrested the defendant. Subsequent and incident to arrest, the officer searched the backpack[10], finding narcotics.
Search incident to arrest: (1) search of arrestee's person; (2) search of area in arrestee's immediate control. The 2nd search requires a separate justification for the search that the arrestee could reach a weapon or destroy evidence. The 1st search requires a lawful arrest which provides the authority of law under Article I, Sec. 7 for the search of the arrestee's person and items immediately associated with the arrestee's person. For an item to be considered a part of the arrestee's person to legitimize a search of that article incident to the owner's arrest the arrestee must have had "actual and exclusive possession at or immediately preceding the time of arrest" (this is the "time of arrest" rule). *Brock* at *3 (citing authority).
Quote: In the context of the search of an arrestee's person incident to arrest, "[w]hen the personal item is taken into custody as a part of the arrestee's person, the arrestee's ability to reach the item during the arrest and search becomes irrelevant." *Id.* at *4.
Rule Explained: "Put simply, personal items that will go to jail with the arrestee are considered in the arrestee's 'possession' and are within the scope of the officer's authority to search." *Id.* at *5.
Held: …[W]hen the officer removes the items from the arrestee's person during a lawful *Terry* stop and the *Terry* stop ripens into a lawful arrest, the passage of time does not negate the authority of law justifying the search incident to arrest." *Id.* at *5. *Reversed*.

DUI SPECIFIC AND TANGENTIALLY RELATED ISSUES

State v. Rich, 186 Wn.App. 632, 347 P.3d 72 (Div. I, 2015), *rev. granted by State v. Rich*, --- P.3d ---- (2015). **DUI & Reckless Endangerment.**
Issue: Was there sufficient evidence to prove beyond a reasonable doubt Reckless Endangerment when the defendant was driving a stolen vehicle with a child in the front passenger seat while she was DUI?
Held: The court found insufficient evidence to prove beyond a reasonable doubt that the defendant "recklessly engaged in conduct that created a substantial risk of death or serious injury to another person" (reckless endangerment elements) as there was no evidence to show the defendant's driving was dangerous or that the Deputy suspected she was drunk based on her driving conduct. For Reckless Endangerment there must be an actual substantial risk of death or serious physical injury to another person; the court indicated that risk cannot be "merely hypothetical or conjectural." The reckless endangerment conviction was remanded with instructions that it be vacated, the DUI conviction was affirmed, and the jury had already found the defendant not guilty of possession of a stolen vehicle.
What is the Definition of Substantial? "considerable in amount, value, or worth." (citing *State v. McKague,* 172 Wn.2d 802, 806, 262 P.3d 1225 (2011).
Take-away: There is no per se violation for Reckless Endangerment. A Reckless Endangerment charge cannot stand on the singular fact that the driver was also DUI at the time. There must

[10] The officer actually searched the backpack twice; first as incident to the defendant's arrest and then as an inventory search; the inventory search exception argument was abandoned by the State at the Supreme Court level.

also be evidence that the driver's conduct created a "substantial risk of death or serious physical injury to another person."

State v. Goggin, 185 Wn.App. 59, 339 P.3d 983 (Div. III, 2014), *rev. den.* 182 Wn.2d 1027 (2015). **Blood draw via warrant in DUI, necessity of warnings, and Confrontation Clause applicability to Judgment and Sentences.**
Facts: Defendant was stopped, arrested for DUI, charged with Felony DUI and convicted. The Trooper who took the defendant for a blood test read the defendant his implied consent warnings, including his right to have additional tests done at his own expense. After the defendant refused the BAC, the Trooper obtained a warrant for his blood, but read him no further warnings. At trial, a judgment and sentence from Idaho was used to prove one of the defendant's four prior DUIs within ten years. The defendant appealed alleging error in failing to provide him additional advisement of his right to obtain independent tests of his blood and in admitting the Idaho judgment and sentence.
Held: The arrest here was not for one of the mandatory blood draw offenses under RCW 46.20.308(3). Reading the defendant the implied consent warnings adequately advised the defendant. Obtaining a warrant for his blood required no further advisement to the defendant. Admitting the judgment and sentence did not violate the defendant's confrontation rights because the judgment and sentence was a certified court record, non-testimonial, and a self-authenticating document that was admissible and the State provided sufficient evidence (the defendant's Washington State Identification card that matched the judgment and sentence for the relevant time) that the person named in the judgment and sentence was the same person on trial. The State's confrontation clause provision under Article I, Sec. 22 does not provide greater protection than the Sixth Amendment to the Federal Constitution. Finding no error, Division III affirmed.

State v. Quaale, 182 Wn.2d 191, 340 P.3d 213 (2014, *En Banc*) **Improper opinion evidence in DUI trial.**
Facts: At a DUI trial, the arresting Trooper testified that based on the HGN test alone, he had no doubt the defendant was impaired. No other tests were done and the defendant refused the breath test.
Held: Under ER 704 opinion testimony regarding an ultimate issue of a case is not objectionable if such opinion is otherwise admissible. Here, the trooper's opinion testimony was not "otherwise admissible" because it violated the limits imposed by *State v. Baity*, 140 Wn.2d 1, 991 P.2d 1151 (2000) in two ways: (1) the trooper's testimony that he had "no doubt" the defendant was impaired based on the HGN test alone gave the HGN test the appearance of scientific certitude; the trooper could have testified that the HGN test showed physical signs of alcohol consumption, but not that the HGN test showed the defendant was impaired. And (2) by testifying that the defendant was impaired based on the HGN alone, the trooper implied that the defendant consumed sufficient alcohol to be impaired which violated *Baity's* prohibition against HGN being used to show a specific level of intoxication. Finding his testimony to be inadmissible ultimate issue testimony, the Court next considered whether that testimony was an improper opinion on guilt. The Court determined that such testimony was an inferential opinion on guilt as it struck right to the heart of the sole issue, *i.e.,* whether the defendant was impaired by the intoxicants he consumed. Admission of such testimony violated the defendant's right to have the jury decide all elements. The Court distinguished *State v. Heatley*, 70 Wn.App. 573, 854 P.2d 658 (Div. I, 1993) because, unlike the officer in *Heatley*, the trooper here based his opinion solely on the HGN test. The Court reversed for a new trial.

Dissent (4 Justices): The dissent argued that the majority inappropriately relied on *Baity* because that case didn't address the issue of HGN in alcohol impairment cases. In any event, the HGN issue was not developed before the trial court and the dissent criticized the majority for creating a rigid limiting rule in DUI cases that ultimately assists DUI defendants and increases the challenges of prosecuting DUI refusal cases without having the record regarding HGN fully developed in the trial court. Additionally, the dissent found the opinion testimony in the case similar to *Heatley* and would hold that the trooper's opinion testimony here was admissible.

State v. Mullen, 186 Wn.App. 321, 345 P.3d 26 (Div. II, 2015)(part published opinion)
Predicate offenses for DUI and necessity of proving they were alcohol-related.
Facts: Defendant was convicted of felony DUI where one of his prior offenses was Reckless Driving, amended from DUI. The trial court refused the defendant's proposed jury instruction which included language that the State must prove that the prior offense involved alcohol or drugs. The defendant appealed.
Issue: Does the State have to prove beyond a reasonable doubt that a prior conviction for reckless driving involved alcohol or drugs to use that conviction in a prosecution for felony DUI?
Held: "[B]ecause the legislature's intent was to charge defendants who are guilty of prior *alcohol-or drug-related* offenses with felony DUI, the involvement of alcohol or drugs in prior convictions is an essential element that must be proven to a jury where it was not an essential element of the prior conviction itself." *Mullen*, 186 Wn.App. at 329 [emphasis in original]. In this case, had the defendant's prior conviction for reckless driving *not included* drugs or alcohol, he could never have been charged with felony DUI. Because the existence of the prior reckless driving offense itself was insufficient to make it a prior offense to elevate the misdemeanor DUI to felony DUI, the existence of alcohol or drugs in that reckless driving case was an essential element that had to have been proven beyond a reasonable doubt to the jury; it was not merely a threshold legal issue for a trial court to decide. The Court cited approvingly *City of Walla Walla v. Greene*, 154 Wn.2d 722, 116 P.3d 1008 (2005), *cert. denied*, 546 U.S. 1174 (2006). The case was remanded with instructions to enter a conviction for misdemeanor DUI!
Application: In felony DUI cases, where a prior offense (like reckless driving) does not include alcohol or drugs as an essential element of the offense, due process requires that the State must prove beyond a reasonable doubt (1) the existence of the prior offense; and (2) that it was alcohol or drug related (the negligent driving 1st at issue in *Greene* was sufficient where its existence was established because one of the essential elements of negligent driving 1st is involvement of alcohol or drugs).
Unpublished Portion: In the unpublished portion of the opinion, the Court affirmed the defendant's DWLS 2nd conviction and found any error in admitting Trooper testimony in violation of the Confrontation Clause was harmless beyond a reasonable doubt. The Court also held that the defendant did not carry his burden in establishing prosecutorial misconduct and denied his Statement of Additional Grounds (SAG) arguments.
Concurrence/Dissent: Judge Melnick would affirm the DWLS 2nd conviction, but would affirm the DUI conviction as the judge disagreed with the majority's conclusion that the existence of alcohol or drugs in the prior offense was an issue for the jury, not the court. The dissent would have held that whether a prior conviction is admissible is a question of law for the court; the existence of the prior offense is a question of fact for the jury to decide. The dissent also disagreed with the majority's remedy of entry of a misdemeanor conviction. The dissent would have remanded for a new trial.

State v. Bird, 187 Wn.App. 942, 352 P.3d 215 (Div. I, 2015). **Prior offense as question of law not element to prove to jury.**
This case represents Division I's disagreement with Division II's assessment[11] that the prosecution must prove beyond a reasonable doubt to a jury that a prior reckless driving was alcohol related if that prior reckless driving is used as a predicate offense for felony DUI. Division I indicated that whether a prior offense qualifies as a statutory prior sufficient to elevate a DUI to a felony is a question of law for the court to determine, not a question of fact for the jury. Division I endorses the approach that once a court determines that a prior offense is admissible (question of law), the State may then introduce proof of that prior at trial to prove the necessary element of felony DUI (*i.e.,* predicate offense). The *Bird* Court held there was sufficient evidence to demonstrate that the defendant's prior vehicular assault conviction was alcohol related, and therefore, it qualified as a statutory predicate offense that could be used to prove the required element of the felony DUI in the present case. The Court therefore reversed the lower court's dismissal of the felony charge.

State v. Fedorov, --- P.3d ---, 2015 WL 4647871 No. 90939-3 (2015)[12], *En Banc*. **Rule based right to counsel, privacy, and totality of the circumstances test.**
Facts: After a high speed chase down I-5, the intoxicated driver was taken into custody and transported to Fife Jail for BAC testing. There, he was placed in contact with an attorney via telephone. When complete privacy was requested, the arresting Trooper moved to the other side of the room, but stayed in the room for safety concerns and to maintain observation of the defendant for the required 15-minute observation period. The defendant argued this violated his right private consultation with his attorney under the rule-based right to counsel, CrR 3.1.
Held: The "rule-based right to counsel does not provide for a right to absolute privacy for conversations between attorney and client." *Fedorov* at *1. Legitimate safety and practical concerns may be balanced against the privacy afforded to an arrestee who has been placed in contact with an attorney under CrR 3.1[13] and a court will review any alleged violations using a totality of the circumstances test. The Court emphasized "that police should provide as much privacy as possible during such consultations … [the Court recognized] that privacy is balanced against legitimate safety and practical concerns." *Id.* at *4. Some non-exclusive factors that a court will consider in a challenge under CrR 3.1 are: "safety of police, prevention of harm to police property, the need to comply with testing protocols, and the physical setting where the events take place." *Id*. The court will also consider the safety of the arrestee. Applying the test to this case, the Court noted that the Trooper had a legitimate concern in leaving an uncooperative arrestee alone, he had to comply with the observation time for the BAC test, he gave the defendant adequate privacy by moving to the other side of the room and did not interfere with the consultation, and the attorney was able to inform the defendant of his rights and consequences of refusing the BAC. Considering all of that information, the Court held there was no CrR 3.1 violation in this case.

State v. Hardtke, 183 Wn.2d 475, 352 P.3d 771 (2015), *En Banc.* **Pre-trial EHM costs.**
Does a trial court have the authority to require a criminal defendant to pay the costs of pre-trial EHM under either RCW 10.01.160 or CRR 3.2? Defendant was arraigned, ordered to consume

[11] *State v. Mullen*, 186 Wn.App. 321, 345 P.3d 26 (Div. II, 2015), *supra*.
[12] This case is limited to the rule-based right to counsel, as the 6th Amendment's right to counsel was not implicated in this case.
[13] CrRLJ 3.1 is coextensive with CrR 3.1.

no alcohol, and was required to be on an electronic alcohol monitoring bracelet as a condition of release; upon plea, he was ordered to repay the county for the costs of pretrial EHM (it appears that the county paid for his EHM with an expectation of reimbursement). The Court held "that under the facts of this case, the costs for an electronic alcohol monitoring bracelet fit under the statutory meaning of 'pretrial supervision.'" *Hardtke*, 183 Wn.2d at 477 (citing RCW 10.01.160). Further, RCW 10.01.160 does allow pretrial supervision costs, but only up to $150. The Court stressed that statutes govern substantive matters, and what types of costs can be imposed upon a defendant is a substantive matter, so the costs allowed by statute for pretrial supervision are limited to the statutory amount of $150. This means if a court allows a pretrial defendant to be released to EHM, *and the court pays for the EHM*, it will only be entitled to a reimbursement of up to $150 because that is the statutory limit. This does not affect the ability of a court to order EHM as a condition of release. A court may still order a defendant to be hooked up with EHM as a condition of release; if the defendant cannot arrange for and pay for the EHM with a third-party monitoring agency, then such defendant would remain in custody until further order of the court. The key to this case is that the county arranged and paid for the EHM with an expectation of reimbursement; such expectation is statutorily limited to $150. Third-party monitoring agencies are not so limited. The Court in this case also considered the bond analogy, where a third-party bonding company can charge a defendant fees for posting a security bond. This makes sense in the context of the Court's analysis because such fee for a bond is not a cost paid to the court; it is a service fee to a third party agency. That analogy is helpful in understanding why the Court ruled as it did here because RCW 10.01.160 is a ceiling for pre-trial supervision costs for a *court*. In any event, subsequent legislation (SSB 6134, which goes into effect 10/9/15) expressly exempts costs associated with pretrial electronic alcohol monitoring, drug monitoring, or 24/7 sobriety monitoring from the $150 statutory limit. Additionally, SSB 6134 authorizes a court in a DUI (and related offenses) case to order a post-conviction defendant to reimburse a providing agency for the costs of monitoring as a condition of the sentence.

TRIAL RELATED ISSUES

State v. Miller, 352 P.3d 236 (Div. III, 2015). **Issued citation, arraignment, and time for trial. Time for Trial:** Division III held that the 2003 revisions to Washington's time-for-trial[14] rule effectively superseded *Bonifacio*.[15] Division III stated that the time-for-trial rule is the device by which a court will determine if a defendant's speedy trial rights have been violated. The court reviewed a history of the revisions of the time-for-trial rules since *Bonifacio* was decided and ultimately concluded that, based on the current version of the time-for-trial rule, the defendant's speedy trial rights in this case were not violated.

State v. Pittman, 185 Wn.App. 614, 341 P.3d 1024 (Div. II, 2015)(part published opinion). **Essential element of attempting to elude.**
Held: "We hold that the method by which police officers signal to stop is not an essential element of the crime of attempting to elude a police vehicle and that the information did not need to include this language." *Pittman*, 185 Wn.App. at 618. While a liberal construction will be utilized to identify whether the essential elements of a crime are contained in the charging

[14] *See generally* CrRLJ 3.3.
[15] 127 Wn.2d 482, 900 P.2d 1105 (1995).

document (so as to constitutionally apprise the defendant of the charges) the best practice is to ensure the charging language matches the statutory elements of the offense and does not include prior obsolete statutory language, or exclude essential elements of the offense.

State v. MacDonald, 183 Wn.2d 1, 346 P.3d 748 (2015), *En Banc*. **Officer as arm of the prosecution at sentencing.**
Issue: Is an investigating officer permitted to advocate for a different sentence than as recommended in a plea agreement at a sentencing hearing?
Facts: Cold case homicide resulted in plea negotiations, which included the investigating detective, which ultimately led to the defendant's plea. At the sentencing hearing, the prosecutor recommended a sentence consistent with the plea, but the investigating officer, purportedly speaking on behalf of the victim (who had no relatives, friends, or others that could act as a victim representative), advocated for the maximum sentence available for the offense to which the defendant pled. The sentencing Judge gave the defendant the max, the defendant timely moved to withdraw his plead due to a violation of the plea agreement, the Court of Appeals affirmed, and the Washington Supreme Court reversed and held the defendant was entitled to either withdraw his plea or seek specific performance.
Held: An investigating officer may not make a recommendation contrary to a plea agreement and "the same due process concerns precluding an investigating officer from undermining a plea agreement bar that officer from making unsolicited remarks on a victim's behalf to the court at sentencing that are contrary to the plea agreement. [Further], Washington's crime victims' rights do not permit the State to breach a plea agreement." *MacDonald*, 183 Wn.2d at 7. The Court held the investigating officer was a "substantial arm of the prosecution" and was therefore bound by the terms of the agreement. A prosecutor may not do through agents what the prosecutor cannot do individually (*i.e.,* advocate against or undercut the plea agreement). Also, courts must seek to harmonize victims' constitutional rights with those of the defendant, but "[t]o the extent that these rights are irreconcilable, federal due process rights supersede rights arising under Washington's statutes or constitution." *Id.* at 16.
Dissent: Would have held that the investigating officer was not acting as an agent of the prosecution in the very narrow and unique circumstances of this case and would have held that the officer was speaking on behalf of an otherwise voiceless victim and such testimony did not violate the terms of the State's plea agreement.

INTERROGATION AND MIRANDA

State v. Rhoden, --- P.3d ---, 2015 WL 4627592, No. 45702-4-II (Div. II, 2015). **Two-step interrogation procedure test.**
Facts: During execution of search warrant a deputy asked five residents (who were detained in handcuffs in the living room) if there were any drugs or guns in the residence; no *Miranda*[16] warnings were given at this time. Mr. Rhoden stated he had meth in his bedroom. The same deputy escorted Mr. Rhoden to the kitchen, advised him of his *Miranda* warnings there and asked him the same question. Mr. Rhoden again admitted to having meth in his bedroom. The post-*Miranda* statements were admitted at trial and the defendant was convicted of UPCS.
Issue: Were defendant's post-*Miranda* statements admissible at trial?

[16] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Test: A reviewing court will evaluate a two-step interrogation procedure using two separate steps of its own: (1) the court will determine whether the use of such technique was deliberately used to circumvent *Miranda*; this is an objective test (though subjective evidence can be used as well) and includes the "timing, setting and completeness of the prewarning interrogation, the continuity of the police personnel and the overlapping content of the pre and postwarning statements." *Rhoden* at *4 (citing authority). If use of the interrogation procedure was found to be deliberate, then (2) a reviewing court will objectively determine if the "midstream" *Miranda* warning sufficiently advised the defendant that he had a choice in following up on his or her earlier statements; a court will consider any curative measures, like a significant break in time and place between the questioning or an additional advisement that the defendant's prewarning statements could not be used against him or her at trial.
Held: Post warning statements should have been suppressed because the use of the two-step interrogation process was deliberate in this case (questioning occurred at scene, questions were essentially the same, deputy was the same, and content of statements overlapped) and the midstream *Miranda* warnings did not sufficiently apprise the defendant he had a choice in following up on his earlier statements (no significant break in time or place, no additional warning that prewarning statements could not be used against him). "Because the two-step interrogation procedure used here to obtain Rhoden's post-*Miranda* statements failed to apprise Rhoden of information essential to his understanding of his right to remain silent under the Fifth Amendment to the United States Constitution, we hold that the trial court erred by failing to suppress the statements." *Id.* at *3.

State v. Elkins, Jr., 353 P.3d 648 (Div. II, 2015). ***Miranda* advisement prior to recommencing questioning.**
Held: "We acknowledge that fully readvising a suspect of his *Miranda* rights is clearly the best practice when resuming questioning of a suspect who has asserted his right to silence. But we hold that there is no bright-line rule that law enforcement officers must always fully readvise a defendant of his or her *Miranda* rights and that whether a defendant's rights have been scrupulously honored must be determined on a case-by-case basis." *Elkins*, 353 P.3d at 653. Division II follows the test it set out in *Mason*[17] in determining the admissibility of a confession after a suspect has waived his or her *Miranda* rights. This is a four factor test and Division II focused on the 4th factor in this case, whether a defendant knowingly and voluntarily waived his or her rights; in assessing that waiver a reviewing court will use a totality of the circumstances test.
Best Practice: If recommencing interrogation of a suspect who has previously waived his or her *Miranda* rights, it is always advisable to readvise that suspect of his or her *Miranda* rights.

[17] *State v. Mason*, 31 Wn.App. 41, 44-45, 639 P.2d 800 (1982), *rev. den.* 97 Wn.2d 1010 (1982).

Summary of SSSB 5052 - Medical Marijuana

By Moses Garcia – Traffic Safety Resource Program

Section 1- Act is known as the Cannabis Patient Protection Act

Section 2-Statement of legislative purposes

Section 3-"Washington State Liquor and Cannabis Board"

Section 4-Definitions – adds "marijuana concentrates" as new product—product of MJ that is 60% or more Delta-9 THC.

Section 5-Housekeeping amendments

Section 6-WSLC Board to implement comprehensive, fair, and impartial evaluation of applications for licenses to produce, process, or sell marijuana:

Priority 1: Applied for a marijuana retailer license prior to July 1, 2014
Operated or were employed by a collective garden prior to January 1, 2013
Have maintained business licenses and
Have a history of paying all applicable state taxes and fees.

Priority 2: Operated or were employed by a collective garden prior to January 1, 2013
Have maintained business licenses and
Have a history of paying all applicable state taxes and fees.

Priority 3: All others

Section 7- WSLC Board authorized to enact rules regarding:
1(c) adds safe handling requirements, approved pesticides and pesticide testing requirements
1(k)(1) strikes prohibition on WSLC Board's authority to seize, confiscate, destroy, or donate to law enforcement marijuana.

Section 8- Applications for marijuana producers to allow increase in canopy to address medical uses of marijuana

Section 9- Licensed marijuana retailers and employees are not criminal or civil offense

Section 10- Section 1 Creates "medical endorsement" for marijuana retail license. Permits current recreational marijuana retailers to also sell medical marijuana
3(d)-demonstrate ability to enter qualifying patients and designated providers into marijuana authorization databases, issue recognition cards, in accord with department standards.
4- authorizes rules to allow sale or gifting of all marijuana products to qualifying patients and designated providers.
4(b) labeling requirements include THC concentration, CBD concentration, THC to CBD ratios
4(c)allows department to regulate mold, fungus, pesticides, solvents, and testing.
5 Employees to be trained on recognition of valid authorizations and documenting sales, marijuana, and related products.

Section 11- Marijuana retailers and retailers with a medical marijuana ("mm") endorsement may sell products with less than 0.3 THC concentration. Retailers with mm endorsement may gift these products to medical marijuana patients ("patients") and designated providers ("DP") as well.

Section 12- July 1, 2016 - Marijuana retailers may only allow persons 21 years or older, unless the person is a mm patient. Patients of any age may enter a retail marijuana location if properly documented. Patients under 18 must also be accompanied by their DP. Only patients or DP, ages 18 and over, may purchase from retailers.
[*Not clear if patients under 18 in retail store may accept free products from retailers*]

Section 13-Exception to civil and criminal prosecution for validly licensed marijuana retailers and employees
3) permits 1 oz. of useable marijuana, 16 oz. of infused product in solid form; 72 ounces of marijuana-infused product in liquid form; or 7 grams of marijuana concentrate.
[*infused products should be under 60% THC concentration, or regulated as "concentrate"*]

Section 14-Governs controlled substances.
4) clarifies that persons under age 21 may not possess, manufacture, sell, or distribute marijuana products—unless they are a qualifying patient with a valid authorization.
[Does not address designated providers]
5) Exempts qualifying patients and designated providers of marijuana concentrates, useable marijuana, marijuana-infused products, or plants in accord with Ch. 69.51 RCW is not a violation of this section, chapter, or Washington State law.
[Eliminates need for mm patients to disprove criminal violation at trial, to jury]

[Requires LEOs to investigate this possibility prior to seeking warrant or making arrest]

Section 15-Bans immediately the use of Butane and flammable gases to extract THC from marijuana. Other limitations on extraction may follow, based on rules enacted.

Section 16- Authorizes "health care professionals" to recommend use of mm for qualifying patients who may benefit and who suffer from terminal and debilitating medical conditions. Patients and Designated Providers who strictly comply with the provisions of this chapter may not be prosecuted.
3) Chapter does not establish or define medical necessity or medical appropriateness of mm for treating terminal or debilitating medical conditions.
4) Expressly does not create a right to use mm in jails, prisons, or those on probation.

Section 17 – "Designated Provider" must be 21 years old and either: the parent or guardian of a qualifying patient under the age of 18; or has been designated in writing by a qualifying patient to serve as the designated provider for that patient, and has an authorization from the patient's health care professional or is in the medical marijuana authorization database as being the designated provider to a qualifying patient, and has a recognition card.
DP is only allowed to serve one patient

"Terminal or debilitating medical condition" means—[long list of possible candidates].

Until July 1, 2016, mm "authorization" means:

A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states "in the health care professional's opinion" the patient may benefit from the medical use of marijuana; and
Proof of identify, such as a WSDL or identicard (RCW 46.20.035).

Beginning July 1, 2016, mm "authorization" means:

A form developed by WLCB, completed and signed by patient's health care professional
Recognition Card issued by marijuana retailer, entered into mm database

Defines "Plant" as having at least 3 distinct leaves, each leaf being at least 3 cm in diameter, with a defined root system of two roots at least 2 cm in length. Stalks from the same rootball or root system are from the same plant.

Section 18 - Defines acts that are not crimes or unprofessional conduct in Washington, when done in accord with the Act and the health care professional's medical judgment; and

-have a documented relationship with the patient, as principal care provider or a specialist, relating to the treatment or monitoring of the patient's terminal or debilitating medical condition;

-complete an in-person physical examination of the patient;
-document the terminal or debilitating medical condition in the medical record and that the patient may benefit from treatment with mm;
-inform the patient of other options for treating the medical condition and document the patient received the information;
-document in the medical records other measures used to treat the patient's condition
-complete the authorization form

c) Authorizations expire after one-year for persons 18 years and older. Authorizations expire after 6 months for persons under age 18. Authorizations may be renewed after a physical examination of the patient and compliance with the other requirements of this section.

d) Health care professionals may <u>not</u>;

Accept remuneration from marijuana retailers, processors, or producers
Examine patients at a location where marijuana is produced, processed, or sold
Have a business that is primarily authorizing the medical use of mm
Authorize the use of mm at any location that is not their permanent physical location
May not hold an economic interest in an enterprise that produces, processes, or sells marijuana if the health care professional authorizes mm use

d(3) The WLCB form to be used by health care professionals shall include: [details]

d(4) Until July 1, 2016, a health care profession who authorizes for mm more than 30 patients must report the number of authorizations issued. [details of oversight]

Section 19 - July 1, 2016 - health care provider may include recommendations on the amount of marijuana patient is likely needed for medical needs.

1) If the HCP does not include a recommendation on the authorization, the retail provider, when adding the patient to the database, shall enter the following (3x recreational):
   -3 oz. of useable marijuana
   -48 oz. of marijuana –infused product in solid form
   -216 oz. of marijuana-infused product in liquid form
   -21 grams of marijuana concentrate
   -The mm patient is also allowed to grow, in their domicile, up to six plants for personal medical use and possess up to 8 oz. of useable marijuana from their plants.

   The recognition card shall specify each of these amounts on the card.
2) If the HCP determines the patient needs exceed the above [default quantity], the HCP must specify on the authorization that the patient is allowed to grow up to 15 plants, may possess up to 18 oz. of useable marijuana in their domicile.
3) If a qualifying patient or designated provider has not been entered into the mm database, they may not receive a recognition card and may only purchase at a retail outlet, the base amounts in RCW 69.50.360. In addition, the patient may grow in their

domicile, up to 4 plants for personal use and possess up to 6 oz. of useable marijuana in their domicile.

Section 20 – July 1, 2016 - HCP may authorize the medical use of marijuana for patients under 18 if:

a) The minor's parents or guardian participate in the minor's treatment and agrees to the use of mm
b) The parent acts as the designated provider

2) The minor may not grow plants or buy concentrates from a retailer
3) Both the minor and the minor's parent must be entered in the mm database
4) A HCP who authorizes mm must do so as part of the course of treatment of the minor's terminal or debilitating medical condition, consult with the minor's medical team, reassess after 6 months or more as needed, determine the condition benefits from mm, include a follow-up discussion with the minor's parent or guardian.

Section 21- WLCB must contract to create a secure confidential mm authorization database that, effective July 1, 2016, allows:

a) Marijuana retailers to add qualifying patients or designated providers, along with required details of use
b) Allows access by persons authorized to prescribe or dispense controlled substances to access the information on their patients
c) Allows patients to access their own health care information
d) Allows local, state, tribal, and federal law and prosecutorial officials who are engaged in a bona fide investigation of marijuana-related activity to confirm the validity of the recognition card or a patient or designated provider
e) Allows retailers to confirm the validity of a recognition card

(3) Recognition Cards must be developed that include the following features [details in bill]

Section 22 – MM database exempt from public disclosure requirements

Section 23 – July 1, 2016 – Class C Felony to:
1(a)access mm database without authorization, or disclose information from database
(c) produce fake recognition card,
(d) sell, donate, or supply mm to another

Section 24 – July 1, 2016 -- MM use is not a crime, qualifying patients and designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal or civil sanctions.
LEOs are not subject to civil liability for failure to seize marijuana if:

1) The patient or DP has been entered into the mm database and holds a valid recognition card and the amount of MM allowed under Section 19 of the Act. If the

person is both a qualifying patient and a DP, they may possess no more than 2x the amounts allowed under Section 19 of the Act.

b) If the qualifying patient or DP presents their recognition card upon being requested

c) if the qualifying patient or DP keeps a copy of their recognition card and contact information posted prominently next to any plants, or mm at their residence; and

d) the LEOs do not possess any evidence that:

the DP has converted mm to personal use

the qualifying patient sold, donated, or supplied mm to another person, and

the DP has not served as a DP to more than one patient within a 15 day period or

the qualifying patient or DP participates in a co-op as provided in Section 26

Section 25 – July 1, 2016 – A qualifying patient or DP who has a valid authorization from a HCP but who is not entered into the mm database and who does not have a recognition card, may raise the affirmative defense set forth in subsection 2 of this section, if:

a) The qualifying patient or DP presents their valid authorization to any law enforcement officer who questions them regarding mm use of marijuana;
b) The possession or use does not exceed the limits set forth in Section 19 of this act
c) They are in compliance with all other terms of this chapter
d) The investigating officer does not have PC to believe the patient or DP has committed a felony or is committing a misdemeanor in the officer's presence, that does not relate to the medical use of marijuana.

If the patient or DP meets these requirements, they may present the affirmative defense at trial

Section 26 – July 1, 2016 – Governing MM Cooperatives

1) No more than 4 patients or DPs may form a co-op, and all members must hold recognition cards. Members of a co-op must be 21 or over, except that a minor may use a DP for the co-op.
2) The co-op may not be located within 1 mile of a marijuana retailer and must register with the WLCB and that is the only location where plants may be grown. The registration must include all names of participating members and a copy of each recognition card.
3) If a co-op member no longer participates, the person must notify the WLCB within 15 days from when they cease participation. WLCB will remove the person from the co-op. Additional patients or DPs may not join the co-op until 60 days have passed since the last patient or DP notified the WLCB of withdrawal.
4) Patients and DPs in a co-op:
    a. May grow the total amount of plants each participating member is authorized on their recognition cards, up to 60 plants. At the location, the co-op may possess

up the amount of useable marijuana that can be produced with the number of plants permitted under this subsection, but not more than 72 oz.

b. Patients and DPs may only participate in one co-op
c. May not grow plants elsewhere;
d. Must provide assistance in growing plants. A monetary contribution is insufficient.
e. May not sell, donate, or otherwise provide marijuana to anyone not participating under this section.

5) The location of the co-op must be the domicile of one of the participants. Only one co-op may be located per property tax parcel. A copy of each participant's recognition card must be kept at the location.
6) Co-ops must be secure to ensure the safety and reduce the risk of diversion
7) WLCB may inspect any co-op and draft rules for inspections.

Section 27 –

a) No more than 15 plants may be grown in one housing unit other than in a co-op.
b) No production or processing of marijuana, or storage or growing of plants may occur if any portion of such activity can be readily seen or smelled from a public place or another housing unit.
c) Cities, towns, counties and other municipalities may create and enforce civil penalties for marijuana production or processing not in compliance with this section.

Section 28 -

Upon the passing rules, patients and DPs may only extract or separate the resin from marijuana in accord with WLCB rules.

Section 29 –

1) A patient or DP with marijuana in excess of the amounts permitted in this chapter, but otherwise in compliance with all other terms and conditions, may establish an affirmative defense to charges of violations of state law through proof at trial, by a preponderance of the evidence, that the qualifying patient's necessary medical use exceeds the amounts set forth in RCW 69.51A.040.
2) An LEO may seize plants, marijuana concentrates, useable marijuana, marijuana-infused products <u>exceeding the amounts set forth in this chapter</u>. In the case of plants, the qualifying patient or DP shall be allowed to select the plants that will remain at the location.

Section 30 –

1) Arrests and prosecution protections in RCW 69.51A.040 may not be asserted in a revocation or violation proceeding.

2) The affirmative defense in RCW 69.51A.043 and 69.51A.045 may not be asserted in a revocation or violation proceeding.
3) RCW 69.51A.040 (exception to arrest/prosecution for mm) does not apply to a person supervised for a criminal conviction where the terms of this chapter are inconsistent with and contrary to supervision.

Section 31 – July 1, 2016 – Exclusions

1) Class 3 civil infraction to use or display mm in a manner or place open to public view.
2) No right of care as a covered health care benefit for mm. Health care providers may or may not cover mm, in their sole discretion.
3) Health Care Providers are not required to authorize mm.
4) No requirement for accommodation of mm in any place of employment, school bus, school grounds, any youth center, correctional facility, or smoking marijuana in any public place or hotel or motel. A school may permit a minor who meets the requirements of section 20 to consume mm on school grounds, in accord with school policy.
5) Chapter does not authorize use or possession of marijuana on federal property.
6) Chapter does not authorize mm by any person subject to the Washington Code of Military Justice in Ch. 38.38 RCW.
7) Employers may establish drug-free work places and need not accommodate mm
8) No person may claim the protection from arrest and prosecution under RCW 69.51A.040 or the affirmative defense under RCW 69.51A.043 for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway.

Section 32 – Collective Gardens

1) Patients may participate in collective gardens for mm use subject to the following:
    a. No more than 10 patients may participate
    b. No person under 21 may participate, except through a DP.
    c. No more than 15 plants per patient, up to a total of 45 plants.
    d. No more than 24 oz. of useable marijuana per patient, up to 72 oz.
    e. A copy of each patient's authorization, including proof of identity, must be available at all times on the premises of the collective garden; and
    f. No useable marijuana may be delivered to anyone other than participants
2) Creation of a "collective garden" means patients sharing responsibility for acquiring and supplying all the resources required to produce and process marijuana for mm use.
3) A person who knowingly violates a provision of subsection 1 is not entitled to the protections of this chapter.

Section 33 – WLCB enforcement by "sting"

WLCB is authorized to do "stings" to verify compliance with this chapter.
Persons under 21 who attempt to purchase marijuana are guilty of a misdemeanor, punishable under RCW 9A.20.021.

Section 34 – Revocation of DP authorization

1) A patient may revoke the DP authorization at any time, in writing with date/time, and with a copy to the DP and, If applicable, to the mm database. The protections of this chapter cease 72 hours after notice is served on the DP.
2) The DP may stop serving as DP to any patient at any time by revoking their designation, in writing, with service to the patient and, if applicable, the mm database. The DP may not begin service as a DP for another patient until 15 days has elapsed since they were a designated provider.

Section 35 – July 1, 2016 – Donation of topical, non-ingestable products with less than .3% THC by HCP to patients is allowed.

Section 36 – **Vetoed by Governor** - Employer limitations on mm advisory by employees
Employers of a HCP may not prohibit or limit HCP who advise patients about the risks or benefits of mm; or regulate providing a patient or DP meeting the statutory requirements with an authorization based upon the HCP's opinion.

Section 37 – Medical Marijuana Consultant Certificates
WLCB may adopt rules necessary to implement this Chapter
Create a training program for MMC certificate holders, subject to annual renewals

Section 38 – Continuing Education Training for Health Care Professionals
The boards of naturopathy, osteopathic medicine and surgery, the medical QA commission, and the nursing care commission shall develop and approve continuing education programs related to mm.

Section 39 – Creation of Health Care Professions Account
Adds payment of mm database as an allowable expense to be paid from HCP account

Section 40 – July 1, 2016 – Tax
Does not authorize any co-op for tax preferences under Ch. 82.04 RCW

Section 41 – Dept. of Health directive
DOH must develop recommendations on establishing mm specialty clinics that would allow for authorization and dispensing of mm to patients of HCP.
Recommendations are due to legislature by Dec. 1, 2015.

Section 42— **Veto by Governor** – Revisions to Schedule I

Section 43 – **Veto by Governor** – Revisions to Schedule I

Section 44— **Veto by Governor** – Creation of Class B Felony for violations

Section 45— **Veto by Governor** – Creation of Class C Felony for violations

Section 46 – **Veto by Governor** – Listing of seriousness level for sentencing

Section 48 – Repeal of prior laws
Repeals RCW 69.51A.140, authorizing Counties, cities, towns the authority to enact and enforce requirements.
[Possible litigation as to local authority to regulate mj by zoning, licensing]

Section 49 – July 1, 2016 – Repealing Collective Gardens in RCW 69.51A.085
[*Repeal includes revisions in Section 32 of this bill*]

Section 52 – **Veto by Governor** – Implementation date tied to HB 2136.

2015
Legislative Update
For Prosecutors

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Moses is a sixth-year Traffic Resource Safety Prosecutor, a grant program of the Washington Traffic Safety Commission. Formerly housed with the Washington State Patrol, he is now with the Municipal Research Services Center in Seattle. He focuses on impaired driving issues and regularly provides training to prosecutors and law enforcement. He is a trial veteran with 15 years of experience and hundreds of trials and appeals in Washington and federal courts. He is a graduate of the University Of Washington College of Architecture and the School of Law. The opinions expressed herein are his own and should be reviewed with your legal advisors.

Summary of ESSB 1276

Section 1- Statement of Intent.

Section 2-Revising 10.21.055:

1)

a) Persons charged with DUI crimes involving alcohol, and are released from custody, at arraignment or after, the court shall require one of the following 4 requirements:
   - i) Have an IID installed on all motor vehicles operated by the person, with proof filed within 5 business days of release.
   - ii) Comply with 24/7 sobriety program monitoring (per RCW 36.28A.330)
   - iii) Do both i) and ii) above, or alcohol monitoring in lieu of 24/7.
   - iv) If defendant required to have IID elects, may file sworn statement stating they will not drive motor vehicle without IID. Must be ordered to participate in 24/7 program or, in alternative, alcohol monitoring at own expense.

b) Court shall immediately notify DOL when IID is imposed for release or conviction. DOL shall imprint notation on driving record to reflect IID required.

2)

b) If the court authorizes removal of an IID imposed under 1a, the court shall immediately notify DOL and DOL shall remove the condition imposed under this section.

3)

When an IID condition imposed as a condition of release is removed, the court shall provide the defendant with a written order confirming release of the restriction. The order serves as proof of the release of the restriction until DOL updates the driving record.

Section 3-Authorizes out-of-state U.S. drivers convicted of DUI crimes—to obtain an IID. (Section b strikes prior waiver of appeal—which was found unconstitutional by court).

Extends credit for IID installation to include DPs, DUIs reduced to Reckless Driving, and Neg. 1 convictions where an IID is required by virtue of a prior conviction within 7 years.

Section 4-

2) Not a crime where prior IID restriction imposed by court has been removed.

3) Sentences imposed for operating without IID shall be served consecutively with any sentence imposed for circumventing an IID, DUI, Physical Control, or any offense imposed under RCW 46.61.5055.

[*presumably excludes all felony convictions*]

Section 5- Implied Consent Statute RCW 46.20.308
Housekeeping: Removes references to THC within ICW. This language was inserted by I-502 Initiative and made irrelevant by 2013 revisions addressing McNeely.

2) While ICW now expressly relates only to breath, it continues to authorize demand for breath when either alcohol OR drugs are suspected.

[Note: having deleted reference to blood—the requirement to warn the driver "in substantially the following language" only relates to breath cases. *There are no statutory warnings under the ICW for any blood case.]*

3) After arrest and receiving of ICW warnings, if the person arrested exercises the statutory right to refuse –no test shall be given except as otherwise authorized by law.
[*The revision expressly recognizes that officers now have legal options following breath refusal.*]

4) Expressly authorizes LEO to obtain a person's blood for testing of alcohol, marijuana, or any drug in any impaired driving case—when authorized by a warrant, exigent circumstances, or any "other authority of law." [*This opens the door a voluntary blood draws, in lieu of a breath test—reversing Kent v. Beigh*].

5)If after arrest and any other applicable conditions and requirements of this section have been satisfied, [a per se violation or a refusal is shown], DOL shall suspend.

7) Add safely-off-the-roadway defense to Physical Control allegations in DOL proceedings.

Section 6- Closes loopholes in prior law by defining "tampering" precisely and by expressly forbidding tampering directly or indirectly.

Requires violations for tampering be served consecutive with several other crimes.

Section 7- Expressly authorizing LEO to seek search warrant in CMV cases. Authorizes DOL to suspend CMV operators for per se violations

Section 8- Open Container Law – Marijuana

New traffic infraction when:

1) a)

i) For registered owner of motor vehicle (or the driver if RO no present) or passengers in the vehicle to keep MJ "in a motor vehicle" when the vehicle is "upon a highway," unless it is

   a. In the trunk; or
   b. If no trunk in the vehicle, in another area not normally occupied or directly accessible to driver or passengers (glove compartments and utility compartments are not permitted as alternatives); or
   c. In a package, container, or receptacle that has not been opened or the seal broken or content partially removed.

ii) For consuming MJ in any manner including smoking or ingesting in a motor vehicle when the vehicle is on a public highway.

iii) For placing MJ in a container specifically labeled by the manufacturer of the container as containing a non-MJ substance—and to consume in violation of ii. Rebuttal presumption that infraction committed if the original MJ container is incorrectly labeled and there is a subsequent violation of (a)(i).

Section 9- RCW 46.61.5055 Revised

11) Conditions of Probation revised to clarify [again] that mandatory jail must be imposed if either i) driving without a valid license or ii) driving without proof of liability insurance. Add a new condition to list: v) not driving a motor vehicle in this state without a functioning IID as required.

14) Prior Offense now includes:

v)A conviction for RCW 79A.60.040(1) or local equivalent (BoatUI) when committed under influence of alcohol or any drug if originally filed as a violation of RCW 79A.60.040(2) or equivalent.

vii)A conviction for RCW 47.68.220 or local equivalent (FlyingUI) when committed under influence of alcohol or any drug; or if original charge was filed as violation of RCW 47.68.220 or equivalent while under influence of alcohol or any drug.

Section 10- Expands record retention for DUI records to include permanent retention of RCW 46.61.503 (Minor DUI)

Section 11- Ignition Interlock Standards

Closes loophole in prosecution by requiring GPS coordinates during all compliance testing.

[All *new* installations after Sept. 26, 2015, ALL units by April 1, 2016]

Section 12- Abstract of Driving Records

2(a)(ii) authorizes court to release copy of ADR to person on abstract or that person's attorney.

g) authorizes DOL to provide ADR to named person's attorney of record. Authorizes prosecutors and named person's attorney of record to provide ADR to treatment agencies to which person has applied for or been assigned for evaluation or treatment.

Section 13- Felony Sentencing

Requires consecutive sentencing for violations of circumvention or tampering in impaired driving convictions.

Section 14- Minor DUI, RCW 46.61.503

Adds safely-off-the-roadway defense for Physical Control in DOL hearings.

Section 15- Expands violation of RCW 46.20.750 to include circumventing IID as condition of release.

Section 16- 18 Details of 24/7 Program changes

Section 19 – Authorizes LEO with PC to believe a participant has violated terms of participation in 24/7 program to immediately take the participant into custody and cause them to be held until appearance before a judge on the next judicial day.

Imposes mandatory punishment for repeat offenders on 24/7 monitoring.

Authorizes court to remove person from 24/7 program for noncompliance.

Section 21- Immunizes blood-draw persons, who use proper procedures and the proper standard of care, from suit when drawing blood at the direction of law enforcement "under the provisions of a search warrant or exigent circumstances:"

[*Similar to Section 23* & *LEOs may now proceed with voluntary blood draws as well*]

Section 22 – RCW 46.61.506 is revised

The revised section drops the prior "or any technician trained in withdrawing blood."

The new section specifies that only state certified employees may draw blood.
Licensed under Ch. 18.71 (Physicians)
Licensed under Ch. 18.57 (Osteopathic Physician)
Licensed under Ch. 18.79 (Registered Nurse, Licensed Practical Nurse, Advanced Registered Nurse Practitioner)
Licensed under Ch. 18.71A (Physician's Assistant)
Licensed under Ch. 18.57A (Osteopathic Physician's Assistant)
Licensed under Ch. 18.73 (Advanced Emergency Medical Technician or Paramedic)

Authorized until July 1, 2016
Certified under Ch. 18.73 (Health Care Assistant)
Certified under Ch. 18.360 (Medical Assistant, Medical Assistant-Phlebotomist)

Section 23 – Somewhat broader Immunity for blood draw personnel and hospitals than Section 21-by including "any other authority of law provision."

Section 24 – Adds Safely off Roadway as permitted defense in DOL proceedings where Physical Control is charged.

Section 25 – **Veto by Governor** – Would have allowed category of medical assistant-phlebotomist category to continue, with certain new requirements. These included 50 blood draws per year and that all such blood draws occur in a clinic/hospital setting, annual mandatory training, etc. Following veto—we lose the medical assistant category completely in 2016.

ESSHB 2136 Consumption of Marijuana in Public Place

Section 401- Adds "concentrates" to list of MJ materials that may not be consumed in public.
Defines "public place" as RCW 66.04.010, without recognizing any exemptions.
Class 3 civil infraction

Sec. 1201- Adds to 69.50 that it is an unfair or deceptive practice under RCW 19.86.020 to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser any product that contains any amount of any synthetic cannabinoid.
"Synthetic Cannabinoids" includes any chemical compound identified in RCW 69.50.204(c)(30) or by the pharmacy quality assurance commission under RCW 69.50.201.

Sec. 1602-repeals RCW 69.50.425-misdemeanor violations-minimum penalties (July 1, 2015).