# LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

**Law Enforcement Officers: Thank you!**

**JANUARY 2020**

**TABLE OF CONTENTS FOR JANUARY 2020 LEGAL UPDATE**


**NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS……2**

**ISSUES OF (1) CAPACITY FOR MIRANDA WAIVER AND (2) VOLUNTARINESS OF CONFESSION FOR INTELLECTUALLY CHALLENGED AND MENTALLY TROUBLED SUSPECTS: FEDERAL HABEAS REVIEW STANDARD ALLOWS THE STATE TO PREVAIL IN APPEAL BY SERIAL MURDERER, BUT A DIFFERENT RESULT COULD HAVE OCCURRED IN DIRECT REVIEW OF BOTH ISSUES**
Cook v. Kernan, ___ F.3d ___ , 2020 WL ___ (January 21, 2020)…….2

**CIVIL RIGHTS ACT CIVIL LIABILITY IN A CORRECTIONAL INSTITUTION: SEXUAL ASSAULT CLAIM BY PRISONER WHO ALLEGES AN EIGHTH AMENDMENT VIOLATION REQUIRES A DIFFERENT JURY INSTRUCTION THAN THE INSTRUCTION REQUIRED FOR EIGHTH AMENDMENT EXCESSIVE FORCE CLAIM**
Bearchild v. Cobban, ___ F.3d ___ , 2020 WL ___ (9th Cir., January 16, 2020)……..5

**CIVIL RIGHTS ACT CIVIL LIABILITY IN A CORRECTIONAL INSTITUTION: TRIAL MUST BE HELD ON CONSTITUTIONAL CLAIMS FOR JUVENILE CORRECTIONS OFFICER'S (1) ALLEGED SEXUAL COMMENTS TO JUVENILE PLAINTIFF, (2) ALLEGED GROOMING BEHAVIOR, AND (3) ALLEGED UNAUTHORIZED WATCHING OF PLAINTIFF IN SHOWER; TRIAL ALSO IS REQUIRED ON SUPERVISOR LIABILITY**
Vazquez v. County of Kern, ___ F.3d ___ , 2020 WL ___ (9th Cir., January 31, 2020)…9

**WASHINGTON STATE SUPREME COURT…….11**

**RCW 26.44.050'S REQUIREMENT OF DSHS OR LAW ENFORCEMENT FOLLOWUP TO "REPORT CONCERNING THE POSSIBLE OCCURRENCE OF ABUSE OR NEGLECT" DOES NOT INCLUDE A REPORT THAT ONLY PREDICTS FUTURE ABUSE OR NEGLECT**
Wrigley v. State of Washington, ___ Wn.2d ___ , 2020 WL ___ (January 23, 2020)….11

**WASHINGTON STATE COURT OF APPEALS……..12**

**EXECUTION BY STAFF OF A COUNTY'S COURTHOUSE SECURITY SEARCH POLICY MAY BE LAWFUL UNDER FEDERAL AND STATE CONSTITUTIONS, BUT**

**ONLY IF SEARCHING IS LIMITED TO SCOPE OF A PERMISSIBLE ADMINISTRATIVE SEARCH**
State v. Griffith, ___ Wn. App. 2d ___ , 2019 WL ___ (Div. III, December 31, 2019)….12

**RCW 9A.76.180, THE INTIMIDATING A PUBLIC SERVANT STATUTE, IS HELD TO BE LIMITED, BASED ON CONSTITUTIONAL FREE SPEECH PROTECTION, TO TRUE THREATS, I.E., SERIOUS EXPRESSIONS OF THE INTENTION TO INFLICT BODILY HARM UPON OR TO TAKE THE LIFE OF ANOTHER**
State v. Dawley, ___ Wn. App. 2d ___ , 2019 WL ___ (Div. I, December 30, 2019)…..14

**BRIEF NOTES REGARDING JANUARY 2020 UNPUBLISHED WASHINGTON COURT OF APPEALS OPINIONS ON SELECT LAW ENFORCEMENT ISSUES……14**

**RESEARCH NOTE: AELE ARTICLE ADDRESSES NINTH CIRCUIT'S DECEMBER 2019 MARTINEZ DECISION ON CIVIL RIGHTS ACT LIABILITY FOR "STATE-CREATED DANGER" IN LAW ENFORCEMENT DV RESPONSES……..18**

************************************

## NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS

### ISSUES OF (1) CAPACITY FOR MIRANDA WAIVER AND (2) VOLUNTARINESS OF CONFESSION FOR INTELLECTUALLY CHALLENGED AND MENTALLY TROUBLED SUSPECTS: FEDERAL HABEAS CORPUS REVIEW STANDARD ALLOWS THE STATE TO PREVAIL IN APPEAL BY SERIAL MURDERER, BUT A DIFFERENT RESULT COULD HAVE OCCURRED IN DIRECT REVIEW OF BOTH ISSUES

In Cook v. Kernan, ___ F.3d ___ , 2020 WL ___ (January 21, 2020), a three-judge Ninth Circuit panel rejects the appeal by a petitioner/defendant convicted of murdering three persons in three separate incidents over the span of four months in 1992 in East Palo Alto, California, where Cook was a local dealer of crack cocaine. Cook lost direct appeals in the California court system from his three convictions, and he subsequently pursued habeas corpus review in the federal courts challenging the adequacy of the California state court review.

Cook had two primary arguments for challenging admissibility of his confession in the three cases. He argued that: (1) his intellectual deficits and his other mental defects made it impossible for him to understand the Miranda warnings and thus to make a knowing and intelligent waiver of his Miranda rights; and (2) those deficits and defects, when combined with the circumstances and methods of questioning, made his confession involuntary.

Both such challenges are difficult to support factually even in a direct appeal under the review standards for (1) Miranda waiver and (2) voluntariness of confession. And such challenges are much more difficult to support factually and legally under the high bar of the statutorily mandated federal court habeas corpus review standard for petitions for federal court review following exhaustion of state court appeals. If a state court can conceivably be said to have been reasonable in its view of the record and the law (with no conflicting U.S. Supreme Court precedent on point) on these issues, the petitioner loses the challenge even if a different view of

the factual record and the law by a hypothetical different state court might also be seen as reasonable.

Nonetheless, the U.S. District Court ruled on the Miranda waiver question in Cook that, even reviewing the case under the highly deferential habeas review standard, the California courts must be seen to have acted unreasonably on the waiver question given the evidence of (1) Cook's confused responses to questioning indicating inability to comprehend his rights; (2) his youth (age 18); (3) his low IQ (rated variously from somewhere in the 70s to 89); (4) his psychological deficiencies (PTSD and other neuropsychological problems); (5) his sometimes-apparent limited ability to follow verbal instructions; (6) his sometimes-apparent dissociation; and (7) his statements to interrogators in the second day of questioning that he had not understood on the first day that he had the right to have a lawyer present at his interrogation (as opposed to in court later).

The two Ninth Circuit judges in the majority in Cook disagree with the District Court's view on the waiver issue. Applying the deferential federal court review standard, two of the three members of the Ninth Circuit panel conclude that, based on the facts that – (1) Cook was repeatedly warned of his Miranda rights, (2) he expressly acknowledged to the officers in the initial interrogation session that he understood the warnings, and (3) he offered mostly coherent and knowing answers to the officers' questions – the California Supreme Court had a reasonable basis under the habeas review standard to reject Cook's challenge to the validity of his Miranda waiver.

All three Ninth Circuit judges apparently agree that the California Supreme Court had a reasonable basis to reject Cook's claim that his confession was involuntary despite his intellectual and psychological defects, combined with the circumstances of the interrogation.

The dissenting Ninth Circuit judge disagrees with the majority's conclusion that the California Supreme Court could have reasonably found support for a valid Miranda waiver on the basis that Cook knowingly and intelligently waived his Miranda rights.

**LEGAL UPDATE EDITORIAL NOTE AND COMMENT: The Ninth Circuit majority, concurring and dissenting opinions take up 67 pages discussing the facts, procedural background, habeas corpus review standard and the law regarding the Miranda waiver and voluntariness-of-confession issues. Readers wishing full context may wish to go to the Ninth Circuit website for published opinions (arranged chronologically) to review that discussion in its entirety. I quote below only the key part of the majority opinion's discussion of the voluntariness-of-confession issue. That discussion is something for law enforcement interrogators to consider when questioning suspects with apparent intellectual deficits and mental health issues:**

> **Cook argues that the evidence in the existing record establishes coercion, highlighting the expert opinions that his statements to police were not voluntary based on his mental capabilities at the time. Cook likens his situation to United States v. Preston, 751 F.3d 1008 (9th Cir. 2014) (en banc), where we held that the 38-minute noncustodial interview of an eighteen-year old with an IQ of 65 was coercive and rendered his confession involuntary.**
>
> **Cook's IQ at the time of his interview ranged between 83 to 89, which is notably higher than Preston's. However, other aspects of Cook's interrogation are comparable to Preston's, such as their similar age and some of the descriptions**

**of their mental attributes – i.e., "easily confused" and "highly suggestible and easy to manipulate." Cook's investigators also employed some of the same interrogation techniques that we noted "would be hard for a person of Preston's impaired intelligence to withstand or rationally evaluate" – such as "alternative questioning, providing suggestive details, and repetitious and insistent questions."**

**Moreover, Cook's custodial interrogation also lasted around seven hours – far longer than the noncustodial interview in Preston – during which Cook became emotional at times and appeared physically exhausted by the end.**

**These factors, on [on direct review, as opposed to habeas corpus review] could support the same conclusion we reached in Preston: that the "subtle forms of psychological persuasion" employed by the investigators were sufficiently coercive to overcome Cook's will.**

**However, our opinion in Preston is not "clearly established" Supreme Court precedent and thus not controlling under [habeas corpus] review. See [Williams v. Taylor, 529 U.S. 362, 412 (2000)] (stating that the phrase "clearly established Federal law" in § 2254(d)(1) "refers to the holdings, as opposed to the dicta, of [the Supreme] Court's decisions as of the time of the relevant state-court decision"). Moreover, none of the Supreme Court cases cited by Cook provide us with a "materially indistinguishable" set of facts by which we can determine whether the state court's decision to deny relief in Cook's case ran contrary to clearly established federal law. . . .**

**Nor do we find that the state court's conclusion would be an unreasonable application of clearly established federal law to the facts of Cook's case. Indeed, the "totality of the circumstances" test for voluntariness as established by the Supreme Court is a fact-based analysis that inherently allows for a wide range of reasonable application. . . .**

**Given this, Cook utterly fails to show how the conclusion that his confession was voluntary under the totality of the circumstances is "inconsistent with the holding in a prior decision of the Supreme Court." . . . . Cook's case presents several circumstances that, taken together, could reasonably support the finding that his confession was voluntary.**

**First, there is the apparent lack of blatantly coercive police activity from the videotaped interview. Aside from some of the suggestive or "repetitious and insistent" questioning we earlier noted, the entire interview contains little indication of coercion. In fact, the investigators' interactions with Cook throughout the interview appear professional, calm, and even affable at times. They did not raise their voices or threaten Cook or make explicit promises of leniency for his confession, and they offered him breaks, food, and water throughout the interview.**

**Second, Cook's responses, taken as a whole, could be reasonably viewed as a deliberate – and largely successful – effort on his part to resist the officers' interrogation tactics. Throughout the interview, Cook manages to evade the officers' repeated and varied attempts to elicit specific admissions and**

**inculpating details about the crimes, often by providing non-responsive, diversionary answers to their questions. When he does finally "confess," he makes only vague admissions to facts that minimize his culpability for the crimes – for instance, his repeated claims that he "blanked" out and does not remember actually committing the murders.**

**Third, the circumstances surrounding the crimes and Cook's personal history – such as his disposal of the murder weapon and flight to Oklahoma after the Morris shooting, as well as his previous arrests and experience with law enforcement – suggest that he could appreciate the gravity of his situation and his actions and could take affirmative measures to minimize or mask his guilt.**

**[Some citations omitted; some paragraphing revised for readability]**

**CIVIL RIGHTS ACT CIVIL LIABILITY IN A CORRECTIONAL INSTITUTION: SEXUAL ASSAULT CLAIM BY PRISONER WHO ALLEGES AN EIGHTH AMENDMENT VIOLATION REQUIRES A DIFFERENT JURY INSTRUCTION THAN THE INSTRUCTION REQUIRED FOR AN EIGHTH AMENDMENT EXCESSIVE FORCE CLAIM**

**LEGAL UPDATE PRELIMINARY EDITORIAL COMMENT RE THE BEARCHILD CASE: While allegations by plaintiffs are not facts, and we cannot know precisely what the correctional officer said or did in this case where he denies the plaintiff's allegations, this case nonetheless provides a prompt for noting the training mantra that most law enforcement and corrections officers have heard about berating retorts or belittling comments made to prisoners or other subjects in their criminal justice encounters: "If it feels good, don't say it."**

In Bearchild v. Cobban, ___ F.3d ___ , 2020 WL ___ (9th Cir., January 16, 2020), a 3-judge Ninth Circuit panel rules 2-1 that a prisoner-plaintiff in the Montana State Prison is entitled to a new trial in his Civil Rights Act lawsuit that alleges that his Eighth Amendment rights against cruel and unusual punishment were violated by a prison guard allegedly committing a sexual assault under the pretext of doing a pat-down search.

The majority opinion holds that the trial court's use of jury instructions modeled on the Eighth Amendment excessive force standard was error. Instead, the jury instructions should have explained the law relating to the Eighth Amendment sexual assault standard, which differs from the excessive force standard and can be summarized as follows (as paraphrased from the Ninth Circuit Majority Opinion):

> A prisoner presents a viable Eighth Amendment sexual assault claim where he or she proves that a prison staff member, acting under color of law and without legitimate penological justification, touched the prisoner in a sexual manner or otherwise engaged in sexual conduct (A) for the staff member's own sexual gratification, or (B) for the purpose of humiliating, degrading, or demeaning the prisoner.

Based on the record made in the jury trial, the Ninth Circuit Majority Opinion summarizes the facts of the case as follows:

> On the morning of November 4, 2013, Bearchild and several other MSP inmates walked from their housing unit to a general equivalency degree (GED) class located in a

different part of the prison. Along the way, guards stopped Bearchild and a fellow inmate to conduct pat-down searches of both men.

Bearchild alleges that Pasha's pat-down lasted about five minutes and involved rubbing, stroking, squeezing, and groping in intimate areas. Bearchild claims that Pasha then ordered him to pull his waistband away from his body, stared at his penis, and asked, "Is that all of you?"

According to Bearchild, Pasha and the other guards who observed the search began laughing. James Ball, another MSP inmate who was present, testified at trial and provided an account that was generally consistent with Bearchild's version of events. Ball also testified that, after watching the first part of Pasha's search, he told guards "that's not right," and was then "told to shut up." Bearchild testified that Pasha started the pat-down from behind him but then moved in front of him.

On cross-examination, Ball testified that the pat-down began with Pasha behind Bearchild. He was not asked whether Pasha ever walked around to the front of Bearchild's body.

Pasha vigorously disputed Bearchild's characterization of the search and denied that it lasted five minutes and that it transgressed the boundaries of a permissible pat-down. At trial, Pasha presented witnesses who explained that maintaining institutional security requires invasive procedures, particularly because inmates often hide contraband in intimate areas knowing that officers may be reluctant to look in those places. As part of his testimony, Pasha demonstrated the scope of the search he claimed to have conducted using another prison employee as a stand-in for Bearchild.

It is undisputed that Sara Simmons, the inmates' GED teacher, observed the first part of the search, but she did not testify at trial. Simmons gave two written statements: one to investigators, and one directly to Bearchild to use in his administrative grievance. In each, she explained that her view was limited, that she observed Pasha ask Bearchild to pull his pants away from his waist, and that eventually she left the scene until the search was completed.

Both of Simmons's statements noted that Bearchild seemed upset when she rejoined him immediately following his encounter with Pasha and that he told Simmons the search was "not right." Bearchild asserts that Simmons asked Pasha if he was "for real" during the search, but neither of Simmons's statements reflect that she said anything to any of the guards. Bearchild listed one of Simmons's statements as a "will-offer" exhibit for trial, but he never attempted to introduce either statement into evidence.

[Some paragraphing revised for readability]

The Ninth Circuit Majority Opinion summarizes the relevant case law regarding the Eighth Amendment sexual assault standard as follows:

> Bearchild does not allege that Pasha used more physical force than necessary to quell a riot or prevent a dangerous situation from escalating; he asserts that Pasha abused his position of authority by converting a routine pat-down search into a humiliating and abusive sexual assault. . . . . We agree with Bearchild that Instruction No. 12 misstated

our circuit's law with respect to an Eighth Amendment claim premised on a sexual assault theory. Two of our prior decisions make this plain.

First, in [Schwenk v. Hartford, 204 F.3d 1187 (9th Cir., 2000)] we considered a § 1983 claim brought by a transsexual woman prisoner against a male prison guard. Schwenk was initially held in a medium-security section of the all-male Washington State Penitentiary.

Schwenk alleged that the defendant-guard, Mitchell, engaged in an escalating pattern of sexual harassment that began with "winking, performing explicit actions imitating oral sex, making obscene and threatening comments, watching [Schwenk] in the shower while 'grinding' his hand on his crotch area, and repeatedly demanding that [Schwenk] engage in sexual acts with him."

Schwenk further alleged that Mitchell later propositioned her for sex in exchange for "girl stuff" and then forcibly grabbed her buttocks when she declined. Schwenk tried to avoid Mitchell after that encounter, but Mitchell subsequently entered her cell, exposed himself, demanded oral sex, and then pinned Schwenk against the bars of her cell and "began grinding his exposed penis into her buttocks" when she refused to comply. Schwenk asserted that Mitchell retaliated after she rebuffed him by orchestrating her transfer to a more restrictive housing unit where she was at greater risk for sexual assault by other inmates.

In her § 1983 complaint, Schwenk argued that this pattern of harassment and violence constituted a deprivation of her Eighth Amendment rights. Mitchell sought qualified immunity, primarily arguing that his conduct did not rise to the level of a constitutional violation, even if the disputed facts were assumed in Schwenk's favor. The district court denied summary judgment and Mitchell filed an interlocutory appeal.

We began our analysis by reviewing the Supreme Court's decision in [Hudson v. McMillian, 503 U.S. 1 (1992)], including the Court's clear direction that "when prison officials maliciously and sadistically use force to cause harm contemporary standards of decency are always violated." Taking our cue from Hudson, we ruled that "no lasting physical injury is necessary to state a cause of action" for an Eighth Amendment violation arising from sexual assault, because "[a] sexual assault on an inmate by a guard – regardless of the gender of the guard or of the prisoner – is deeply offensive to human dignity."

Schwenk affirmed the district court's order denying Mitchell qualified immunity, holding "the Eighth Amendment right of prisoners to be free from sexual abuse was unquestionably clearly established prior to the time of this alleged assault, and no reasonable prison guard could possibly have believed otherwise."

[Wood v. Beauclair, 692 F.3d 1041 (9th Cir., 2012)] followed Schwenk. In Wood, a male prisoner brought a § 1983 claim against a female prison guard. Wood alleged that the guard had a reputation for being "overly friendly with the inmates" and that she pursued a relationship with him. Despite his efforts to resist her advances, Wood alleged that a romantic – but not sexual – relationship began, where the two would talk "often about personal topics" and "[o]ccasionally, they would hug, kiss, and touch each other on the arms and legs."

When Wood learned that the guard was possibly married, he sought to end their relationship but the guard refused. Wood alleged that the guard subjected him to "aggressive pat searches in front of other inmates on a number of occasions," and, in at least two separate incidents, entered Wood's cell and forcibly grabbed his penis.

Wood filed a § 1983 action asserting "sexual harassment by [the guard] in violation of the Eighth Amendment," but the district court granted partial summary judgment, dismissing the Eighth Amendment harassment claims. The court concluded that Wood had impliedly consented to the sexual acts through his willing participation in the romantic relationship and that, consequently, no sexual assault occurred.

Our opinion in Wood began with the premise that "[s]exual harassment or abuse of an inmate by a corrections officer is a violation of the Eighth Amendment." We went on to explain that "sexual contact between a prisoner and a prison guard serves no legitimate role and 'is simply not part of the penalty that criminal offenders pay for their offenses against society.'" . . .

Because there is no "legitimate penological purpose" served by a sexual assault, the subjective component of "malicious and sadistic intent" is presumed if an inmate can demonstrate that a sexual assault occurred. . . . We also surveyed a range of cases from other circuits, each of which held that sexual assault can be cognizable as an Eighth Amendment violation.

[Court's footnote 7: *Wood cited three cases: Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003) (considering claim that prison guards "purposefully demeaned and sexually harassed [the plaintiff-prisoner] while strip searching him in front of female officers" (alteration in original)); Berry v. Oswalt, 143 F.3d 1127, 1131 (8th Cir. 1998) (considering claim by female prisoner that male guard "had attempted to perform non-routine patdowns on her, had propositioned her for sex, had intruded upon her while she was not fully dressed, and had subjected her to sexual comments"); and Watson v. Jones, 980 F.2d 1165, 1165 (8th Cir. 1992) (considering claim by two male inmates that female correctional officer routinely "fondled them during pat-down searches"). In each case, the court concluded that the prisoner-plaintiffs presented colorable constitutional claims*.]

[The Wood decision] also contrasted sexual assault cases with Eighth Amendment excessive force claims arising out of prison guards' efforts to suppress disturbances or restore discipline, observing that when prison disturbances arise, "prison officials must make 'decisions in haste, under pressure, and frequently without the luxury of a second chance.'" . . . . That context requires courts to afford prison staff significant deference in their use of force; only "malicious and sadistic" use of force will rise to the level of a constitutional violation. The same concerns are not present when officers are accused of engaging in conduct for their own sexual gratification or to humiliate or degrade inmates.

Existing case law distinguishes Eighth Amendment claims arising from sexual assault and makes a few points very clear. First, sexual assault serves no valid penological purpose. . . .

Second, where an inmate can prove that a prison guard committed a sexual assault, we presume the guard acted maliciously and sadistically for the very purpose of causing harm, and the subjective component of the Eighth Amendment claim is satisfied.

Finally, our cases have clearly held that an inmate need not prove that an injury resulted from sexual assault in order to maintain an excessive force claim under the Eighth Amendment. . . . Any sexual assault is objectively "repugnant to the conscience of mankind" and therefore not de minimis for Eighth Amendment purposes. . . .

The decision we issue today follows our prior holdings in Schwenk and Wood – that sexual assault has no place in prison – and it is entirely consistent with a steady drumbeat of recent case law from our sister circuits. . . . As the Second Circuit observed in Crawford v. Cuomo, "societal standards of decency regarding sexual abuse and its harmful consequences have evolved," 796 F.3d 252, 256 (2d Cir. 2015) [collecting statutes], and all but two states have criminalized sexual contact between prisoners and guards. .

Moreover, Congress passed the PREA unanimously in 2003 and the Attorney General promulgated National Standards to Prevent, Detect, and Respond to Prison Rape in 2012. See 77 Fed. Reg. 37, 106 (June 20, 2012). These legislative enactments are the "clearest and most reliable objective evidence of contemporary values." Atkins v. Virginia, 536 U.S. 304, 312 (2002) (quoting Penry v. Lynaugh, 492 U.S. 302, 331 (1989)). Schwenk and Wood reflect our recognition of these societal standards.

Schwenk and Wood had no occasion to define "sexual assault" for Eighth Amendment purposes because it was apparent that the extreme misconduct alleged in those cases transgressed constitutional boundaries. We now hold that a prisoner presents a viable Eighth Amendment claim where he or she proves that a prison staff member, acting under color of law and without legitimate penological justification, touched the prisoner in a sexual manner or otherwise engaged in sexual conduct for the staff member's own sexual gratification, or for the purpose of humiliating, degrading, or demeaning the prisoner.

This definition recognizes that there are occasions when legitimate penological objectives within a prison setting require invasive searches. It also accounts for the significant deference courts owe to prison staff, who work in challenging institutional settings with unique security concerns.

In a case like Bearchild's, where the allegation is that a guard's conduct began as an invasive procedure that served a legitimate penological purpose, the prisoner must show that the guard's conduct exceeded the scope of what was required to satisfy whatever institutional concern justified the initiation of the procedure. Such a showing will satisfy the objective and subjective components of an Eighth Amendment claim.

[Some citations omitted, others revised for style; some footnotes omitted; some paragraphing revised for readability]

**CIVIL RIGHTS ACT CIVIL LIABILITY IN A CORRECTIONAL INSTITUTION: TRIAL MUST BE HELD ON CONSTITUTIONAL CLAIMS FOR JUVENILE CORRECTIONS OFFICER'S (1) ALLEGED SEXUAL COMMENTS TO JUVENILE PLAINTIFF, (2) ALLEGED GROOMING**

**BEHAVIOR, AND (3) ALLEGED UNAUTHORIZED WATCHING OF PLAINTIFF IN SHOWER; TRIAL ALSO IS REQUIRED ON SUPERVISOR LIABILITY**

In Vazquez v. County of Kern, ___ F.3d ___ , 2020 WL ___ (9th Cir., January 31, 2020), a three-judge Ninth Circuit panel reverses a U.S. District Court summary judgment order for the County of Kern (California), and the panel remands the Civil Rights Act case to the U.S. District Court for trial on the allegations of a female juvenile detainee that a Juvenile Corrections Officer violated the juvenile detainee's constitutional rights when the male Corrections Officer: (1) made extensive sexual comments to her, (2) groomed her for sexual abuse, and (3) on several occasions, with no employment justification, looked at her while she was showering. The panel also rules that a claim of supervisor liability must also by tried.

The following summary is adapted relatively closely from a Ninth Circuit staff synopsis (which is not part of the Ninth Circuit Opinion).

*Individual liability of the Corrections Officer*

The Ninth Circuit panel holds that, viewing the facts in the light most favorable to plaintiff and drawing all reasonable inferences in her favor (as is required in review of a summary judgment ruling in this context), she presented sufficient facts to establish a violation of her right to bodily privacy, right to bodily integrity, and right to be free from punishment as guaranteed by the Fourteenth Amendment of the U.S. Constitution. Thus the panel holds that the plaintiff alleged facts from which a jury could find that:

- the Corrections Officer violated plaintiff's right to privacy under the Fourteenth Amendment when he allegedly watched her shower multiple times.

- the Corrections Officer's alleged conduct, which included touching plaintiff's face and shoulders without her consent, talking about her appearance in her shower gown, and telling her about a sexual dream, violated plaintiff's Fourteenth Amendment right to bodily integrity.

- The Corrections Officer violated plaintiff's right to be free from punishment because she alleged that the Officer's conduct caused her harm outside of the inherent discomforts of confinement and did not serve a legitimate governmental objective.

The panel held that the Corrections Officer was not entitled to qualified immunity because case law is established on the constitutional standards as applied to the facts alleged by plaintiff.

*Individual liability of a supervisor*

The three-judge panel also held that a jury could find that the Corrections Officer's supervisor knew or reasonably should have known of the violations and failed to act to prevent them. Therefore, viewing the evidence in the light most favorable to plaintiff and making all justifiable inferences in her favor, the panel held that the district court erred when it concluded that there was no evidence supporting a causal link between the supervisor's conduct and the Corrections Officer's alleged violation of plaintiff's constitutional rights. On this question, the three-judge panel notes that the supervisor was aware of a prior incident involving alleged impropriety in the accused Corrections Officer's supervision of female wards' showers.

**LEGAL UPDATE EDITOR'S NOTE: Readers may wish to review the detailed descriptions of the facts, proceedings and case law in the Ninth Circuit Opinion, which is accessible under "Opinions (Published)" on the internet at http://www.ca9.uscourts.gov/ Opinions are arranged chronologically. Also, the Ninth Circuit Opinions site provides a search tool to find decisions by, among other things, case name.**

**********

## WASHINGTON STATE SUPREME COURT

### RCW 26.44.050'S REQUIREMENT OF DSHS OR LAW ENFORCEMENT FOLLOWUP TO "REPORT CONCERNING THE POSSIBLE OCCURRENCE OF ABUSE OR NEGLECT" DOES NOT INCLUDE A REPORT THAT ONLY PREDICTS FUTURE ABUSE OR NEGLECT

In Wrigley v. State of Washington, ___ Wn.2d ___ , 2020 WL ___ (January 23, 2020), a 5-4 majority of the Washington Supreme Court reverses a 2018 decision of Division Two of the Court of Appeals and rules that a report predicting only future abuse of a child does not trigger the statutory duty under RCW 26.44.050 for Washington's Department of Children, Youth and Families (hereafter, "Department," which at the time of this lawsuit was under the umbrellas of the Department of Social and Health Services) and Washington's state and local law enforcement agencies to investigate a "report concerning the possible occurrence of abuse or neglect."

RCW 26.44.050 (emphasis added) includes the following provision imposing a duty on law enforcement agencies and the Department to investigate regarding reports of child abuse or neglect:

> Upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

RCW 26.44.030 imposes a reporting duty for many categories of mandatory reporters who develop reasonable cause to believe that child abuse or neglect or sexual abuse has occurred, and subsection (5) (emphasis added) of section 030 provides:

> (5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify [DSHS] of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify [DSHS] within twenty-four hours. In all other cases, the law enforcement agency shall notify the [DSHS] within seventy-two hours after a report is received by the law enforcement agency.

In this case, during the course of making a dependency placement decision for a six-year-old child, the former unit of Department of Social and Health Services that has since been replaced by the separate Washington State agency, the Department of Children, Youth and Families, received extensive allegations from the mother of the child regarding past abuse of her and past criminal activity by the child's father. The Department did not receive any allegations that the father had abused the child in the past or was presently doing so. But the assigned social worker was told by the child's mother that if the child were to be placed with the father, the child "would be dead within six months."

Less than three months later, the child died after the father struck the child on the head. The father was subsequently convicted of manslaughter for the assault.

Five justices of the Washington Supreme Court sign the Majority Opinion that concludes as follows that the prediction of future assaults by the mother does not support a lawsuit grounded in the statutory duty of DSHS under chapter 26.44 RCW:

> We find that DSHS never received a report involving conduct of abuse or neglect of A.A. by Viles. Since no report was received, the duty to investigate was not triggered. Since we find the statutory duty to investigate was never triggered, we do not evaluate the sufficiency of any investigation that DSHS performed.

But the Majority Opinion also drops the following footnote in its concluding paragraph, thus leaving the door open to pursuit of the lawsuit on a different ground:

> Wrigley's legitimate concerns of Viles's prior acts of domestic violence against her cannot alone form the basis of a sufficient report of child abuse or neglect of A.A. under former RCW 26.44.050. See former RCW 26.44.020(14). This allegation may be appropriately addressed in a general negligence claim on remand.

A Concurring Opinion signed by four justices argues in vain that the Court should not have interpreted the statutory scheme as never deeming a prediction of future child abuse or neglect as constituting "a report concerning the possible occurrence of abuse or neglect" for purposes of bringing a lawsuit based on RCW 26.44.050.

Result: Reversal of decision of Court of Appeals in favor of the mother of the deceased child; case remanded to the Thurston County Superior Court for further proceedings, including the possible litigation of a general negligence claim by the deceased child's mother.

**********

## WASHINGTON STATE COURT OF APPEALS

### EXECUTION OF A COUNTY'S COURTHOUSE SECURITY SEARCH POLICY MAY BE LAWFUL UNDER FEDERAL AND STATE CONSTITUTIONS, BUT ONLY IF SEARCHING IS LIMITED TO SCOPE OF A PERMISSIBLE ADMINISTRATIVE SEARCH

In State v. Griffith, ___ Wn. App. 2d ___ , 2019 WL ___ (Div. III, December 31, 2019), Division Three of the Court of Appeals reverses a conviction for possession of a controlled substance. The Court of Appeals rules under the Fourth Amendment and the Washington constitution, article I, section 7, that execution of a county's courthouse security search policy may be lawful, but only if the suspicion-less searching is limited to the scope of a permissible administrative

search. The Court of Appeals rules that the case must be remanded for further fact-finding on the issue of the constitutionality of the courthouse screening search in this case.

A private security guard removed methamphetamine from a courthouse visitor's coat that the visitor took off and submitted to separate search during a courthouse security screening. The trial court denied the defendant's motion to suppress the drugs that were found by the security guard.

The trial court judge incorrectly believed that during a courthouse security screening process, security personnel may lawfully search through a person's coat pockets based on implied consent (i.e., based on the visitor impliedly consenting to search by choosing to go through the screening process instead of turning back at the threshold of the checkpoint). The prosecutor conceded on appeal in Griffith that, under controlling case law, implied consent is a not a viable legal rationale for such searches.

The trial court also justified denying the defendant's motion to suppress based upon the alternative rationale that some drugs (for example, fentanyl) are so dangerous that a search of coat pockets for drugs is lawful in a courthouse screening process. The Court of Appeals rules in a footnote that there is no evidence that one can "weaponize" fentanyl or other drugs, and therefore that this is not a lawful justification for searching a person's clothing during a courthouse security screening.

Apparently because the trial court had concluded that the search of the defendant's coat pocket was lawful based on the above two alternative rationales, the trial court concluded that it was not necessary for the trial court to make a factual finding on whether the private security guard (A) fetched the methamphetamine out of the defendant's coat pocket along with a cell phone as part of the process of looking for weapons, or (B) fetched the drugs out of the pocket after knowing that no hard object such as the defendant's cell phone was in his coat pocket.

The security guard testified in the suppression hearing that he reached into the coat pocket because he felt a hard object that turned out to be Mr. Griffith's cell phone. However, a sheriff's deputy and a police officer each testified at the suppression hearing that the security guard had told them that the defendant placed his cell phone and his wallet in a basket before handing over his coat to be searched. The security guard also testified that while his "primary purpose in a screening search is to find weapons, even if he feels something soft, he is "still going to look." Asked why, he testified: "Curiosity. Got to know what it is."

The Court of Appeals in Griffith declares that under relatively well-established Fourth Amendment case law on entry-screening searches (especially at airports), a warrantless courthouse screening search is valid under the Fourth Amendment's "special needs" exception to the warrant requirement, so long as (1) the search was undertaken pursuant to a legitimate administrative search scheme; (2) the searcher's actions are cabined to the scope of the permissible administrative search; and (3) there was no impermissible programmatic secondary motive. i.e., programmatic pretext, for the search. The Griffith Court concludes further that, while Washington case law is not as well-established, warrantless and suspicion-less courthouse screening searches likewise do not violate article I, section 7 of the Washington constitution when limited in a manner similar to the Fourth Amendment standard.

Under this legal standard, when conducting a courthouse screening search, a screener may not remove a soft item that does not appear to be a weapon from a person's coat pocket. If, however, a soft item that contains contraband is inadvertently removed at the same time as a

hard object that could be a weapon, the contraband will not be suppressed if the requirements of plain view are established.

As noted above, the case is remanded to the trial court for additional fact-finding to determine if the private security guard first determined that the coat pocket did not contain a weapon and then searched the coat pocket, felt only a soft object, and then unlawfully seized methamphetamine from the defendant's coat pocket.

Result: Reversal of Chelan County Superior Court conviction of Lanny Lee Griffith for possession of methamphetamine; case remanded for further fact-finding on the suppression issue.

**RCW 9A.76.180, THE INTIMIDATING A PUBLIC SERVANT STATUTE, IS HELD TO BE LIMITED, BASED ON CONSTITUTIONAL FREE SPEECH PROTECTION, TO TRUE THREATS, I.E., SERIOUS EXPRESSIONS OF THE INTENTION TO INFLICT BODILY HARM UPON OR TO TAKE THE LIFE OF ANOTHER**

In State v. Dawley, ___ Wn. App. 2d ___ , 2019 WL ___ (Div. I, December 30, 2019), Division Two of the Court of Appeals reverses convictions on two counts of violating RCW 9A.76.180, the intimidating a public servant statute. The Court of Appeals rules that because of constitutional Free Speech protection, the statute applies only to true threats, i.e., serious expressions of the intention to inflict bodily harm upon or to take the life of another.

In Dawley, the defendant made relatively vague statements about the imperiled safety of the police chief and city attorney due to their failure to act in accord with his wishes, as well as about danger that might be posed by other members of the public who would be inspired by the defendant's complaints about the chief and city attorney. But, as the prosecutor conceded on appeal, the defendant's words did not explicitly state serious expression of intention to inflict bodily harm on the chief or city attorney.

Result: Reversal of Island County Superior Court convictions of Jeremy William Dawley on two counts of intimidating a public servant. He did not appeal from his conviction for telephone harassment.

Status: Based on review of the Washington Courts' website as of February 3, 2020, I think the no further review will be sought from the Court of Appeals decision.

**LEGAL UPDATE EDITORIAL NOTE: The interpretation of the intimidating a public servant statute in Division One's Dawley decision appears to be in direct conflict with the decision by Division Two over twenty years ago in State v. Stephenson, 89 Wn. App. 794 (1998). Stephenson held that threats beyond "true threats" can be the lawful basis of prosecution under the statute without running afoul of Free Speech protections. As always, I urge law enforcement officers and agencies to consult their legal advisors and local prosecutors on legal questions triggered by the Legal Update.**

**************************************

**BRIEF NOTES REGARDING JANUARY 2020 UNPUBLISHED WASHINGTON COURT OF APPEALS OPINIONS ON SELECT LAW ENFORCEMENT ISSUES**

Under the Washington Court Rules, General Rule 14.1(a) provides: "Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate."

Every month I will include a separate section that provides very brief issue-spotting notes regarding select categories of unpublished Court of Appeals decisions that month. I will include such decisions where issues relating to the following subject areas are addressed: (1) Arrest, Search and Seizure; (2) Interrogations and Confessions; (3) Implied Consent; and (4) possibly other issues of interest to law enforcement (though probably not sufficiency-of-evidence-to-convict issues).

In December 2020, ten unpublished Court of Appeals opinions fit these categories. I do not promise to be able catch them all, but each month I will make a reasonable effort to find and list all decisions with these issues in unpublished opinions from the Court of Appeals. I hope that readers, particularly attorney-readers, will let me know if they spot any cases that I missed in this endeavor, as well as any errors that I may make in my brief descriptions of issues and case results.

1. State v. Paul W. Williams: On January 2, 2020, Division Three of the COA rejects the appeal of the defendant from his Yakima County Superior Court conviction for *minor in possession of marijuana*. The Court of Appeals holds that a law enforcement **officer had reasonable articulable suspicion to temporarily seize and question a minor as to possession of marijuana, where, following a lawful traffic stop of a car, the officer smelled marijuana coming from inside a car in which the minor sat as a passenger**. During the officer's questioning, the defendant admitted to possessing marijuana as a minor. The Williams Court distinguishes State v. Grande, 164 Wn.2d 135 (2000) a Washington Supreme Court decision holding under article I, section 7 of the Washington constitution that there is no probable cause to arrest car occupants in similar circumstances. The Williams Court's explanation in key part is as follows:

> [The officer] held grounds for the initial traffic stop based on Steven Enriquez's running of a stop sign. [The officer], based on his training and experience, smelled a strong odor of marijuana from within the Chevy Malibu. [The officer] had reason to believe that none of the Malibu's occupants were eighteen years of age or older. [The officer] lacked probable cause to arrest any of the car's occupants simply for being inside the vehicle, but [the officer] held reasonable suspicion that a minor possessed marijuana. [The officer] thereby possessed authority to briefly question Paul Williams to investigate whether, as an individual under twenty-one years of age, Williams illegally possessed marijuana. [The officer] lawfully asked questions during the stop to confirm or dispel his suspicions.

2. State v. Corey Dean Harris: On January 7, 2020, Division Two of the COA rejects the State's appeal of a suppression order in a prosecution in Clark County Superior Court for *five counts of possession of stolen property*. The trial court suppressed evidence regarding stolen property that an officer found in a shop building because **the officer obtained consent to enter the shop building from the landlord but not the tenant**. The Court of Appeals rejects the State's argument that **the "independent source" doctrine** saves the warrant search, because, **without the officer-affiant's information about what he saw when he entered the**

**workshop unlawfully, the affidavit does not establish probable cause to search the shop building**.

3. State v. David Dorrance Roque Gaspar: On January 13, 2020, Division Two of the COA rejects the appeal of defendant from his Pierce County Superior Court convictions for *four counts of first degree child rape of his cousin*. Defendant argued on appeal that his confession during a custodial interrogation was not voluntary. He pointed out that the lead detective used some deception in suggesting that the sex was maybe consensual, even though the victim was only nine years old and the defendant an adult at the time of the crimes. Defendant also pointed out that the lead detective told him that he would be in a "world of hurt," if he did not confess; the detective testified that what was meant by this phrase was that Roque Gaspar would appear dishonest in the interview recording and "might have to pay for what he did in court."

In key part, the Roque Gaspar Court's fact-based legal analysis in **holding the confession to be voluntary** is as follows:

> . . . Roque Gaspar [a young adult] testified at the CrR 3.5 hearing that he was "a pretty smart person," who had been held back during his sophomore year of high school due to not doing his homework [not due to intellectual deficit]. Roque Gaspar was gainfully employed and self-sufficient. The record supports the trial court's conclusion that Roque Gaspar's condition, maturity, physical condition, and mental health provided him the ability to knowingly, voluntarily, and intelligently waive his constitutional rights.
>
> The record further supports the trial court's conclusion that the location, duration, and methods of the interrogation were not so manipulative or coercive that they deprived Roque Gaspar of his ability to make unconstrained, autonomous decisions. The interrogation lasted approximately one hour and forty minutes. As seen in the interrogation video, this included breaks and many long pauses between questions. The video shows that the detectives were not overbearing or loud. And although [the detective] warned Roque Gaspar that he would be in a "world of hurt" if he did not admit to having intercourse with A.G., considering the totality of the circumstances, the trial court did not err when it ruled that [the detective's] tactics were not so manipulative or coercive that they deprived Roque Gaspar of his ability to make an autonomous decision to confess.

4. State v. Nicole Rene Jones: On January 21, 2020, Division One of the COA rejects defendant's appeal from her Snohomish County Superior Court conviction for *possession of a controlled substance*. At 6:30 p.m. on June 2016, a law enforcement officer noticed that defendant was either asleep or passed out in the driver's seat of her car with the driver's side window down. The officer tapped on the car and spoke in a raised voice to rouse the defendant. He observed an open purse containing an unlabeled pill bottle containing different kinds of pills. When the woman roused, the officer asked her to take off her sun glasses. She complied and the officer observed that each of her pupils were tiny, "like a pinpoint." The officer asked for her ID and took it back to his patrol car. The Court of Appeals rules that at the point of taking the ID and returning to the patrol car – and not before – the officer had seized the defendant. But the Court rules that **the seizure was supported by reasonable suspicion of violation of Washington drug laws by the defendant**.

5. State v. Kyle Phillip Crumpton: On January 21, 2020, Division One of the COA rejects the defendant's appeal from a Snohomish County Superior Court determination that his *second*

*degree robbery conviction authorized revocation of his driver's license under RCW 46.20.285(4)*. The statute authorizes revocation of a driver's license for "[any felony in the commission of which a motor vehicle is used[.]".) Crumpton argued on appeal that his use of the car was only "incidental" to the robbery, and therefore was insufficient to support the revocation of his license. **The Court of Appeals rules that RCW 46.20.285(4) applies under the facts of this case where defendant positioned and used the car for his getaway from the robbery.** The Court of Appeals distinguishes factually the decision in State v. Alcantar-Maldonado, 184 Wn. App. 215, 228 (2014) where use of a vehicle was deemed to be only "incidental" in circumstances where a defendant used a vehicle to drive to a residence, after which he went inside and assaulted a male friend of his estranged wife.

6. State v. Phuong Vien Mai: On January 21, 2020, Division One of the COA rejects the appeal of defendant from his King County Superior Court conviction for *first degree unlawful possession of a firearm*. He lost his suppression challenge to recovery of a firearm by community corrections officers during a warrantless search of his residence. The Court of Appeals applies the standard for CCO searches set forth in State v. Cornwell, 190 Wn.2d 296 (2018) and rules that **there was a sufficient non-stale nexus between his community custody violation and the property searched**. Casino video footage had depicted Mai in possession of a firearm 54 days before CCOs searched his residence and found a handgun, controlled substances and a large amount of cash.

7. State v. Sergio Stuardo Monroy: On January 21, 2020, Division One of the COA rejects the appeal of defendant from his King County Superior Court conviction for *rape in the second degree*. The Court of Appeals rules, among other rulings, that **officers were not required to Mirandize defendant before questioning him because, under the totality of the circumstances, defendant was not in custody to a degree associated with formal arrest**. The Court notes that

> [b]oth detectives specifically advised Monroy that he was not under arrest. They did not place him in handcuffs or restrict his movement. [One detective] testified that the general tone of the conversation was "cordial" and that he did not believe Monroy was a suspect at that time. Although English is not Monroy's first language, the detectives testified that they had no difficulty conversing with him in English. Monroy did not ask to leave, did not ask detectives to stop questioning him, and did not ask for an attorney at any time during the interview.

8. State v. Christopher R. Johnson: On January 28, 2020, Division Two of the COA rejects the appeal of defendant caught in a Craigslist sting from his Kitsap County Superior Court convictions for *attempted second degree rape of a child, attempted commercial sexual abuse of a minor, and communication with a minor for immoral purposes*. Entrapment is not a defense if law enforcement "merely afforded the actor an opportunity to commit a crime." RCW 9A.16.070(2). The Court of Appeals explains as follows that **the evidence shows that the State merely afforded defendant the opportunity to commit the crimes relating to** child sex exploitation for which he was convicted:

> Johnson willingly responded to the [Craigslist] posting, steered the conversation to explicitly sexual topics, testified that he wanted to meet the person, and drove to the agreed locations.

9. State v. E.E.: On January 28, 2020, Division Two of the COA rejects the appeal of defendant from his Lewis County Superior Court juvenile *felony harassment* conviction. The

Court of Appeals accepts the State's concession that the defendant's confession should have been suppressed by the trial based on failure to Mirandize him prior to police questioning in a school principal's office (**Miranda warnings were necessary because, among other things, the principal had ordered the defendant to go to the office, the door remained closed during the officer's questioning, and the defendant was not told that he was free to leave**). However, the Court of Appeals also agrees with the State that other evidence in the record is so strong that the **admission of the confession in evidence was harmless error**.

10. State v. Jacob Skylar Allyn Lee: On January 28, 2020, Division Two of the COA rejects defendant's appeal from his Pierce County Superior Court conviction for one count of *vehicular homicide*. The Court of Appeals rejects defendant's argument for suppressing his statements to officers at the scene of a crash site, concluding: (1) **that evidence of defendant's behavior and communications at the scene of the crash does not support his argument that his statements to the officer were involuntary due to defendant's injuries and inebriation**; and (2) that at the time of the officer's questioning of the defendant at the crash site while he was lying down and receiving medical treatment, **no Miranda warnings were required** because defendant was free to terminate the law enforcement encounter and therefore not in custody equivalent to arrest.

**********************************

**RESEARCH NOTE: AELE ARTICLE ADDRESSES NINTH CIRCUIT'S DECEMBER 2019 MARTINEZ DECISION ON CIVIL RIGHTS ACT LIABILITY FOR "STATE-CREATED DANGER" IN LAW ENFORCEMENT DOMESTIC VIOLENCE RESPONSES**

Digested in the December 2019 Legal Update beginning at page 10 is the Ninth Circuit decision in Martinez v. City of Clovis, ___ F.3d ___ (9th Cir., December 4, 2019). The Ninth Circuit declared in its Martinez decision that, based on the absence of prior controlling case law, qualified immunity protected the law enforcement officer-defendants in that Civil Rights Act civil liability case arising from a DV investigation. However, the Ninth Circuit's Martinez decision also declares that the "state-created danger doctrine" will support lawsuits in cases arising in the future where officers embolden an alleged DV abuser by (1) disclosing the victim's confidential report and making disparaging remarks about the victim in the presence of the suspect, or (2) giving praise to the abuser in a way that suggests that abuse will not be punished.

The Americans For Effective Law Enforcement recently published an excellent comprehensive article addressing the Martinez state-created danger decision. The AELE article can be accessed at http://www.aele.org/law/2020all02/2020-02MLJ101.pdf

**********************************

**LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT IS ON WASPC WEBSITE**

Beginning with the September 2015 issue, the most recent monthly Legal Update for Washington Law Enforcement is placed under the "LE Resources" link on the Internet Home Page of the Washington Association of Sheriffs and Police Chiefs. As new Legal Updates are issued, the current and three most recent Legal Updates will be accessible on the site. WASPC will drop the oldest each month as WASPC adds the most recent Legal Update.

In May of 2011, John Wasberg retired from the Washington State Attorney General's Office. For over 32 years immediately prior to that retirement date, as an Assistant Attorney General

and a Senior Counsel, Mr. Wasberg was either editor (1978 to 2000) or co-editor (2000 to 2011) of the Criminal Justice Training Commission's Law Enforcement Digest. From the time of his retirement from the AGO through the fall of 2014, Mr. Wasberg was a volunteer helper in the production of the LED. That arrangement ended in the late fall of 2014 due to variety of concerns, budget constraints and friendly differences regarding the approach of the LED going forward. Among other things, Mr. Wasberg prefers (1) a more expansive treatment of the core-area (e.g., arrest, search and seizure) law enforcement decisions with more cross references to other sources and past precedents regarding these core-area cases; and (2) a broader scope of coverage in terms of the types of cases that may be of interest to law enforcement in Washington (though public disclosure decisions generally are unlikely to be addressed in the Legal Update). For these reasons, starting with the January 2015 Legal Update, Mr. Wasberg has been presenting a monthly case law update for published decisions from Washington's appellate courts, from the Ninth Circuit of the United States Court of Appeals, and from the United States Supreme Court. Since January 2018, he has also been providing some information every month about certain categories of unpublished Washington Court of Appeals decisions.

The Legal Update does not speak for any person other than Mr. Wasberg, nor does it speak for any agency. Officers are urged to discuss issues with their agencies' legal advisors and their local prosecutors. The Legal Update is published as a research source only and does not purport to furnish legal advice. Mr. Wasberg's email address is jrwasberg@comcast.net. His cell phone number is (206) 434-0200. The initial monthly Legal Update was issued for January 2015. Mr. Wasberg will electronically provide back issues on request.

***************************************

## INTERNET ACCESS TO COURT RULES & DECISIONS, RCWS AND WAC RULES

The Washington Office of the Administrator for the Courts maintains a website with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [http://www.courts.wa.gov/]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [http://legalwa.org/] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions. The site also includes links to the full text of the RCW, WAC, and many Washington city and county municipal codes (the site is accessible directly at the address above or via a link on the Washington Courts' website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [http://www.courts.wa.gov/court_rules].

Many United States Supreme Court opinions can be accessed at [http://supct.law.cornell.edu/supct/index.html]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's own website at [http://www.supremecourt.gov/opinions/opinions.html]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since September 2000 can be a ccessed (by date of decision or by other search mechanism) by going to the Ninth Circuit home page at [http://www.ca9.uscourts.gov/] and clicking on "Opinions." Opinions from other U.S. circuit courts can be accessed by substituting the circuit number for "9" in this address to go to the home pages of the other circuit courts. Federal statutes are at [http://www.law.cornell.edu/uscode/].

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's, is at [http://www.leg.wa.gov/legislature]. Information about bills filed since 1991 in the Washington Legislature is at the same address. Click on "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. The Criminal Justice Training Commission (CJTC) Law Enforcement Digest Online Training can be found on the internet at [cjtc.wa.gov/resources/law-enforcement-digest].

**********