

CONSTRUCTIVE NOTICE AND WARNING

NOTICE TO PRINCIPAL IS NOTICE TO ALL AGENT(S)

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HALT, YOU MAY NOT “**ARREST AND TAKE ME INTO CUSTODY**” FOR JUST ANYTHING THAT YOU WANT TO OR RCW 46.20.342 DRIVING WHILE LICENSE SUSPENDED WITHOUT VIOLATING THE ARREST WITHOUT WARRANT STATUTE RCW 10.31.100(2)(a)(b) and (c) **WHICH DOES NOT INCLUDE RCW 46.20.342 DWLS!!!**

“The dissent mischaracterizes **RCW 10.31.100**. That statute first establishes the general rule that an officer may arrest for a misdemeanor or gross misdemeanor **only when the offense is committed in the officer’s presence**. The subsections that follow set forth a number of exceptions.

Subsection (3)(e) provides that when a officer has probable cause to believe that the offense of driving while one’s license is suspended or revoked has been committed, the officer then “**shall have the authority to arrest the person**”. RCW 10.31.100(3)(e). **However, it is significant that this subsection does not specifically authorize a custodial arrest. Since the subsection immediately prior does specifically authorize a custodial arrest in other circumstances, see RCW 10.31.100(2), the difference cannot be deemed inadvertent.** The omission of words from a statute must be considered intentional on the part of the legislature. *State v. Roadhs*, 71 Wn.2d 705, 707, 430 P.2d 586 (1967).

Furthermore, the dissent fails to realize that the facts make RCW 10.31.100(3)(e) moot here because Trooper Fry clearly testified that in this case, he had determined to release Kincaid prior to engaging in his search of the vehicle. **At most, RCW 10.31.100(3)(e) gives the officer the authority to arrest; it does not require that he take an offender into custody**, where, as here, the officer determines correctly that there is no reason to do so. . . . **the Ninth Circuit recently held that detention in a police car after a stop for suspicion of driving with a suspended license did not constitute a “full custody arrest”**, and therefore a warrantless search of the driver’s passenger compartment could not be upheld as incident to an arrest. *United States v. Parr*, 843 F.2d 1228 (9th Cir. 1988).” **STATE v. STORTROEN, 53 Wn.App. 654, 659, 769 P.2d 321 (March 20, 1989).**

“In *Stortroen*, the court held that an officer could not make a custodial arrest simply because the driver was operating the vehicle with a revoked license. It considered RCW 10.31.100 in a footnote, but found that it did not give police officers authority to perform a custodial arrest. *Stortroen*, 53 Wn.App. at 659 n.5. It noted that RCW 10.31.100(3) provides that an officer “**shall have the authority to arrest**” a person for offenses such as driving with a revoked license. It contrasted this language with that in the preceding subsection, RCW 10.31.100(2), which states that a police officer “**shall arrest and take into custody**” an individual who has committed some act of domestic violence. The court felt that such a difference in language could not be inadvertent. Therefore it

concluded that RCW 10.31.100(3) did not authorize custodial arrests. ...**Although RCW 10.31.100 may use the word “arrest” in a generic fashion, RCW 46.64.015 ANSWERS THE SEPARATE QUESTION OF WHAT FORM A TRAFFIC ARREST MUST TAKE.** It provides that the detention arising from such an arrest must generally be no longer than “reasonably necessary **to issue and serve a citation and notice**”. RCW 46.64.015.

. . . The central issue in this case is the relation between our decision in State v. Hehman, 90 Wn.2d 45, 47, 578 P.2d 527 (1978), and subsequent legislation, contained in RCW 10.31.100 and RCW 46.64.015. We conclude that the legislation codified our rule in Hehman that officers generally may not perform custodial arrests for minor traffic offenses.” **STATE v. REDING, 119 Wn.2d 685, 688, 835 P.2d 1019 (September 10, 1992).** And;

“RCW 46.64.015 Citation and notice to appear in court–Issuance–Contents–Written promise–Arrest–Detention.

Whenever any person is arrested for any violation of the traffic laws or regulations which is punishable as a misdemeanor or by imposition of a fine, **the arresting officer may serve upon him or her a traffic citation and notice to appear in court.** ...An officer may not serve or issue any traffic citation or notice for any offense or violation except either when the offense or violation is committed **in his or her presence** or when a person may be arrested pursuant to RCW 10.31.100, as now or hereafter amended. **The detention arising from an arrest under this section may not be for a period of time than is reasonably necessary to issue and serve a citation and notice, ...”** And;

RCW 46.63.030 Notice of traffic infraction–Issuance.

“(1) A law enforcement officer has the authority to issue a notice of traffic infraction:
(a) When the infraction is committed in the officer’s presence.” And;

RCW 46.61.021(3) Duty to obey law enforcement officer–Authority of officer.

“(3) Any person requested to identify himself or herself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself or herself, give his or her current address, and sign an acknowledgment of receipt of notice of the infraction. And;

This has been overruled in **Port Orchard v. Delmar L. Tilton, 77 Wash. App. 178 (March 6, 1995).**

Furthermore, **RCW 46.61.021(3) is worded in the conjunctive “and” just like RCW 46.64.015.** It requires a person to “identify himself, give his current address, **“[a]nd” sign an acknowledgment of receipt of the notice of the notice of infraction.**”

CrRLJ 2.1(b) Citation and Notice to Appear.

(1) Issuance. Whenever a person is arrested or could have been arrested pursuant to a statute for a violation of law which is punishable as a misdemeanor or gross misdemeanor the arresting officer, or any other authorized peace officer, may serve upon the person a citation and notice to appear in court. And;

“Issuance of a citation after arrest for a traffic misdemeanor is discretionary with the arresting officer. Whenever any person is arrested for any violation of the traffic

laws or regulations which is punishable as a misdemeanor or by imposition of a fine, **the arresting officer may serve upon him a traffic citation and notice to appear in court**” STATE v. McINTOSH, 42 Wn. App. 573, 576, 712 P.2d 319 (January 13, 1986).
And;

“An arrest for a misdemeanor or gross misdemeanor is not mandatory.” Torres v. City of Anacortes, 97 Wn. App. 64, at 74, 981 P.2d 891 (1999), review denied, 140 Wn.2d 1007 (2000).

THIS MEANS THAT YOU THE OFFICER HAVE THE DISCRETION TO NOT
ISSUE A CITATION EVEN AFTER ARREST FOR A TRAFFIC MISDEMEANOR!
(Emphasis added.)