

Chapter 2.28 RCW
POWERS OF COURTS AND GENERAL PROVISIONS

Sections

- 2.28.010 Powers of courts in conduct of judicial proceedings.
- 2.28.020 Contempt—Punishment.
- 2.28.030 Judicial officer defined—When disqualified.
- 2.28.040 May act as attorney, when.
- 2.28.050 Judge distinguished from court.
- 2.28.060 Judicial officers—Powers.
- 2.28.070 Contempt—Judicial officer may punish.
- 2.28.080 Powers of judges of supreme and superior courts.
- 2.28.090 Powers of inferior judicial officers.
- 2.28.100 Legal holidays—No court—Exceptions.
- 2.28.110 Legal holiday—Sitting deemed adjourned.
- 2.28.120 Proceedings may be adjourned from time to time.
- 2.28.130 Proceeding not to fail for want of judge or session of court.
- 2.28.139 County to furnish courthouse.
- 2.28.140 Court rooms.
- 2.28.141 County commissioners to provide temporary quarters.
- 2.28.150 Implied powers—Proceeding when mode not prescribed.
- 2.28.160 Judge pro tempore—Compensation—Reimbursement for subsistence, lodging and travel expenses—Affidavit to court.
- 2.28.200 Signage concerning assaults in court facilities during court proceedings.
- 2.28.210 Court consultation of judicial information system—Disclosure to parties.
- 2.28.300 Definitions—Immigration enforcement and civil arrests.
- 2.28.310 Immigration and citizenship information—Federal immigration authorities.
- 2.28.320 Law enforcement actions in court facilities—Completion of information form—Notice to court staff.
- 2.28.330 Privilege from civil arrest—Court facilities.
- 2.28.340 Applicability of courts open to all act.

Justice without unnecessary delay: State Constitution Art. 1 § 10.

RCW 2.28.010 Powers of courts in conduct of judicial proceedings. Every court of justice has power—(1) To preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings before it or its officers. (4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be

necessary in the exercise of its powers or the performance of its duties. [1955 c 38 § 12; 1909 c 124 § 2; RRS § 85.]

Compelling attendance of witnesses: Chapter 5.56 RCW.

Oaths, who may administer: RCW 5.28.010.

RCW 2.28.020 Contempt—Punishment. For the effectual exercise of the powers specified in RCW 2.28.010, the court may punish for contempt in the cases and the manner provided by law. [1891 c 54 § 2; RRS § 53.]

Rules of court: CR 45(f).

Contempts: Chapter 7.21 RCW.

Criminal contempts: Chapter 7.21 RCW, RCW 9.92.040.

Power of judicial officer to punish for contempt: RCW 2.28.060, 2.28.070.

Witnesses, failure to attend as contempt: RCW 5.56.061 through 5.56.080.

RCW 2.28.030 Judicial officer defined—When disqualified. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he or she is a member in any of the following cases:

(1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is directly interested.

(2) When he or she was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.

(3) When he or she is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.

(4) When he or she has been attorney in the action, suit, or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court.

In the cases specified in subsections (3) and (4) of this section, the disqualification may be waived by the parties, and except in the supreme court and the court of appeals shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law. [2011 c 336 § 39; 1971 c 81 § 11; 1895 c 39 § 1; 1891 c 54 § 3; RRS § 54.]

RCW 2.28.040 May act as attorney, when. A part-time district judge, if permitted by court rule, may act as an attorney in any court other than the one of which he or she is judge, except in an action,

suit or proceeding removed therefrom to another court for review.
[1987 c 202 § 104; 1891 c 54 § 4; RRS § 55. Cf. Code 1881 § 3293.]

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

Judge may not practice law: State Constitution Art. 4 § 19.

RCW 2.28.050 Judge distinguished from court. A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from a court and not otherwise. [1891 c 54 § 5; RRS § 56.]

RCW 2.28.060 Judicial officers—Powers. Every judicial officer has power:

(1) To preserve and enforce order in his or her immediate presence and in the proceedings before him or her, when he or she is engaged in the performance of a duty imposed upon him or her by law;

(2) To compel obedience to his or her lawful orders as provided by law;

(3) To compel the attendance of persons to testify in a proceeding pending before him or her, in the cases and manner provided by law;

(4) To administer oaths to persons in a proceeding pending before him or her, and in all other cases where it may be necessary in the exercise of his or her powers and the performance of his or her duties. [2011 c 336 § 40; 1955 c 38 § 13; 1891 c 54 § 6; RRS § 57.]

Compelling attendance of witnesses: Chapter 5.56 RCW.

Oaths, who may administer: RCW 5.28.010.

RCW 2.28.070 Contempt—Judicial officer may punish. For the effectual exercise of the powers specified in RCW 2.28.060, a judicial officer may punish for contempt in the cases and manner provided by law. [1891 c 54 § 7; RRS § 58.]

Rules of court: CR 45(f).

Contempts: Chapter 7.21 RCW.

Criminal contempts: Chapter 7.21 RCW, RCW 9.92.040.

Power of court to punish for contempt: RCW 2.28.020.

Witnesses, failure to attend as contempt: RCW 5.56.061 through 5.56.080.

RCW 2.28.080 Powers of judges of supreme and superior courts. The judges of the supreme and superior courts have power in any part of the state to take and certify—

(1) The proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged.

(2) The acknowledgment of satisfaction of a judgment in any court.

(3) An affidavit or deposition to be used in any court of justice or other tribunal of this state.

(4) To exercise any other power and perform any other duty conferred or imposed upon them by statute. [1891 c 54 § 8; RRS § 59.]

Who may take acknowledgments: RCW 64.08.010.

RCW 2.28.090 Powers of inferior judicial officers. Every other judicial officer may, within the county, city, district, or precinct in which he or she is chosen:

(1) Exercise the powers mentioned in RCW 2.28.080 (1) through (3);

(2) Exercise any other power and perform any other duty conferred or imposed upon him or her by other statute. [2011 c 336 § 41; 1891 c 54 § 9; RRS § 60.]

RCW 2.28.100 Legal holidays—No court—Exceptions. No court shall be open, nor shall any judicial business be transacted, on a legal holiday, except:

(1) To give, upon their request, instructions to a jury when deliberating on their verdict;

(2) To receive the verdict of a jury;

(3) For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature;

(4) For hearing applications for and issuing writs of habeas corpus, injunction, prohibition, and attachment;

(5) For the issuance of any process or subpoena not requiring immediate judicial or court action, and the service thereof.

The governor, in declaring any legal holiday, in his or her discretion, may provide in his or her proclamation that such holiday shall not be applicable to the courts of or within the state. [2011 c 336 § 42; 1986 c 219 § 1; 1933 c 54 § 1; 1927 c 51 § 2; RRS § 64. Prior: 1891 c 41 § 2; Code 1881 § 1267.]

Courts to be open except on nonjudicial days: State Constitution Art. 4 § 6 (Amendment 28).

Legal holidays: RCW 1.16.050.

RCW 2.28.110 Legal holiday—Sitting deemed adjourned. If any legal holiday happens to be a day appointed for the sitting of a court or to which it is adjourned, such sitting shall be deemed appointed for or adjourned to the next day which is not a legal holiday. [1927 c 51 § 3; RRS § 65. Prior: 1891 c 41 § 3.]

RCW 2.28.120 Proceedings may be adjourned from time to time. A court or judicial officer has power to adjourn any proceeding before

it or him or her from time to time, as may be necessary, unless otherwise expressly provided by law. [2011 c 336 § 43; 1891 c 54 § 10; RRS § 66.]

RCW 2.28.130 Proceeding not to fail for want of judge or session of court. No proceeding in a court of justice in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges, or by the failure of a session of the court. [1891 c 49 § 2; RRS § 67.]

Rules of court: Section superseded by CR 6(c). See comment by court after CR 6(c).

RCW 2.28.139 County to furnish courthouse. The county in which the court is held shall furnish the courthouse, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance, and other incidental expenses of the courthouse and court which are not paid by the United States. [Code 1881 § 2111; 1869 p 421 § 10; 1863 p 425 § 11; RRS § 4034.]

RCW 2.28.140 Court rooms. If the proper authority neglects to provide any superior court with rooms, furniture, fuel, lights and stationery suitable and sufficient for the transaction of its business and for the jury attending upon it, if there be one, the court may order the sheriff to do so, at the place within the county designated by law for holding such court; and the expense incurred by the sheriff in carrying such order into effect, when ascertained and ordered to be paid by the court, is a charge upon the county. [1955 c 38 § 14; 1891 c 54 § 11; RRS § 68.]

RCW 2.28.141 County commissioners to provide temporary quarters. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county. [Code 1881 § 2688; 1854 p 423 § 23; RRS § 4035.]

RCW 2.28.150 Implied powers—Proceeding when mode not prescribed. When jurisdiction is, by the Constitution of this state, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws. [1955 c 38 § 15; 1891 c 54 § 12; RRS § 69.]

RCW 2.28.160 Judge pro tempore—Compensation—Reimbursement for subsistence, lodging and travel expenses—Affidavit to court. Whenever a judge serves as a judge pro tempore the payments for subsistence, lodging, and compensation pursuant to RCW 2.04.250 and 2.06.160 as now or hereafter amended shall be paid only for time

actually spent away from the usual residence and abode of such pro tempore judge and only for time actually devoted to sitting on cases heard by such pro tempore judge and for time actually spent in research and preparation of a written opinion prepared and delivered by such pro tempore judge; which time spent shall be evidenced by an affidavit of such judge to be submitted by him or her to the court from which he or she is entitled to receive subsistence, lodging, and compensation for his or her services pursuant to RCW 2.04.250 and 2.06.160 as now or hereafter amended. [2011 c 336 § 44; 1975-'76 2nd ex.s. c 34 § 2.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

RCW 2.28.200 Signage concerning assaults in court facilities during court proceedings. (1) Signage shall be posted notifying the public of the possible enhanced penalties under chapter 256, Laws of 2013.

(2) The signage shall be prominently displayed at any public entrance to a courtroom.

(3) The administrative office of the courts shall develop a standard signage form notifying the public of the possible enhanced penalties under chapter 256, Laws of 2013. [2013 c 256 § 3.]

RCW 2.28.210 Court consultation of judicial information system—Disclosure to parties. (1) Before granting an order under any of the following titles of the laws of the state of Washington, the court may consult the judicial information system or any related databases, if available, to determine criminal history or the pendency of other proceedings involving the parties:

(a) Granting any temporary or final order establishing a parenting plan or residential schedule or directing residential placement of a child or restraining or limiting a party's contact with a child under Title 26 RCW;

(b) Granting any order regarding a vulnerable child or adult or alleged incapacitated person irrespective of the title or where contained in the laws of the state of Washington;

(c) Granting letters of guardianship or administration or letters testamentary under Title 11 RCW;

(d) Granting any relief under Title 71 RCW;

(e) Granting any relief in a juvenile proceeding under Title 13 RCW; or

(f) Granting any order of protection, temporary order of protection, or criminal no-contact order under chapter 7.105, 9A.46, 10.99, or 26.52 RCW.

(2) In the event that the court consults such a database, the court shall disclose that fact to the parties and shall disclose any particular matters relied upon by the court in rendering the decision. Upon request of a party, a copy of the document relied upon must be filed, as a confidential document, within the court file, with any confidential contact information such as addresses, phone numbers, or other information that might disclose the location or whereabouts of any person redacted from the document or documents. [2021 c 215 § 88; 2016 c 89 § 1; 2015 c 140 § 1.]

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

RCW 2.28.300 Definitions—Immigration enforcement and civil arrests. The definitions in this section apply throughout this section and RCW 2.28.310 through 2.28.330 unless the context clearly requires otherwise.

(1) "Civil arrest" means the arrest of a person for an alleged violation of civil law. It is not an arrest for an alleged violation of criminal law, or for contempt of the court in which the court proceeding is taking place or will be taking place.

(2) "Court facility" means any building or space occupied or used by a court of this state, and adjacent property, including but not limited to adjacent sidewalks, all parking areas, grassy areas, plazas, court-related offices, commercial and governmental spaces within court building property, and entrances and exits from said building or space.

(3) "Court order" means a directive issued by a judge or magistrate under the authority of Article III of the United States Constitution or Article IV of the state Constitution. A "court order" includes but is not limited to warrants and subpoenas.

(4) "Court security personnel" means law enforcement agencies and officers assigned to protect court facilities or to transport in-custody individuals to and from court proceedings and private agents contracted to provide security at court facilities.

(5) "Court staff" means any municipal, county, or state employees or contractors assigned to perform duties in court facilities, including but not limited to probation officers, court security personnel, court clerks, court administrators, interpreters, court facilitators, and bailiffs.

(6) "Federal immigration authority" means any officer, employee, or person otherwise paid by or acting as an agent of the United States department of homeland security including but not limited to its subagencies, immigration and customs enforcement, and customs and border protection, and any present or future divisions thereof, charged with immigration enforcement.

(7) "Immigration or citizenship status" means as such status has been established to such individual under the immigration and nationality act.

(8) "Judge" includes justices of the supreme court, judges of the court of appeals, judges of the superior courts, judges of any court organized under Title 3 or 35 RCW, judges pro tempore, court commissioners, and magistrates.

(9) "Law enforcement action" includes but is not limited to observation of court proceedings, investigation, questioning, and arrests by law enforcement agents acting in their official capacity.

(10) "Nonpublicly available personal information" includes one or more of the following, when the information is linked with or is reasonably linkable, including via analytic technology, to the person's first name or first initial and last name: Location, home address, work address, place of birth, telephone number, social security number, driver's license number or Washington identification card number, electronic mail address, social media handle or other identifying social media information, and any other means of contacting the person.

(11) "Prosecutor" means a county prosecuting attorney, a city attorney, or the attorney general.

(12)(a) "State law enforcement agency" means any agency of the state of Washington that:

(i) Is a general authority Washington law enforcement agency as defined in RCW 10.93.020;

(ii) Is authorized to operate prisons or to maintain custody of individuals in prisons; or

(iii) Is authorized to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities.

(b) "State law enforcement agency" does not include any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state. [2020 c 37 § 2.]

Findings—2020 c 37: "(1) The legislature finds that civil arrests in and around Washington's court facilities impede the fundamental mission of Washington's courts, which is to ensure due process and access to justice for everyone. The United States supreme court has recognized that "the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy," and that a state may therefore adopt measures necessary and appropriate to safeguarding the administration of justice by its courts. *Cox v. Louisiana*, 379 U.S. 559, 562 (1965). People access courts for many reasons, including to obtain domestic violence and sexual assault protection orders, obtain child support orders, seek back wages, pay traffic fines, apply for permits, answer and defend against criminal charges, answer and defend against eviction actions, testify in civil and criminal proceedings, and get married. The administration of justice depends upon all people having free and full access to the courts.

(2) The legislature further finds that civil arrests at Washington court facilities have created a climate of fear that is deterring and preventing Washington residents from safely interacting with the justice system. Victims cannot seek protection, families cannot enter into custody agreements, and those charged with crimes cannot mount a proper defense or be held accountable. Courts and lawyers cannot deliver the promise of equal access to justice and due process under law to community members who are precluded from accessing the courts. Therefore, it is essential that the state have policies providing safeguards protecting access to justice.

(3) The legislature further finds that it is imperative that all members of our community feel safe coming to, remaining at, and returning from Washington's courts. The United States supreme court has acknowledged that a state has "the power to preserve the property under its control for the use to which it is lawfully dedicated," and that "[t]here is little doubt that in some circumstances the Government may ban the entry on to public property that is not a 'public forum' of all persons except those who have legitimate business on the premises." *United States v. Grace*, 461 U.S. 171, 178 (1983). Accordingly, Washington may regulate entry and access to the courts, and activity on courthouse premises and environs, that threatens the fair and nondiscriminatory administration of justice or the openness of courts. Additionally, the United States supreme court and the Washington supreme court have long recognized privileges against civil arrests for those attending court. In recognition of the

harmful impacts of civil arrests in and around Washington courts, the legislature has a substantial and compelling interest in ensuring the courts in the state of Washington remain places where the rights and dignity of all residents are maintained and there is access to justice for all." [2020 c 37 § 1.]

Short title—2020 c 37: "This act may be known and cited as the courts open to all act." [2020 c 37 § 10.]

RCW 2.28.310 Immigration and citizenship information—Federal immigration authorities. (1) Judges, court staff, court security personnel, prosecutors, and personnel of the prosecutor's office:

(a) Shall not inquire into or collect information about an individual's immigration or citizenship status, or place of birth, unless there is a connection between such information and an investigation into a violation of state or local criminal law; provided that a judge may make such inquiries as are necessary to adjudicate matters within their jurisdiction. The court may enter orders or conditions to maintain limited disclosure of any information regarding immigration status as it deems appropriate to protect the liberty interests of victims, the accused, civil litigants, witnesses, and those who have accompanied victims to a court facility; and

(b) Shall not otherwise provide nonpublicly available personal information about an individual, including individuals subject to community custody pursuant to RCW 9.94A.701 and 9.94A.702, to federal immigration authorities for the purpose of civil immigration enforcement, nor notify federal immigration authorities of the presence of individuals attending proceedings or accessing court services in court facilities, unless required by federal law or court order.

(2) RCW 2.28.300 through 2.28.330 do not limit or prohibit any state or local agency or officer from:

(a) Sending to, or receiving from, federal immigration authorities the citizenship or immigration status of a person, or maintaining such information, or exchanging the citizenship or immigration status of an individual with any other federal, state, or local government agency, in accordance with 8 U.S.C. Sec. 1373; or

(b) Complying with any other state or federal law. [2020 c 37 § 3.]

Findings—Short title—2020 c 37: See notes following RCW 2.28.300.

RCW 2.28.320 Law enforcement actions in court facilities—Completion of information form—Notice to court staff. (1) The governmental entity responsible for the security of a court facility, using the form described in subsection (2) of this section, shall collect the name of the law enforcement officer, agency, date, time, specific law enforcement purpose, and the proposed law enforcement action to be taken by all on-duty state and federal law enforcement officers, including plain-clothed officers, entering court facilities, unless such officer's purpose is to participate in a case or proceeding before the court. Completed forms must be immediately transmitted to the appropriate court staff. Information collected must

not include personal identifying information concerning the individuals who were the target of the law enforcement action, and to the extent such individuals are identified, they must be identified by the initials of their first and last names. Completed forms must be transmitted to the administrative office of the courts on a monthly basis.

(2) The administrative office of the court [courts] shall develop a standard form to collect the information in subsection (1) of this section. The form must be developed no later than July 1, 2020. The administrative office of the courts shall publish a quarterly report of the information collected in subsection (1) of this section beginning October 1, 2020.

(3) Designated court staff must be notified without delay if a law enforcement agent covered by this section is present in the court facility with the intent of conducting a civil arrest. [2020 c 37 § 4.]

Findings—Short title—2020 c 37: See notes following RCW 2.28.300.

RCW 2.28.330 Privilege from civil arrest—Court facilities. (1) No person is subject to civil arrest while going to, remaining at, or returning from, a court facility, except:

(a) Where such arrest is pursuant to a court order authorizing the arrest;

(b) When necessary to secure the immediate safety of judges, court staff, or the public; or

(c) Where circumstances otherwise permit warrantless arrest pursuant to RCW 10.31.100.

(2) For purposes of this section, "going to" and "returning from" includes the area within one mile of the court facility.

(3) Prior to any civil arrest in or on a court facility authorized by subsection (1)(a) of this section, a designated judicial officer shall review a court order authorizing any civil arrest to confirm compliance with subsection (1)(a) of this section.

(4) Nothing in this section narrows, or in any way lessens, any common law or other right or privilege of a person privileged from arrest pursuant to RCW 2.28.300 through 2.28.320 or otherwise. [2020 c 37 § 5.]

Findings—Short title—2020 c 37: See notes following RCW 2.28.300.

RCW 2.28.340 Applicability of courts open to all act. RCW 2.28.300 through 2.28.330 apply to the following courts: The supreme court, the courts of appeal, the superior courts, and to the courts of limited jurisdiction of this state, including district and municipal courts. [2020 c 37 § 6.]

Findings—Short title—2020 c 37: See notes following RCW 2.28.300.