# GOVERNMENT ACCOUNTABILITY

## Executive Sessions

According to the Open Public Meetings Act, before entering executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer. There is no requirement to record the proceedings conducted in executive session.

**The Attorney General will join State Auditor Brian Sonntag in introducing legislation that:**

- Requires an audio recording of complete executive sessions
- Makes the recording a public record, not subject to disclosure except by court order
- Allows an individual alleging an improper executive session to petition a court to review the audio recording and the court will determine whether there was an improper executive session.
- Permits the court to disclose only those portions of the audio recording where it finds a violation of the executive session provisions.
- Allows any documents relied upon in an improper executive session to be subject to disclosure if not otherwise exempt.

## Paying Penalty Awards to Crime Victims

In April 2006, the Department of Corrections (DOC) began to track public disclosure requests on a department-wide basis. From April through December of 2006, DOC received 3,617 public record requests from inmates, consuming 9,575 staff hours—or roughly 4.6 years.

The "public disclosure act lottery" is a major incentive for filing these requests, providing inmates with the opportunity to "win" hundreds of thousands of dollars if they file enough requests to force the DOC into non-compliance.

The Attorney General's Office proposes amending RCW 42.56.550(4) to prohibit an incarcerated person requesting public records from receiving penalty awards for an agency's unlawful non-disclosure. The penalty awards would instead be paid to the crime victims' compensation program.

## Eminent Domain

At a news conference in January 2007, Attorney General McKenna joined the Washington Policy Center and the Institute for Justice Washington Chapter in spotlighting the plight of several Washington property owners who were victims of eminent domain abuse:

- Kwan Fong, an immigrant from mainland China is building a business in Southeast Seattle, but the City of Seattle is considering declaring much of the Rainier Valley - including his property - "blighted" under Washington's Community Renewal Law.
- John Fujii, whose family owns the Sinking Ship parking garage in Seattle's Pioneer Square, saw his business permanently condemned by the Seattle Monorail, when it only needed the property temporarily. The Monorail hoped to sell the property for a profit once it was done with it - but the project fell through.

Over the summer, we convened an eminent domain task force to explore these issues in greater detail.

**Their work continues but for this session, the office will request legislation to accomplish the following:**

- Redefine "blight" narrowly to apply to specific properties and not general areas that might include non-blighted land.
- Prohibit the use of eminent domain for private redevelopment.
- Publish a pamphlet in plain language explaining eminent domain.

## Open Public Meetings Act

The Legislature passed the Open Public Meetings Act ("OPMA"), chapter 42.30 RCW in 1971 as a part of a nationwide effort to make government affairs more accessible. While the Legislature has clarified some of its provisions, the OPMA is substantially unchanged.

There has been relatively little litigation regarding its interpretation, so many gray areas exist.

**The Attorney General's Office is requesting legislation:**

- Directing the Attorney General's Office to develop advisory model rules by Feb. 1, 2009.
- Requiring the Attorney General's Office to publish a plain-language pamphlet explaining the OPMA.
- Increasing public notice of special meetings.

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# 2008 AGO LEGISLATIVE PRIORITIES

COMMUNITY SAFETY
CONSUMER PROTECTION
GOVERNMENT ACCOUNTABILITY

ATTORNEY GENERAL
ROB MCKENNA

# 2008 LEGISLATIVE PRIORITIES

## COMMUNITY SAFETY

### Domestic Violence

According to National Institute for Justice statistics, homicide was the second leading cause of death on the job for women in 2003. The NIJ also reports an estimated one million women are stalked each year in the U.S., and about 25 percent of them report missing work as a result of the stalking, missing an average of 11 days.

Due to their circumstances, domestic victims may deplete their earned leave balances and may need to take additional time away from work to address important safety concerns, changes in living arrangements or injuries that do not rise to the level that would make the employee eligible for the shared leave program.

Washington state's shared leave program allows eligible state employees to donate leave to other eligible state employees who have been called to service in the uniformed services; who are responding to a state of emergency; or who are suffering from or have an eligible relative or household member suffering from a severe illness, physical or medical condition which could force these employees to take leave without pay (LWOP) or terminate employment.

Consistent with his on-going commitment to the fight against DV, and based on the recommendations of the AGO domestic violence workgroup, AG McKenna will request legislation adding victims of domestic violence to the list of employees eligible for shared leave.

### Youth Internet Safety

In August 2007, AG McKenna convened the Youth Internet Safety Task Force to identify educational, collaborative and law enforcement strategies to make the Internet safer for the people of Washington and their families.

The committee is comprised of representatives from across Washington's education, law enforcement and technology communities who have formed three working groups to address Internet safety.

- Law Enforcement
- Consumer Education
- Research and Technology

The Task Force continues its work but the law enforcement work group recommends two immediate and targeted changes to RCW 9.68A: (1) create a new crime of "Viewing Child Pornography," and (2) amend 9.68A.110 to allow non-commissioned police personnel trained in forensic analysis to assist in child pornography investigations.

## CONSUMER PROTECTION

### Guarding Washington residents from identity theft

Identity theft is one of our state's fastest-growing crimes. Despite tougher laws, aggressive outreach and educational campaigns, much work remains to be done. Law enforcement and prosecutors report that investigations are frequently prolonged by legal processes that require individuals to testify to the authenticity of records before they are submitted as evidence. Police reports are essential to help identity theft victims clear their name, but victims say that some law enforcement agencies are reluctant to take reports.

Attorney General Rob McKenna created LEGIT, Washington's Law Enforcement Group against Identity Theft, in 2006 to look at ways law enforcement can effect positive change in this area. This policy-advising group is headed up by a King County deputy prosecutor and includes representatives from local police and sheriff's departments, state government and the private sector. LEGIT suggested many legislative changes, including the following AG-request bills:

- Create a statutory requirement for police to take police reports from victims of the crime. Investigation is not required. Victims have the option to file a report in their local jurisdiction or with the agency where the crime occurred.

- Allow prosecutors to bring separate charges against an accused identity thief for each use of a particular piece of someone's personal information. This bill reverses policy set in *State v. Leyda* (2006), where the Washington Supreme Court held that a defendant may only be charged once for use of someone else's information even when that information is used in multiple locations multiple times.

- Allow records provided by out-of-state businesses to be authenticated by affidavit, rather than in person, in criminal cases. When properly served with a request for records, the recipient must provide the records within 20 business days and verify the authenticity by providing a signed affidavit, declaration or certification.

### Prohibiting third-party marketing of cell phone numbers

In 2005, the Legislature unanimously passed a law stating that radio communication service companies must obtain express opt-in consent from subscribers before publishing their wireless phone numbers in directories. When drafting the law, legislators likely did not predict the recent development of online companies that profit by compiling and selling cell phone numbers and other personal information.

One such company, the Bellevue-based Intelius, announced in August 2007 that it will sell mobile phone numbers. People who visit its Web site can enter a person's name to receive a number, or do the reverse by entering a number to get the subscriber's name. Another company, Zabasearch, also sells contact information for cell phone numbers.

The Attorney General's Office has proposed a bill to require any person in the business of compiling, marketing or selling phone numbers for commercial purposes to obtain a consumer's express opt-in consent before publishing his or her wireless phone number in a directory. A violation of the law is punishable by a fine of up to $50,000. The Attorney General may bring actions to enforce compliance and may notify first-time violators with a letter of warning

### Shutting down Spyware

Washington's Computer Spyware Statute, RCW 19.270, has several loopholes and weaknesses. These include an intent requirement for certain violations that burdens enforcement authorities, murkiness in some of the definitions of unlawful practices, a lack of enforcement authority against those who knowingly facilitate or procure the sending of spyware, and the absence of language in the statute prohibiting deceptive conduct that has emerged since the statute was originally passed.

The Attorney General's Office has requested legislation to remedy loopholes and weaknesses in the state's Computer Spyware Statute.

**The proposed legislation:**

- Removes onerous requirements that hinder ability to prove cases against violators;

- Creates liability for Web hosting services who ignore violators' use of their products or merchants who pay others to violate the law;

- Adds violations for new forms of spyware; and

- Clarifies the standards for proof of violations and the circumstances under which actions may be brought

### Protecting consumers from mortgage foreclosure

In this time of rising mortgage rates, desperate homeowners have been lured by offers of assistance – only to be cheated out of equity they've built up and tricked into transferring ownership of their home. Cons gain ownership of the home for much less than its actual value, then evict the family and sell the home – stealing a families' equity and leaving them homeless. Many homeowners are unaware that they've lost their property until they receive an eviction notice. The New York Times reported on July 23, 2007, that at least seven states have created laws against foreclosure rescues. No such legislation exists in Washington.

The Attorney General's Office is requesting legislation to reduce foreclosure rescue schemes that include an option to buy or lease back the property. The proposed bill is modeled after 2004 legislation enacted in Minnesota and a similar version subsequently passed in Illinois, California and several other states. This important law would add a new chapter to RCW 64 "Real Property and Conveyances" to:

- Require a written contract with clearly disclosed terms be completed, signed and dated by the homeowner and the purchaser prior to the property's transfer;

- Provide the foreclosed homeowner with the right to cancel the contract within five business days;

- Require that the purchaser demonstrate that the foreclosed homeowner is able to meet the terms of the contract including making interest and lease payments and is capable of purchasing the property within the allowable period;

- Require that the homeowner must receive at least 82 percent of the difference between the property's fair market value and the underlying mortgage in the event of a sale to a third party.

A violation of the law would be made a per se violation of the Consumer Protection Act, making the outcome of litigation against foreclosure rescue schemes substantially certain and resulting in broad deterrence.

GOVERNMENT ACCOUNTABILITY →