

Washington State Criminal Justice Training Commission

Basic Law Enforcement Academy

Criminal Law

Student Resource Guide



Revised 2014-08

Copyright ©2014 WSCJTC
Burien, Washington

Mission Statement: The Washington State Criminal Justice Training Commission enhances public safety by establishing standards and providing education and training.

Contact Information.

Washington State Criminal Justice Training Commission
19010 1st Avenue South, Burien, WA 98148
Phone: 206.835.7300

TABLE OF CONTENTS

• Nature & Function of Legal Rules	1
• Substantive Criminal Law	2
• Mental States	6
• Jurisdiction & General Definitions	8
• Classes of Crimes	13
• Defenses & Defense-type Mechanisms	17
• Preliminary & Complicity Articles	27
• Anticipatory Offenses	30
• Firearms & Dangerous Weapons	34
• Homicide	53
• Assault & Physical Harm	63
• Abuse & Neglect	86
• Burglary, Trespass & Vehicle Prowling	97
• Sex Offenses	111
• Sexual Exploitation of Children	138
• Indecent Exposure & Prostitution	155
• Harassment & Court Orders	162
• Kidnapping, Unlawful Imprisonment	185
• Arson, Reckless Burning & Malicious Mischief	193

TABLE OF CONTENTS

• Theft & Possession of Stolen Property	210
• Robbery & Extortion	247
• Animal Cruelty	253
• Fraud	257
• Bribery & Official Proceedings	264
• Obstructing Governmental Operations	272
• Public Disturbance	286
• Gambling Laws – Overview	291
• Liquor & Tobacco Laws – Overview	294
• Landlord-Tenant Act – Overview	303
• Juvenile Law & Procedures – Overview	307
• Vulnerable Adults Law & Procedures	317
• Litter & Illegal Dumping – Overview	325
• I.T.A. & Alcohol/Drug Treatment	329
• Misdemeanor Presence Rule	330

1 - Nature & Function of Legal Rules

Why Study Criminal Law?

1. As law enforcement officers, we need to recognize criminal conduct.
2. Our job is to enforce the law.
3. We need to know when somebody is breaking the law.
4. We must know the legal defenses to criminal conduct.
5. We need to understand the elements of each crime in order to make solid arrests.
6. It assists in writing a complete arrest report.
7. Investigations - you need to know what specific crime has occurred.
8. It allows you to exercise options:
 - Is the crime a felony?
 - Is it a mandatory arrest?
 - Does the crime fall under RCW 10.31.100 (the exceptions to the Misdemeanor Presence Rule)?
 - Has the statute of limitations passed?
9. If the act (crime) is covered by more than one statute, which is the most specific?
10. When settling disputes, understanding of the law assists in determining whether the issue is civil or criminal.

2 - Substantive Criminal Law

Five Basic Premises of Criminal Law

1. There must be an **act** or an **omission**.
 - **“Omission”** means failing to do an act.
Example of omission – Failure to provide basic necessities of life for children.
Example of omission – Failing to file tax return.
2. The suspect may have a **mental state (“mens rea”)**.
 - Wrongful thoughts.
 - Bad intent.
 - There are offenses that are “strict liability”. These crimes have no mental state.
3. There must be a **concurrence** of both of the above at the same time.
 - The mental state must be present *along with* the act/omission.
4. **Causation** must be present.
 - This shows a direct result of conduct.
 - Causation links criminal results with a perpetrator.
5. RCW 9A.04.020 Purposes- Principles of Construction
 - **All laws must be written.**
 - This gives advance warning of what is considered criminal.
 - This also gives notice of the punishment for the crime.

Recognize that criminal law has no “bright line” definition like science. There is not always an easy, clear call to be made.

2 - Substantive Criminal Law

Rule of Corpus Delicti ("Body of the Crime")

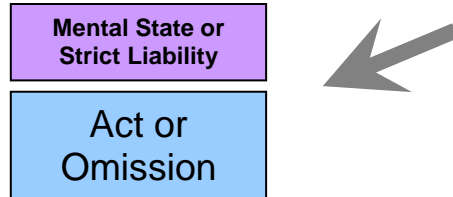
1. Consists of proof which:
 - Shows that a specific loss or injury occurred
 - Shows that somebody is criminally responsible

 2. Before a confession may be introduced at trial, there must be additional evidence to indicate that the confession is truthful.
 - In the past, confessions were obtained through torture.
 - Confessions obtained against a person's will are not always reliable.
 - Too many people are willing to give false confessions – why?
 - To gain notoriety of crime
 - To cover for the real culprit
-
3. Absent independent evidence of the crime, the confession may still be admitted if there is substantial independent evidence that would tend to establish the trustworthiness of the confession. The court may consider:
 - Any evidence corroborating or contradicting the facts set out in the confession;
 - The character of the person making the statement and the number of witnesses to the statement;
 - Whether a record of the statement was made and the timing of the record in relation to the statement; and/or
 - The relationship between the witness and the defendant.

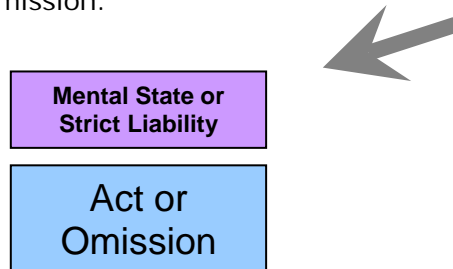
2 - Substantive Criminal Law

Explanation of Diagrams Used in this Outline

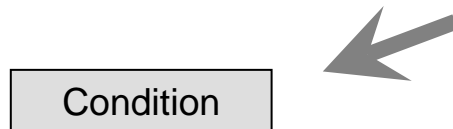
1. Each criminal law will contain an act/omission (or several acts/omissions). These are represented by a box that's slightly darker than the others:



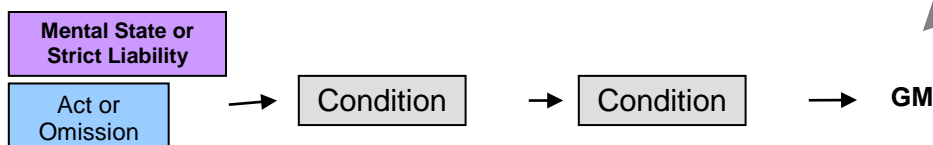
2. Attached to the act/omission, you will sometimes find the mental state listed. If there is no mental state then it is a strict liability crime. The mental state or the strict liability language that goes along with the act/omission is represented by a small dark box just above the act/omission:



3. Usually, the RCW will specify the conditions (elements) that must also be present along with the act/omission. These conditions will be represented by a light gray box:



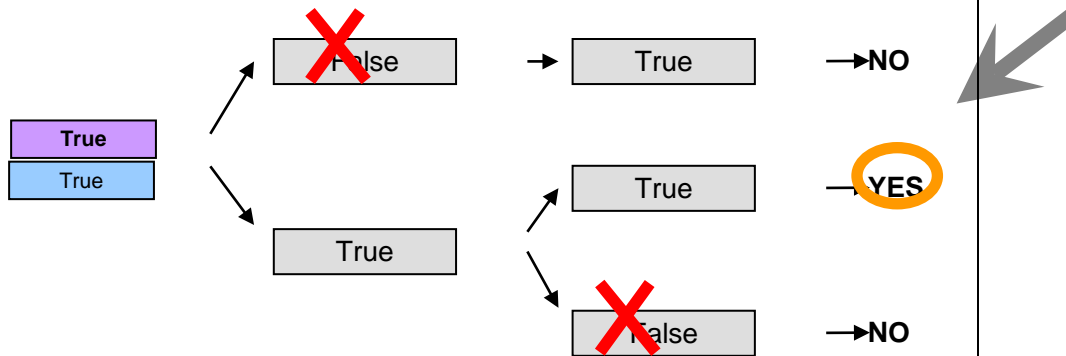
4. The act/omission and the conditions will be connected by arrows to form a "path" or "track." You read the diagram from left to right. The track ends in a letter(s) designating the class of crime that has been committed (in this example, a Gross Misdemeanor):



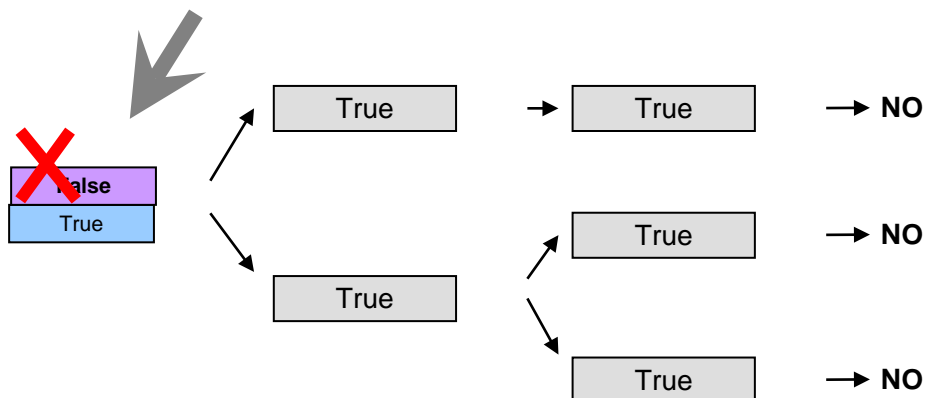
2 - Substantive Criminal Law

Explanation of Diagrams Used in this Outline

5. Every box in a track must be true in order to arrive at the final result. If one of the boxes is not true (the condition is not present), then you must look for another track that fits your scenario. If no tracks fit the scenario, then this specific RCW cannot be applied to the specific scenario.



6. In this next example, the required mental state is not present, so it doesn't matter that all of the other conditions are true – you cannot use this specific RCW. The track "dies" right there.



3 – Mental States

General Requirements of Culpability

– RCW 9A.08.010

1. **“Intent”** - This is the actor's aim, purpose, or goal.

- **“Specific Intent”** - what the actor specifically intended to do.
- **“Maliciously”** means “with evil intent.”
- **“Transferred Intent”** - The actor's specific intent is transferred to an unintended victim.

Example – A person shoots at his targeted victim but misses and hits an innocent person - the intent is transferred to the innocent party.

2. **“Knowledge”**

- A person is aware of facts or circumstances described by a statute which defines a criminal offense,
-OR-
- A person possesses information that would lead a reasonable person in the same situation to believe that facts exist which constitutes a criminal violation.
- A requirement that an offense be committed “willfully” is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears.

3. **“Recklessness”**

- A person is aware that their conduct creates a substantial risk that a wrongful act may occur, AND
 - They disregard that risk, AND
 - Disregarding that risk is a gross deviation from the acts of a reasonable person.
- **“Substantial risk”** = great amount of hazard.

4. **“Criminal Negligence”**

- A person fails to be aware that their conduct creates a substantial risk that a wrongful act may occur, AND
- They should have been aware, AND
- Failure to be aware is a gross deviation from the acts of a reasonable person.

Sometimes the RCW will specify that the suspect must have the intent to accomplish something in particular, like “intent to deprive” or “intent to cause great bodily harm.” In these cases, we must go beyond proving that the suspect simply meant to do the act – we must prove that the suspect meant to do the act with that specific goal in mind.

When an RCW does not directly specify a mental state (or make it clear through the wording), then we are to assume that the legislators intended it that way. Therefore if there is NO mental state listed it is considered strict liability.

3 – Mental States

5. Mental States created by court rulings.

There are four basic laws that do not list a state of mind and have strict liability language. However, through court rulings (case law) have defined the state of mind;

- RCW 9.41.040 Unlawful Possession of Firearm- **Knowledge**
- RCW 46.52.010-020 Hit and Run- **Knowledge**
- RCW 9A.36.041 Assault 4- **Intent**
- **Knowledge**- Any simple possession crimes for a controlled substance and some misdemeanor firearms laws that have strict liability language.

6. "Strict Liability"

In law, strict liability is a standard for liability which may exist in either a criminal or civil context. A rule specifying strict liability makes a person legally responsible for the damage and loss caused by his or her acts and omissions regardless of culpability including fault in criminal law terms, typically the presence of the state of mind (mens rea).

Strict liability can be determined by looking at the intent of the legislature. If the legislature seems to have purposefully left out a mental state element (mens rea) because they felt mental state need not be proven, it is treated as a strict liability.

4 – Jurisdiction & General Definitions

State Criminal Jurisdiction (Specific Areas)

- RCW 9A.04.030

1. The following persons are liable to punishment:
 - a. A person who commits in the state any crime, in whole or in part. *Note- there are exceptions listed below.
 - b. A person who commits out of the state any act, which, if committed within it, would be theft and is afterward found in the state with any of the stolen property.
 - c. A person who being out of the state, counsels, causes, procures, aids, or abets another to commit a crime in this state.
 - d. A person who, being out of the state, abducts or kidnaps by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends, or conveys such person into this state.
 - e. A person who commits an act without the state, which affects persons or property within the state, which, if committed within the state, would be a crime.
 - f. A person who, being out of the state, makes a statement, declaration, verification, or certificate under RCW 9A.72.085 which, if made within the state, would be perjury.
 - g. A person who commits an act onboard a conveyance within the state of Washington, including the airspace over the state of Washington, that subsequently lands, docks, or stops within the state which, if committed within the state, would be a crime.
 - h. Dual Jurisdiction. I.e. a phone call is deemed to have occurred both where it is made (dialed) and where it is received. The same rule applies to letters, e-mails and texts.
 - i. **Exceptions**; some exceptions apply for crimes committed on Indian Reservations, military bases, and national forests and parks.

Tab Marker:
**MENTAL
STATES**

Tab Marker:
DEFINITIONS

4 - Jurisdiction & General Definitions

Definitions

– RCW 9A.04.110

1. **“Bodily injury,” “physical injury,” or “bodily harm”** means physical pain or injury, illness, or an impairment of physical condition.
2. **“Substantial bodily harm”** means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.
3. **“Great bodily harm”** means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.
4. **“Building,”** in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building.
5. **“Deadly weapon”** means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a “vehicle” as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.
6. **“Dwelling”** means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging.
7. **“Malice”** and **“maliciously”** shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

4 - Jurisdiction & General Definitions

Definitions

– RCW 9A.04.110

-continued from previous page-

8. **“Officer”** and **“public officer”** means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer.
9. **“Omission”** means a failure to act.
10. **“Peace officer”** means a duly appointed city, county, or state law enforcement officer.
11. **“Pecuniary benefit”** means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain.
12. **“Property”** means anything of value, whether tangible or intangible, real or personal.
13. **“Signature”** includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.
14. **“Vehicle”** means a **“motor vehicle”** as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail.
15. **“Strangulation”** means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe.
16. **“Suffocation”** means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe.
17. Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neutral genders; and in the singular shall include the plural; and in the plural shall include the singular.

4 - Jurisdiction & General Definitions

Definitions

– RCW 9A.04.110

-continued from previous page-

18. “Threat” means to communicate, directly or indirectly, the intent:

- To cause bodily injury in the future to the person threatened or to any other person;
-OR-
- To cause physical damage to the property of a person other than the actor;
-OR-
- To subject the person threatened or any other person to physical confinement or restraint;
-OR-
- To accuse any person of a crime or cause criminal charges to be instituted against any person;
-OR-
- To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule;
-OR-
- To reveal any information sought to be concealed by the person threatened;
-OR-
- To testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
-OR-
- To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding;
-OR-
- To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent;
-OR-
- To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships.

This RCW defines what activities and behaviors are considered to be “threats.”

- *It does not specify here whether the activity is illegal or not.*
- *Other individual RCWs will specify which of these activities are crimes under certain circumstances (like Harassment, Coercion, etc.).*

4 - Jurisdiction & General Definitions

Case law has also defined what a “threat” is. Case law has made it clear that any threat be interpreted by the receiver, must indeed be a “true threat”. A true threat is defined as a statement in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted...as a serious expression of intention to inflict bodily harm upon or to take the life of another person.

A true threat is a serious threat, not one said in jest, idle talk, or political argument. Under this standard, whether a true threat has been made is determined under an objective standard that focuses on the speaker.—from *State v. Kilburn*, 151 Wn.2d at 43-44 (citations omitted).

5 - Classes of Crimes

Definitions

– RCW 9A.04.040

1. **“Crime”** - An offense for which a sentence of imprisonment is authorized.
2. **“Felony”** - If so designated by statute, or if upon conviction, a person may be sentenced to more than one year of imprisonment.
3. **“Gross Misdemeanor”** - If so designated by statute, or if upon conviction, a person may be imprisoned for up to 364 days.
4. **“Misdemeanor”** - If so designated by statute, or if upon conviction, a person may be imprisoned for up to 90 days.
5. RCW 9A.20.021 - Maximum sentences for crimes (committed after 07-01-84).
 - **Class A Felony**
 - Up to life imprisonment / \$50,000 fine
 - **Class B Felony**
 - Up to ten years imprisonment / \$20,000 fine
 - **Class C Felony**
 - Up to five years imprisonment / \$10,000 fine
 - **Gross Misdemeanor**
 - Up to 364 days imprisonment / \$5,000 fine
 - **Misdemeanor**
 - Up to 90 days imprisonment / \$1,000 fine

LEVEL:	IMPRISONMENT - UP TO:	FINE - UP TO:
Class A Felony	Life	\$50,000
Class B Felony	Ten Years	\$20,000
Class C Felony	Five Years	\$10,000
Gross Misdemeanor	364 days	\$5,000
Misdemeanor	90 Days	\$1,000

Tab Marker:
CRIME
CLASSES

5 - Classes of Crimes

Limitation of Actions

– RCW 9A.04.080

Also called
"Statute of
Limitations"

1. No limit

- Murder
- Arson with death
- Homicide by Abuse
- Vehicle Homicide
- Vehicle Assault if a death results
- Hit & Run if death results

2. Ten years

- Arson with no death
- Felony by a public officer in the performance of his duties or in connection with his duties or a breach of his or her oath of office
- If the victim of a rape is under age 14, and the rape was reported within one year of its commission, it may be prosecuted up to *the victim's 28th birthday*
- Rape 1st degree and Rape 2nd degree, if reported within one year of its commission
- Also applied to domestic violence assault committed by a police officer while off duty because such an offense was contrary to his or her oath of office

3. Up to the victim's 30th birthday when committed against a victim under the age of 18

- Rape 1st and 2nd degree
- Rape of a Child 1st, 2nd & 3rd degree
- Child Molestation 1st, 2nd & 3rd degree
- Indecent Liberties (1b) – When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless
- Incest
- Sexual Exploitation of a Minor

4. Six years (after commission or discovery, whichever occurs later)

- Leading Organized Crime
- Use of Proceeds of Criminal Profiteering

5 - Classes of Crimes

Limitation of Actions

– RCW 9A.04.080

-continued from previous page-

- Felony violation of Money Laundering
- Felony Violation of Identity Crimes (RCW 9.35)
- Theft 1st or 2nd degree, when accomplished by color or aid of deception
- Trafficking in stolen property 1st or 2nd degree under chapter 9A.82, where the stolen property is a motor vehicle or major component part of a motor vehicle

5. Three years

- *Most* other felonies
- Rape 1st degree and Rape 2nd degree, if NOT reported within one year of its commission

6. Two years

- Gross Misdemeanors
- Exception: Voyeurism (even though it's a felony)
 - If the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced *within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed or filmed.*

7. One year

- Misdemeanors
- In any prosecution for a sex offense, the period of limitation runs from the date of commission or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

5 - Classes of Crimes

"Stopping the Clock" on the Statute of Limitations

1. Must be able to show that the suspect left the state before the end of the limitation for more than a brief period;

-OR-

2. Must issue a warrant for suspect's arrest before the end of the limitation;

-OR-

3. The "clock" does not even begin running until the suspect sets foot in the state (for suspects that commit crimes without being in the state at time of commission).

4. Temporary absences such as traveling out of state for job training will not stop the clock on the statute of limitations. The suspect must either relocate to another state or intend to change residences.—State v. Willingham 169 wn. 2d192 (2010).

6 - Defenses & Defense-type Mechanisms

Insanity – Definition of Terms

– RCW 9A.12.010

√ 1. Insanity Defense

a. The defense must show that at the time of the commission of the offense, due to mental disease or defect, the mind of the actor was affected to such an extent that:

- The actor was unable to perceive the nature and quality of the act with which he is charged,

-OR-

- The actor was unable to tell right from wrong with reference to the particular act charged.

b. Known as the “M’Naghten Test” or “M’Naghten Rule.”

- Legal standards (established in England in 1843) requiring the defendant to be out of touch with reality and not accurately perceiving the world around him.

Example – He may be hearing voices that command him to commit harmful acts.

Example – He may be acting under a delusional belief system, such as a belief that secret agents are out to kill him or that he is a significant historical person like Christ.

c. Defense bears the burden of proof by a preponderance of the evidence.

Intoxication

– RCW 9A.16.090

√ 1. Involuntary intoxication is an affirmative defense.

- Without a person’s knowledge
- Defendant was not at fault in becoming intoxicated, and was unaware that he was committing a wrongful act

Example – Spiked drink, marijuana brownies

Example – Unusual reaction to prescription drugs

⊗ 2. Voluntary intoxication is not an affirmative defense. It may be used to mitigate (lower) the mental state (i.e. murder with a mental state of intent may be lowered to manslaughter with a mental state of recklessness or criminal negligence).

SYMBOLS USED:

√ = Lawful
Defense
(Excuse)

⊗ = **Not** a legal
Defense

“Affirmative Defense”

means the defendant is admitting to it, but claiming they have a legal excuse for it.

6 - Defenses & Defense-type Mechanisms

Definitions

– RCW 9A.16.010

1. **“Necessary”** means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.
2. **“Deadly force”** means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

6 - Defenses & Defense-type Mechanisms

Use of Force – When Lawful

– RCW 9A.16.020

By Anyone

1. The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

√ a. Necessarily used by a public officer in performance of a legal duty or assisting an officer and acting under the officer's direction;

Public officer or helper

-OR-

√ b. Necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;

Anyone arresting a felon

-OR-

√ c. Whenever used by a party about to be injured or preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other interference with property in ones possession;

Self Defense

Defense against trespass or loss of property on a person

-OR-

√ d. To detain someone who enters or remains unlawfully in a building or real property for a reasonable time duration and manner to investigate the detained person's presence so long as the premises did not reasonably appear to be intended to be open to the public;

-OR-

√ e. At the request of a carrier to expel a person from a carriage, railway car, vessel or other vehicle who refuses to obey a lawful and reasonable regulation, prescribed for the conduct of passengers, if such vehicle has first been stopped and force is necessary and reasonable;

-OR-

√ f. To prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person or in enforcing necessary restraint for the protection of the person.

6 - Defenses & Defense-type Mechanisms

Excusable Homicide

– RCW 9A.16.030

By Anyone

- √ 1. When committed by accident or misfortune.
 - a. Must be involved in lawful act by lawful means, AND
 - b. Without criminal negligence or unlawful intent

6 - Defenses & Defense-type Mechanisms

Justifiable Homicide or Use of Deadly Force by Public Officer, Peace Officer, Person Aiding

– RCW 9A.16.040

1. Homicide or the use of deadly force is justifiable in the following cases:
 - √ a. When a public officer is acting in obedience to the judgment of a competent order;
-OR-
 - √ b. When necessarily used by a peace officer to overcome resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty;
-OR-
 - √ c. When necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:
 - To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony; or
 - To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; or
 - To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or
 - To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

2. In considering whether to use deadly force to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or others. Among the circumstances which may be considered by peace officers as a "**threat of serious physical harm**" are the following:
 - A suspect threatens an officer with a weapon or displays a weapon in a manner that could reasonably be considered threatening,
-OR-
 - An officer has probable cause to believe a suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances, deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.

3. A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

By Officer or Helper

Note – The law says officers may use deadly force under these guidelines. The law does not require it.

6 - Defenses & Defense-type Mechanisms

Homicide – By Other Person – When Justifiable – RCW 9A.16.050

By Anyone

1. Homicide is also justifiable when committed either:

- √ a. In lawful defense of a family member or any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person and there is imminent danger of such design being accomplished;

To defend against attack when you can see it coming (even if it hasn't happened yet).

-OR-

- √ b. In the actual resistance of an attempt to commit a felony upon the slayer in his presence, or upon or in a dwelling, or other place of abode, in which he is.

Imminent does NOT mean "immediate".

Note- The prosecution must prove the absence of self-defense beyond a reasonable doubt.

Whether there are reasonable grounds to fear is determined from the point of view of the slayer, considering their experience, background, etc.....

6 - Defenses & Defense-type Mechanisms

Duress

– RCW 9A.16.060

- √ 1. The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or another (third person) would be liable to immediate death or immediate grievous bodily injury, AND
 - a. Apprehension of the threat is reasonable, AND
 - b. The actor would not have committed the crime except for the duress.
- ⊗ 2. Duress is not available as a defense when the crime charged is Murder, Manslaughter, or Homicide by Abuse.
- ⊗ 3. Duress is not available as a defense when the actor intentionally or recklessly positioned themselves for duress to occur.
- ⊗ 4. Solely showing that a married person was acting on the command of his or her spouse is not enough to claim the defense of duress.
- ⊗ 5. The defense bears the burden of proof by a preponderance of evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true.

Entrapment

– RCW 9A.16.070

- √ 1. In any prosecution for a crime, it is a defense that:
 - a. The criminal design originated in the mind of law enforcement officials, or any person acting under their direction, AND
 - b. The actor was lured or induced into committing a crime that he did not intend to commit, AND
 - c. There was *undue* solicitation on the part of law enforcement.
- ⊗ 2. Entrapment does not exist if police merely afford the actor an opportunity to commit a crime.
- ⊗ 3. Entrapment does not exist if police merely use a normal amount of persuasion.
- ⊗ 4. Entrapment does not exist if police merely use the guise of sympathy or friendship.
- ⊗ 5. The defense bears the burden of proof by a preponderance of evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true.

6 - Defenses & Defense-type Mechanisms

Reasonable Grounds as a Defense

– RCW 9A.16.080

- √ 1. Any person may be detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning the ownership of any merchandise.
 - a. Must be a reasonable time limit; AND
 - b. For the purpose of being questioned by a police officer or authorized employee; AND
 - c. Must have reasonable grounds to believe that the person was committing or attempting to commit a theft or shoplifting from the premises.
 - **“Reasonable grounds”** shall include, but not be limited to, knowledge that a person has concealed possession of un-purchased merchandise.

Outdoor Music Festival, Campground – Detention

– RCW 9A.16.120

- √ 1. Any person on or in the immediate vicinity of the premises of an outdoor music festival or related campground may be detained:
 - a. For a reasonable time; AND
 - b. If the peace officer, owner, operator, employee or agent of the outdoor music festival had reasonable grounds to believe that the person so detained was unlawfully consuming or attempting to unlawfully consume or possess alcohol or illegal drugs on the premises; AND
 - c. For the purpose of pursuing an investigation or questioning by a law enforcement officer regarding the consumption or possession of alcohol or illegal drugs.

Necessity— Defense

(from the Washington Pattern Jury Instructions)

- √ Necessity is a defense to a charge of a crime if;
 - (1) the defendant reasonably believed the commission of the crime was necessary to avoid or minimize a harm; and
 - (2) the harm sought to be avoided was greater than the harm resulting from a violation of the law; and

6 - Defenses & Defense-type Mechanisms

-continued from previous page-

(3) the threatened harm was not brought about by the defendant; and

(4) no reasonable legal alternative existed.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty [as to this charge].

Unwitting Possession- Defense

UNWITTING POSSESSION WPIC 52.01

Generally

Unwitting possession is an affirmative defense and must be proved by a preponderance of the evidence. It is an affirmative defense because unwitting possession excuses conduct rather than negating an element of the charge.

The defense of unwitting possession may be supported by one of two alternative showings (1) that the defendant did not know that he was in possession of the controlled substance, or (2) that the defendant did not know the nature of the substance possessed

The unwitting possession defense is unique to Washington and North Dakota and was adopted to ameliorate the harshness of the almost strict criminal liability our law imposes for unauthorized possession of a controlled substance.

Where unwitting possession defense raised, defendant's knowledge is directly relevant to the defense and the universe of relevant evidence expands.

Applicability to various crimes

Unwitting possession is an available affirmative defense to crime of possession of a controlled substance.

Unwitting possession available in a VUFA prosecution.

Unwitting possession versus "fleeting, momentary" possession

"Unwitting possession" should not be confused with a defense based on "momentary, temporary and fleeting" possession. Unwitting possession is a legal excuse and an affirmative defense. The amount of time drugs are possessed is irrelevant where one presents an "unwitting possession" defense.

6 - Defenses & Defense-type Mechanisms

Use of Force on Children

– RCW 9A.16.100

- √ 1. Physical discipline of children is allowed:
 - a. Must be reasonable and moderate; AND
 - b. Must be used by parent, teacher, or guardian; AND
 - c. Must be for purposes of restraining or correcting the child.

- 2. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate.

- 3. Unlawful actions (not all inclusive):
 - ⊗ a. Throwing, kicking, burning or cutting
 - ⊗ b. Striking with a closed fist
 - ⊗ c. Shaking a child under the age of three
 - ⊗ d. Interfering with a child's breathing
 - ⊗ e. Threatening a child with a deadly weapon
 - ⊗ f. Any other act likely to cause and does cause bodily harm greater than transient pain or minor temporary marks

Physical discipline is also called "corporal punishment."

7 - Preliminary & Complicity Articles

People capable of committing crimes — Capability of children. (Liability of Children)

-RCW 9A.04.050

Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he or she may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his or her examination by one or more physicians, whose opinion shall be competent evidence upon the question of his or her age.

[2011 c 336 § 347; 1975 1st ex.s. c 260 § 9A.04.050.]

1. ZERO THRU ELEVEN YEARS: Capacity issue- Juveniles between the ages of birth and 11 years of age are presumptively incapable of committing an offense. Capacity is not an element of the crime; rather a jurisdictional impediment. Therefore, a juvenile court lacks jurisdiction to adjudicate and enter disposition against “juvenile” offender under the age of 12 absent a finding of capacity.
 - A. Age 0-7 PRESUMPTIVE INCAPABILITY: Incapable of knowing the act is wrong.
 - B. Age 8-11 PRESUMED INCAPABLE; Presume they can't know the act is wrong.

The State can remove this presumption in a capacity hearing. A court will consider the following factors in a capacity hearing;

- The nature of the crime
- The child's age and maturity
- Whether the child showed a desire for secrecy
- Whether the child admonished the victim not to tell
- Prior conduct similar to that charged
- Any consequences that attached to the conduct; and
- Acknowledgment that at the time of the act, the child knew it was wrong; and
- That he or she could be detained. *Note however it is not necessary to prove the child knew conduct was illegal.*

7 - Preliminary & Complicity Articles

-continued from previous page-

In any investigation involving this age group, the officer should ask questions to confirm capacity. These questions must focus on whether the child knew the act was wrong **when** the child committed the crime, not after the fact. Asking "Do you know it's wrong to steal things like iPods?" does NOT help because the question does not reference whether the child knew it **at the time of the act**. Asking "At the time you took the iPod, did you know it was wrong?" better establishes capacity. A suggested follow-up question, "Why was it wrong?"

7 - Preliminary & Complicity Articles

Liability for Conduct of Another – Complicity

– RCW 9A.08.020

1. Complicity imposes criminal responsibility on individuals for a crime committed by someone else, usually because these secondary actors have intentionally helped or encouraged the primary actor to commit the crime.

2. There are two ways of helping someone else commit a crime:

a. Physical Aid – The defendant can physically help another person commit a crime.

Example – He might obtain the gun used by the primary actor in the bank robbery. Or he may actually be present at the crime and help with its commission, perhaps by acting as a lookout or by driving the getaway car.

b. Psychological Aid – The defendant can encourage or reinforce the primary actor's decision to commit a crime.

Example – She may urge a fellow gang member to shoot a rival gang member who has shown her disrespect.

3. A person is an accomplice of another person in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime he solicits, commands, encourages, or requests such other person to commit it or aids or agrees to aid such other person in planning or committing it.

Example – A person who works inside an armored car center draws out the building layout and leaves the back door unlocked for his accomplice to enter and steal the money.

Example of a situation where a person would not be an accomplice – Someone is fooled or forced to commit a criminal act.

4. Two ways to terminate one's complicity:

a. Give timely warning to law enforcement officials;

-OR-

b. Make a good faith effort to stop the crime.

Note – a person is not an accomplice in a crime committed by another person if he is a victim of that crime.

8 - Anticipatory Offenses

Criminal Attempt

– RCW 9A.28.020

1. With the intent to commit a specific crime, a person takes a substantial step toward the commission of that crime.
 - a. Mental planning alone does not constitute a substantial step.
 - b. Courts will determine substantial step on a case-by-case basis.
- ⊗ 2. It is not a defense if an attempt was made and it was factually or legally impossible to complete the crime.
 - Example- An undercover officer is posing as an 11-year old girl online and a sex offender is communicating with her for immoral purposes and setting up a meeting for a sexual encounter. The sex offender arrives at the pre-planned location (motel) and is arrested.
3. An attempt to commit a crime is a step ladder system of punishment:

CRIME:	ATTEMPT PUNISHED AS:
Murder 1 st Degree [A] ----->	Class A Felony
Murder 2 nd Degree [A] ----->	Class A Felony
Arson 1 st Degree [A] ----->	Class A Felony
Rape 1 st & 2 nd Degree [A] ----->	Class A Felony
Indecent Liberties w/ Forcible Compulsion [A] ->	Class A Felony
Rape of a Child 1 st and 2 nd Degree [A] -->	Class A Felony
Child Molestation 1 st Degree [A] ----->	Class A Felony
Class A Felony ----->	
Class B Felony ----->	Class B Felony
Class C Felony ----->	Class C Felony
Gross Misdemeanor ----->	Gross Misdemeanor
Misdemeanor ----->	Misdemeanor
	Misdemeanor

Anticipatory offenses are not used if the underlying crime has been committed.

8 - Anticipatory Offenses

-continued from previous page-

4. Drug Offenses-

Any attempt or conspiracy to commit a drug offense is punished as the same as the completed crime. (RCW 69.50.407)

8 - Anticipatory Offenses

Criminal Solicitation

– RCW 9A.28.030

1. With the intent to promote or facilitate the commission of a crime, a person offers or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of the other person(s) in its commission or attempted commission.
2. Criminal solicitation shall be punished in the same manner as criminal attempt under RCW 9A.28.020 (the step-ladder system).

CRIME:

Murder 1st Degree [A] ----->

Murder 2nd Degree [A] ----->

Arson 1st Degree [A] ----->

Rape 1st & 2nd Degree [A] ----->

Indecent Liberties w/ Forcible Compulsion [A] ->

Rape of a Child 1st and 2nd Degree [A] -->

Child Molestation 1st Degree [A] ----->

Class A Felony ----->

Class B Felony ----->

Class C Felony ----->

Gross Misdemeanor ----->

Misdemeanor ----->

ATTEMPT PUNISHED AS:

Class A Felony

Class A Felony

Class A Felony

Class A Felony

Class A Felony

Class A Felony

Class A Felony

Class B Felony

Class C Felony

Gross Misdemeanor

Misdemeanor

Misdemeanor

Anticipatory offenses are not used if the underlying crime has been committed.

Tab Marker:
**ANTICIPATORY
OFFENSES**

8 - Anticipatory Offenses

Criminal Conspiracy

– RCW 9A.28.040

1. With the intent to commit a crime, a person agrees with one or more other persons to engage in criminal conduct, and any one of the persons takes a substantial step toward the commission of the crime.
2. It is *not* a defense if the accused person's co-conspirator(s):
 - ⊗ a. Has not been prosecuted or convicted of the same crime or any other crime,
-OR-
 - ⊗ b. Is not amenable to justice,
-OR-
 - ⊗ c. Has been acquitted,
-OR-
 - ⊗ d. Lacked the capacity to commit an offense,
-OR-
 - ⊗ e. Is a law enforcement officer and the crime was never intended to be committed.

3. Conspiracy is also punished with a step-ladder system:

CRIME:		ATTEMPT PUNISHED AS:
Murder 1 st Degree [A]	----->	Class A Felony
Class A Felony	----->	
Class B Felony	----->	Class B Felony
Class C Felony	----->	Class C Felony
Gross Misdemeanor	----->	Gross Misdemeanor
Misdemeanor	----->	Misdemeanor
	----->	Misdemeanor

4. Drug Offenses-

Any attempt or conspiracy to commit a drug offense is punished as the same as the completed crime. (RCW 69.50.407)

Anticipatory offenses are not used if the underlying crime has been committed.

9 - Firearms & Dangerous Weapons

Definitions

– RCW 9.41.010

1. **"Firearm"** - A weapon or device from which a projectile may be fired by an explosive such as gunpowder.
2. **"Pistol"** - Any firearm with a barrel length of less than 16 inches, or is designed to be held and fired with a single hand.
3. **"Rifle"** - A weapon designed or redesigned, and intended to be fired from the shoulder, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.
4. **"Short-barreled Rifle"** - A rifle having one or more barrels less than 16 inches in length OR has an overall length of less than 26 inches.
5. **"Shotgun"** - A weapon with one or more barrels designed or redesigned and intended to be fired from the shoulder, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.
6. **"Short-barreled Shotgun"** – A shotgun having one or more barrels less than 18 inches in length OR an overall length of less than 26 inches.
7. **"Machine Gun"** - Any firearm known as a machine gun that does not require the trigger to be pressed for each shot.
8. **"Loaded"** means:
 - a. A cartridge in the chamber of the firearm, or
 - b. Cartridge in a clip that is locked in place in the firearm, or
 - c. Cartridge in the cylinder of the firearm if it is a revolver, or
 - d. Cartridge in the tube or magazine that is inserted in the action, or
 - e. A ball in the barrel and firearm is capped or primed if it is a muzzle loader.

9 - Firearms & Dangerous Weapons

Unlawful Possession of Firearms 2nd Degree - RCW 9.41.040 (Class C Felony)

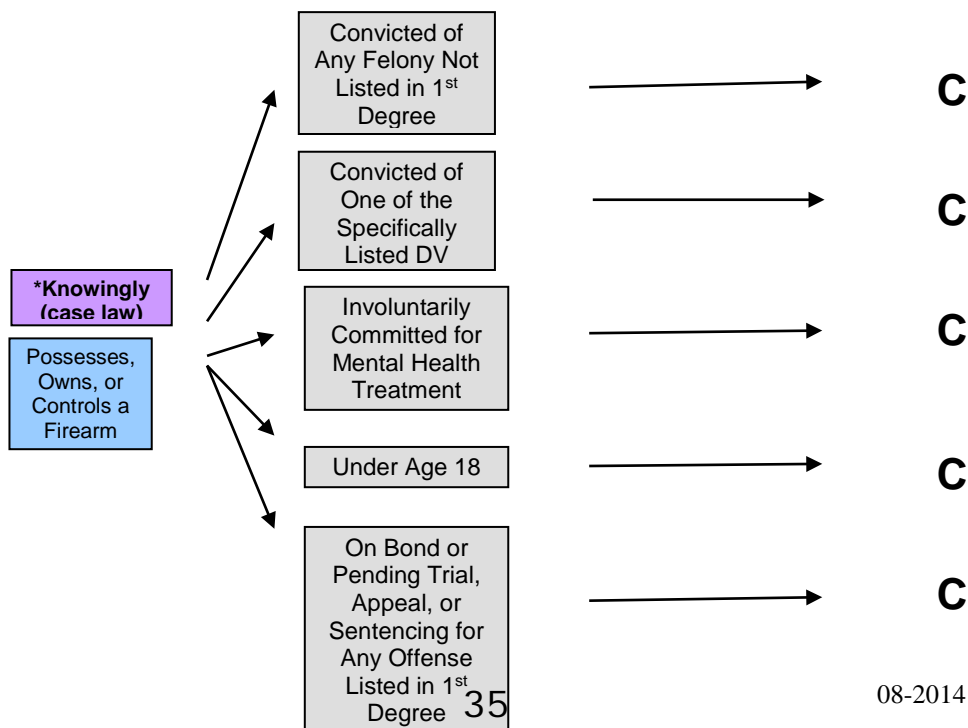
1. A person cannot *knowingly** own/possess/control a firearm if he/she:
 - a. Has been convicted or found not guilty by reason of insanity of any felony not listed in Unlawful Possession 1st Degree;

-OR-
 - b. Has been convicted or found not guilty by reason of insanity of a Domestic Violence Offense committed on or after July 1, 1993 involving:
 - A Simple Assault, or
 - Coercion, or
 - Stalking, or
 - Reckless Endangerment, or
 - Criminal Trespass 1st Degree, or
 - Violation of a No-Contact or Protection Order;

-OR-
 - c. Has been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77, or equivalent statutes of another jurisdiction (unless rights have been restored);

-OR-
 - d. Is under the age of 18 (Exceptions under RCW 9.41.042);

-OR-
 - e. Is on Bond/PR/Pending Trial/Appeal/or Sentencing for any of the Unlawful Possession 1st Degree offenses (*may own, while on bond/PR, just not possess (State v. Spiers, 119 Wn.App. 85 (2003).*



9 - Firearms & Dangerous Weapons

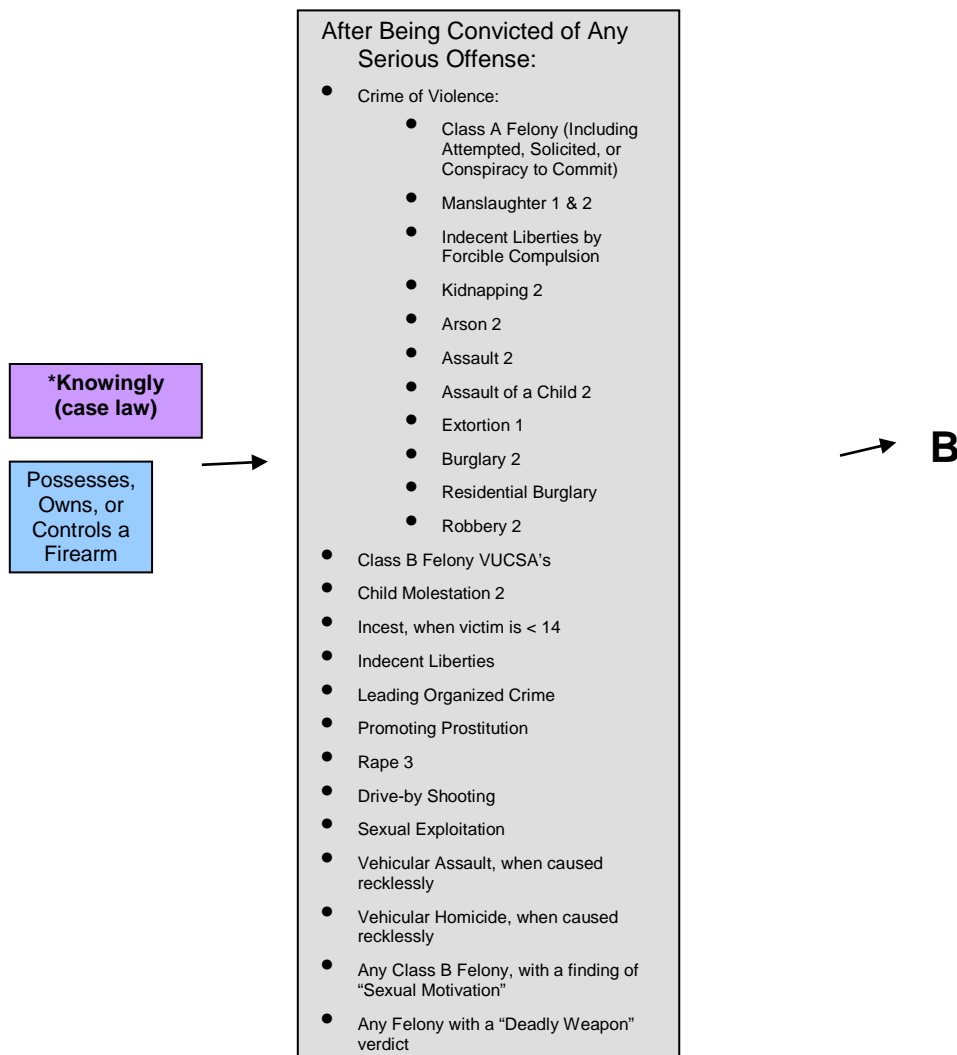
Unlawful Possession of Firearms 1st Degree – RCW 9.41.040 (Class B Felony)

1. A person, whether an adult or a juvenile, is guilty of the crime of Unlawful Possession of a Firearm 1st Degree, if the person *knowingly** owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any “**Serious Offense**” defined as:
 - Any crime of violence including:
 - Any Class A or attempted Class A Felony, or
 - Criminal Solicitation of or Criminal Conspiracy to commit a Class A Felony, or
 - Manslaughter 1st and 2nd Degree, or
 - Indecent Liberties if committed by forcible compulsion, or
 - Kidnapping 2nd Degree, or
 - Arson 2nd Degree, or
 - Assault 2nd Degree, or
 - Assault of a Child 2nd Degree, or
 - Extortion 1st Degree, or
 - Burglary 2nd Degree, or
 - Residential Burglary, or
 - Robbery 2nd Degree;
 - OR-
 - Felony VUCSA Violations (RCW 69.50) - classified as Class B or with a maximum term of 10 years,
-OR-
 - Child Molestation 2nd Degree,
-OR-
 - Incest when committed against a child under age 14,
-OR-
 - Indecent Liberties,
-OR-
 - Leading Organized Crime,
-OR-
 - Promoting Prostitution 1st Degree,
-OR-
 - Rape 3rd Degree,
-OR-
 - Drive-by Shooting,
-OR-
 - Sexual Exploitation,
-OR-
 - Vehicular Assault – when caused by the operation or driving of a vehicle by a person under the influence or in a reckless manner,
-OR-
 - Vehicular Homicide – when proximately caused by the driving of any vehicle by any person under the influence or in a reckless manner,
-OR-
 - Any Class B Felony with a finding of sexual motivation,
-OR-
 - Any other felony with a deadly weapon verdict.

9 - Firearms & Dangerous Weapons

Unlawful Possession of Firearms 1st Degree – RCW 9.41.040 (Class B Felony)

-continued from previous page-



9 - Firearms & Dangerous Weapons

Possession by Offenders

– RCW 9.41.045

1. As a sentence condition and requirement, offenders under the supervision of the department of corrections pursuant to chapter 9.94A RCW shall not own, use or possess firearms or ammunition.
2. Offenders shall be subject to violation process and sanctions.

9 - Firearms & Dangerous Weapons

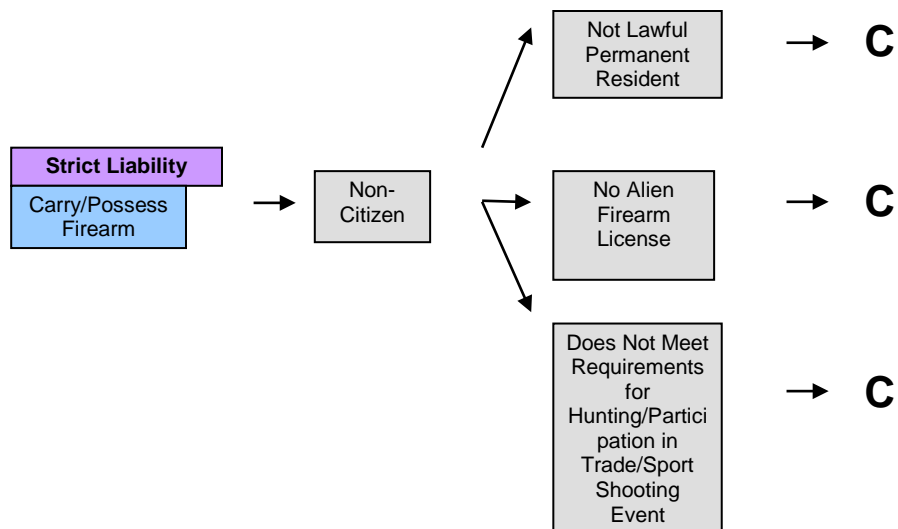
Alien Possession of Firearms

– RCW 9.41.171 (Class C Felony)

1. It is a class C felony for any person who is not a citizen of the United States to carry or possess any firearm, unless the person:
 - a. Is a lawful permanent resident;

-OR-
 - b. Has obtained a valid alien firearm license pursuant to RCW 9.41.173;

-OR-
 - c. Meets the requirements of RCW 9.41.175 (regarding hunting or participation in a trade show or sport shooting event).



9 - Firearms & Dangerous Weapons

Children – Permissible Firearm Possession

– RCW 9.41.042

1. RCW 9.41.040 (Unlawful Possession of Firearms) shall not apply to any person under the age of 18 years who is:
 - √ a. In attendance at a hunter's safety course;
-OR-
 - √ b. Engaging in practice at an established range;
-OR-
 - √ c. Engaging in an organized competition;
-OR-
 - √ d. Hunting or trapping under a valid license issued under Title 77 RCW;
-OR-
 - √ e. In an area where the discharge of a firearm is permitted, is not trespassing, and is at least 14 years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol;
-OR-
 - √ f. In an area where the discharge of a firearm is permitted, is not trespassing, and is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;
-OR-
 - √ g. Traveling with any unloaded firearm in their possession to or from any activity described above;
-OR-
 - √ h. On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;
-OR-
 - √ i. At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in 9A.16.020[3] (self-defense);
-OR-
 - √ j. Is a member of the armed forces of the United States, National Guard, or organized reserves, when on duty.

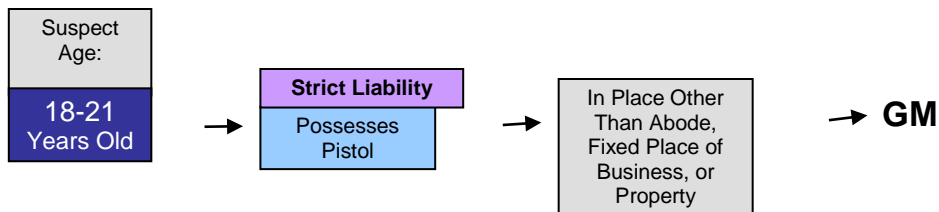
9 - Firearms & Dangerous Weapons

Possession of Pistol by Person 18-21

– RCW 9.41.240 (Gross Misdemeanor)

1. Except for lawful exceptions (RCW's 9.41.042, 9.41.050, & 9.41.060), a person at least eighteen years of age, but less than twenty-one years of age, may possess a pistol ONLY WHEN:

- √ a. In the person's place of abode;
-OR-
- √ b. At the person's fixed place of business;
-OR-
- √ c. On real property under the person's control.



Misdemeanor Presence
Exception?

9 - Firearms & Dangerous Weapons

Carrying Firearms [& C.P.L. Violations] – RCW 9.41.050 (Infraction / Misdemeanor)

1. Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol.
 - Washington State is an "open carry" state. No license is needed to carry a weapon in a manner that is readily visible to others.
2. Every licensee shall have his or her concealed pistol license (C.P.L.) in his or her immediate possession at all times that he or she is required by this section and shall display the license upon demand to any police officer or to any other person when and if required to do so by law.
 - *Any violation of this subsection shall be a Class 1 Civil Infraction.*
3. A person shall not carry or place a loaded pistol in any vehicle unless the person has a concealed weapons permit, AND
 - a. The pistol is on the licensee's person,
-OR-
 - b. The licensee is within the vehicle at all times the pistol is there,
-OR-
 - c. The licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.
4. A person at least 18 years of age who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.
5. Any law enforcement officer in this state or from any other state, member of the United States armed forces, and officers or employees of the United States duly authorized to carry a concealed pistol are exempt under RCW 9.41.060.

SEE HANDOUT FOR DIAGRAM

Misdemeanor Presence
Exception?

*Note –
Exceptions to
CPL rules are
listed in RCW
9.41.060*

9 - Firearms & Dangerous Weapons

Concealed Pistol Licenses [Prohibited]

– RCW 9.41.070

1. Prohibited from possession, as spelled out in statutes, if any of the following is applicable:
 - a. Under 21 years of age;

-OR-
 - b. Currently under a court order relating to firearms for criminal or civil harassment, D.V., or a dissolution action;

-OR-
 - c. Currently on bond or P.R. pending trial, appeal or sentencing for a felony offense;

-OR-
 - d. Currently has an outstanding warrant for any crime;

-OR-
 - e. Has been ordered to forfeit a firearm relating to an alcohol or drug related incident during the past year.

9 - Firearms & Dangerous Weapons

Possession of Unlawful Firearms

– RCW 9.41.190 (Class C Felony)

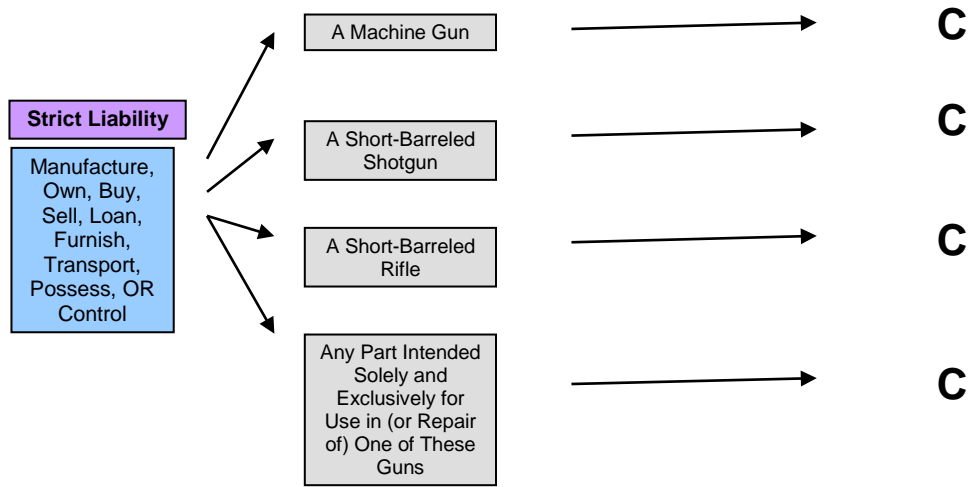
1. It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control any:
 - a. Machine gun,

-OR-
 - b. Short-barreled shotgun,

-OR-
 - c. Short-barreled rifle,

-OR-
 - d. Any part designed and intended solely and exclusively for use in a machine gun, short-barreled shotgun, or short-barreled-rifle, or in converting a weapon into a machine gun, short-barreled shotgun or short-barreled rifle; or to assemble or repair any machine gun, short-barreled shotgun or short-barreled rifle.

(See RCW for exceptions)



9 - Firearms & Dangerous Weapons

Aiming or Discharging Firearms Or Dangerous Weapons

– RCW 9.41.230 (Gross Misdemeanor)

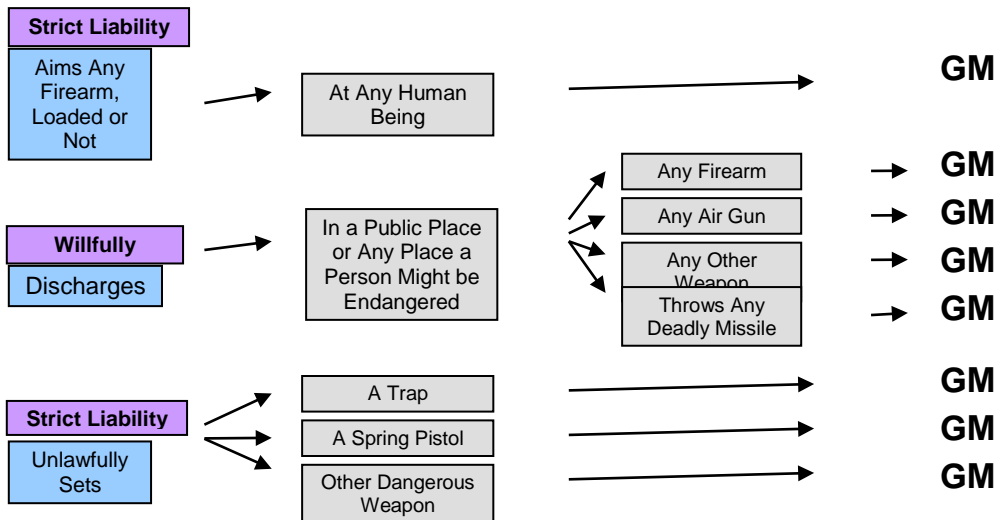
1. For conduct not amounting to a violation of RCW 9A.36 (Assault), any person who:
 - a. Aims any firearm, loaded or not, at or towards any human being;

-OR-
 - b. Willfully discharges any firearm, air gun, or other weapon, or throws any deadly missile in a public place or in any place where a person may be endangered thereby;

-OR-
 - c. Except as provided in RCW 9.41.185 (Coyote getters), sets a so-called trap, spring pistol, rifle, or other dangerous weapon, although no injury occurs.

Misdemeanor Presence Exception?

Note – If an injury results from a violation involving aiming a weapon at another, the person shall be subject to the applicable laws under 9A.32 (Homicide) and 9A.36 (Assault).



9 - Firearms & Dangerous Weapons

[Carrying] Dangerous Weapons – RCW 9.41.250 (Gross Misdemeanor)

1. It is unlawful for a person to manufacture, possess, sell, or dispose of:
 - a. Slung shot, or
 - b. Sand club, or
 - c. Metal knuckles, or
 - d. Spring blade knife (*police exception*), or
 - e. Butterfly knife.

2. If furtively carried, with intent to conceal, it is unlawful to have any:
 - a. Dirk (a knife designed primarily for stabbing) , or
 - b. Dagger (a double-bladed knife designed primarily for stabbing) , or
 - c. Pistol (unless the person has a concealed pistol license) , or
 - d. Other dangerous weapon.

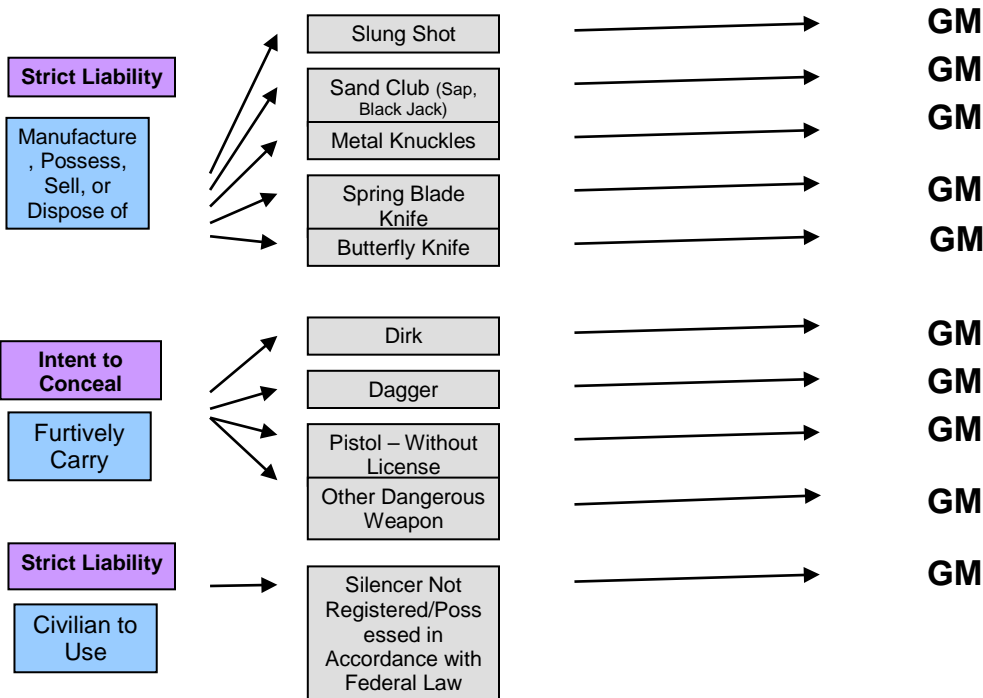
3. It is illegal for a civilian to use a silencer, unless legally possessed and registered in accordance with federal law.

Misdemeanor Presence Exception?

A, B, C, & E of this subsection apply to all people – including police officers. An exception for on-duty police was added for spring blade knives in 2007.

Think of "Furtive" as "Sneaky and malicious"

Police Officers are expected to carry certain devices as a part of their job, and it is not in a malicious (furtive) manner. So this subsection does not apply to police officers.



This law is more about which exact items are illegal under certain circumstances.

9 - Firearms & Dangerous Weapons

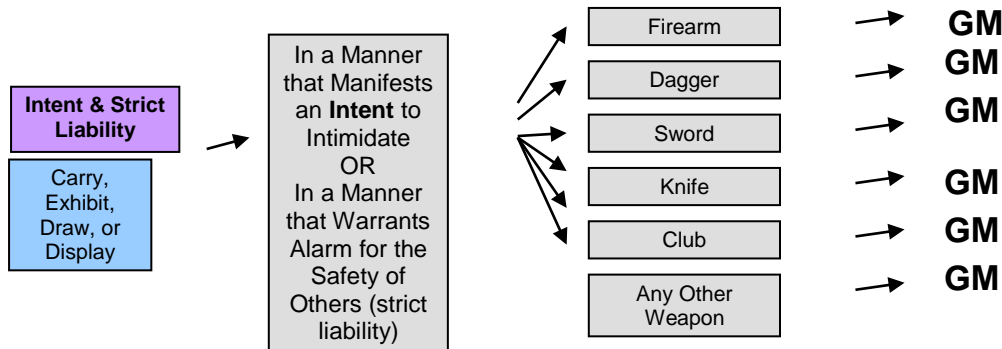
[Brandishing] Weapons Capable of Producing Bodily Harm

– RCW 9.41.270 (Gross Misdemeanor)

1. It is unlawful to carry, exhibit, draw or display in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons any:
 - a. Firearm, or
 - b. Dagger, or
 - c. Sword, or
 - d. Knife, or
 - e. Club, or
 - f. Any other weapon apparently capable of producing bodily harm.

Also referred to simply as "Brandishing"

Misdemeanor Presence Exception?



This law is more about the manner in which the item is used – not exactly what the item is.

This particular RCW does not apply to:

- √ Any act committed by a person while in his or her place of abode or fixed place of business

9 - Firearms & Dangerous Weapons

Possessing Dangerous Weapons on School Facilities – RCW 9.41.280 (Gross Misdemeanor)

Misdemeanor Presence
Exception?

1. It is unlawful for a person to carry onto, or to possess on, public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:
 - a. Any firearm, or
 - b. Any dangerous weapon defined in RCW 9.41.250, or
 - c. Nun-chu-ka sticks, or
 - d. Throwing stars, or
 - e. Air gun, air pistol, air rifle, designed to propel a BB, pellet or other projectile by the discharge of compressed air, carbon dioxide or other gas, or
 - f. Stun gun, or
 - g. Any device, object, or instrument used or intended to be used as a weapon with the intent to injure a person by electric shock, charge or impulse.

2. Exemptions include:
 - √ a. Any student or employee of a private military academy when on the property of the academy;
-OR-
 - √ b. Any person engaged in military, law enforcement, or school district security activities (security officers carrying a stun gun must have received training equivalent to that received by law enforcement officers);
-OR-
 - √ c. Any person who is involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed;
-OR-
 - √ d. Any person participating in a firearms or air gun competition approved by the school or school district;
-OR-
 - √ e. Any person in possession of a pistol with a valid concealed pistol license while picking up or dropping off a student;
-OR-
 - √ f. Any non-student at least 18 legally in possession of a firearm or dangerous weapon and it is secured from view within a locked unattended vehicle while conducting legitimate business at the school;
-OR-
 - √ g. Law enforcement officers are exempt from these prohibitions (on or off duty);

9 - Firearms & Dangerous Weapons

Possessing Dangerous Weapons on School Facilities – RCW 9.41.280 (Gross Misdemeanor)

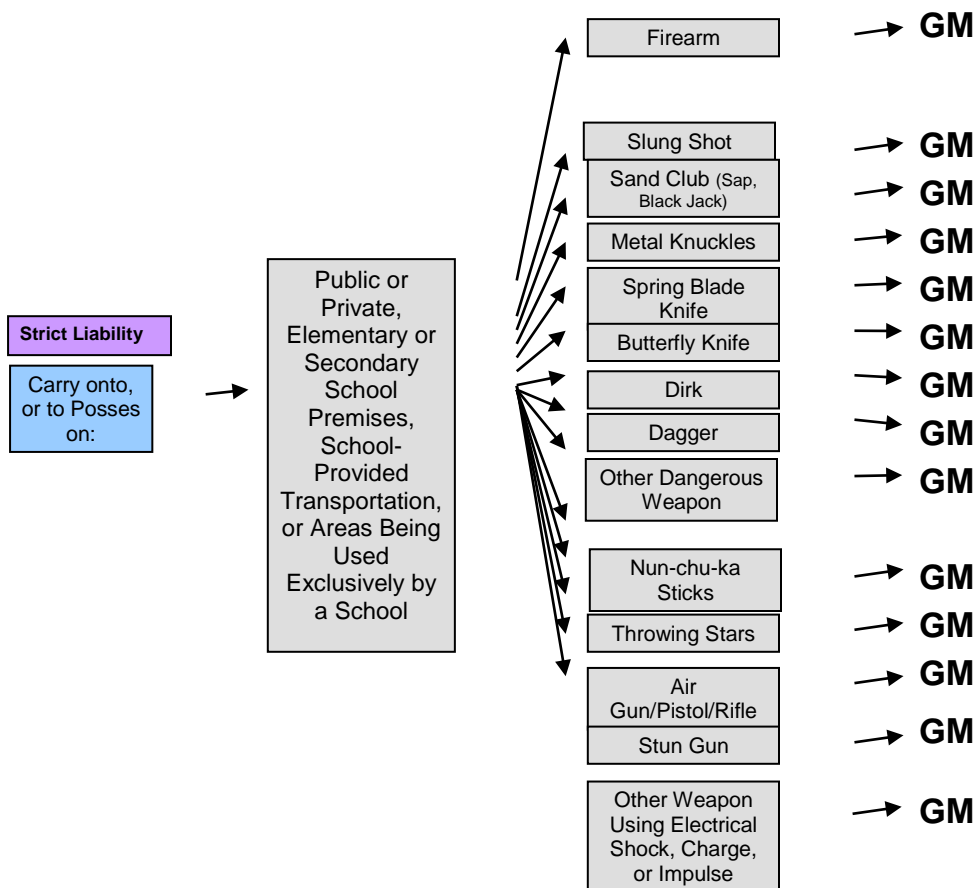
-continued from previous page-

-OR-

- √ h. Any person who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes authorized to be conducted on the school premises;

-OR-

- √ i. Any person who possesses a stun gun, if possessed and used solely for purposes approved by the school for use in a school authorized event, lecture, or activity conducted on the school premises.



9 - Firearms & Dangerous Weapons

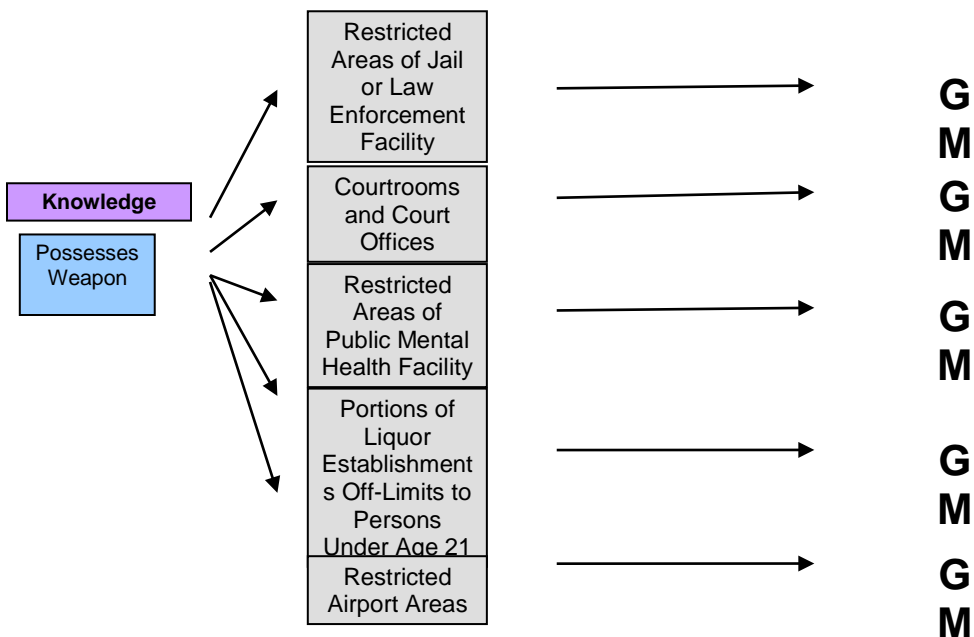
[Carrying a Weapon in] Places Where a Weapon is Prohibited

– RCW 9.41.300 (Gross Misdemeanor)

Misdemeanor Presence
Exception?

1. It is unlawful for any person to enter the following places when he or she knowingly possesses or has under his or her control a Weapon:
 - a. Restricted access areas of a jail or law enforcement facility,
-OR-
 - b. Courtrooms and court offices,
-OR-
 - c. Restricted access areas of a public mental health facility certified by DSHS,
-OR-
 - d. Liquor establishments - That portion of an establishment classified by the state liquor control board as off-limits to persons under 21 years of age,
-OR-
 - e. Restricted areas of airports.

2. Exemptions include:
 - √ a. A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;
-OR-
 - √ b. Law enforcement personnel;
-OR-
 - √ c. Security personnel while engaged in official duties.



9 - Firearms & Dangerous Weapons

Deadly Weapon Special Verdict Definition

– RCW 9.94A.825

1. In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime.
2. For the purpose of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death.
3. The following instruments are included in the term deadly weapon:
 - Blackjack
 - Sling Shot
 - Billy Club
 - Sand Club (AKA: Sap, Black-Jack)
 - Sand Bag
 - Metal Knuckles (including Sap Gloves)
 - Dirk / Dagger
 - Pistol
 - Revolver
 - Any firearm
 - Knife having a blade over 3 inches
 - Razor with unguarded blade
 - Metal pipe or bar used or intended to be used as a club
 - Any explosive
 - Weapons containing poisonous or injurious gas

This RCW is not a crime – it only provides a sentence enhancement.

This definition of “Deadly Weapon” is different and only applies to this RCW.

9 - Firearms & Dangerous Weapons

Loaded Firearm in Vehicle

– RCW 77.15.460

(1) A person is guilty of unlawful possession of a loaded rifle or shotgun in a motor vehicle, as defined in RCW 46.04.320, or upon an off-road vehicle, as defined in RCW 46.04.365, if:

(a) The person carries, transports, conveys, possesses, or controls a rifle or shotgun in a motor vehicle, or upon an off-road vehicle, except as allowed by department rule; and

(b) The rifle or shotgun contains shells or cartridges in the magazine or chamber, or is a muzzle-loading firearm that is loaded and capped or primed.

(2) A person is guilty of unlawful use of a loaded firearm if:

(a) The person negligently discharges a firearm from, across, or along the maintained portion of a public highway; or

(b) The person discharges a firearm from within a moving motor vehicle or from upon a moving off-road vehicle.

(3) Unlawful possession of a loaded rifle or shotgun in a motor vehicle or upon an off-road vehicle, and unlawful use of a loaded firearm are misdemeanors.

(4) This section does not apply if the person:

(a) Is a law enforcement officer who is authorized to carry a firearm and is on duty within the officer's respective jurisdiction;

(b) Possesses a disabled hunter's permit as provided by RCW 77.32.237 and complies with all rules of the department concerning hunting by persons with disabilities; or

(c) Discharges the rifle or shotgun from upon a nonmoving motor vehicle or a nonmoving off-road vehicle, as long as the engine is turned off and the motor vehicle or off-road vehicle is not parked on or beside the maintained portion of a public road, except as authorized by the commission by rule.

(5) For purposes of subsection (1) of this section, a rifle or shotgun shall not be considered loaded if the detachable clip or magazine is not inserted in or attached to the rifle or shotgun.

10 - Homicide

Homicide Definition

– RCW 9A.32.010

1. **“Homicide”** is the killing of a human being by the act, procurement, or omission of another; death occurring at any time after the act and is either:
 - a. Murder
 - b. Homicide by Abuse
 - c. Manslaughter
 - d. Excusable Homicide
 - e. Justifiable Homicide

2. **“Criminal Homicides”**
 - a. Murder 1st and 2nd Degree
 - b. Manslaughter 1st and 2nd Degree
 - c. Homicide by Abuse
 - d. Homicide by Controlled Substance
 - e. Vehicular Homicide
 - f. Homicide by Watercraft

3. **“Non-criminal Homicides”**
 - a. Justifiable Homicide (9A.16.040, 9A16.050)
 - b. Excusable Homicide (9A.16.030)

Tab Marker:
HOMICIDE

10 - Homicide

BARRK Felonies

- **Burglary** 1st Degree
- **Arson** 1st and 2nd Degree
- **Rape** 1st and 2nd Degree
- **Robbery** 1st and 2nd Degree
- **Kidnapping** 1st and 2nd Degree

Felony Murder Rule

1. Murder 1st Degree: Commits or attempts to commit *any BARRK felony* and in the course of such crime or immediate flight therefrom:
 - a. He or she or another participant causes the death of a non-participant, AND
 - b. The defendant's conduct was the cause in fact of the result, which usually (but not always) means that *but for* the conduct of the defendant the result would not have occurred.
2. Murder 2nd Degree: Commits or attempts to commit any non-BARRK felony, including Assault, and, in the course of and in furtherance of such crime or immediate flight therefrom:
 - a. He or she or another participant causes the death of a non-participant, AND
 - b. The defendant's conduct was the cause in fact of the result.

*BARRK +
Someone Dies
= Murder 1*

*Non-BARRK +
Someone Dies =
Murder 2*

Premeditation

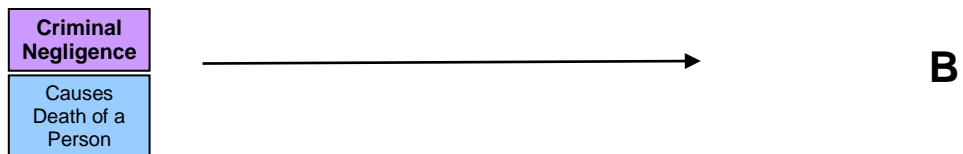
– RCW 9A.32.020

1. Premeditation is required in order to support a conviction of the crime of Murder 1st Degree, and must involve more than a moment in point of time.

10 - Homicide

Manslaughter 2nd Degree – RCW 9A.32.070 (Class B Felony)

1. A person, with *criminal negligence*, causes the death of another person.

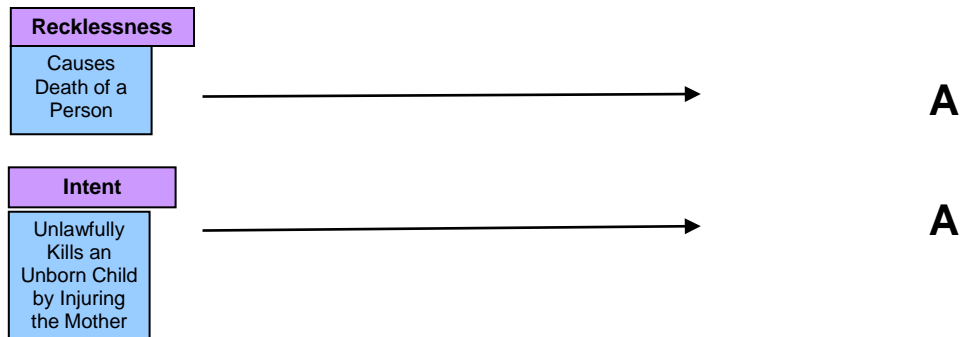


10 - Homicide

Manslaughter 1st Degree

– RCW 9A.32.060 (Class A Felony)

1. A person *recklessly* causes the death of another person;
-OR-
2. Intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother.
3. **“Quick Child”** (or **“Viable Child”**) means a fetus in the third trimester of pregnancy (approximate), capable of independent existence outside mother's womb (even if only in an incubator).



10 - Homicide

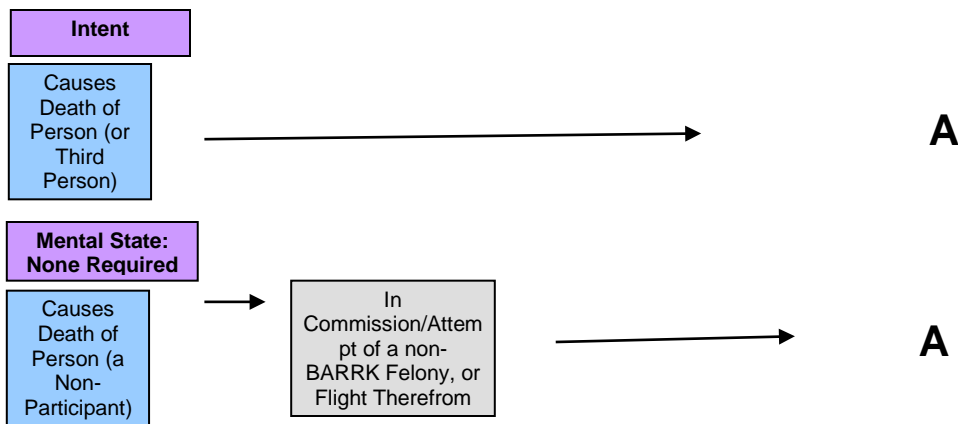
Murder 2nd Degree

– RCW 9A.32.050 (Class A Felony)

1. A person is guilty of Murder in the Second Degree when:
 - a. With *intent*, but without premeditation, a person causes the death of another person;

-OR-

 - b. In the commission or attempted commission of a non-BARRK felony, and in the course of such crime or the immediate flight therefrom, the suspect or another participant causes the death of a non-participant.



10 - Homicide

Murder 1st Degree

– RCW 9A.32.030 (Class A Felony)

1. A person is guilty of Murder in the First Degree when:
 - a. With *premeditated intent* to cause the death of another person, he or she causes the death of such person or of a third person;
 - Premeditation is defined as more than a moment in point of time.
 - Premeditation is determined by the courts on a case-by-case basis.

-OR-

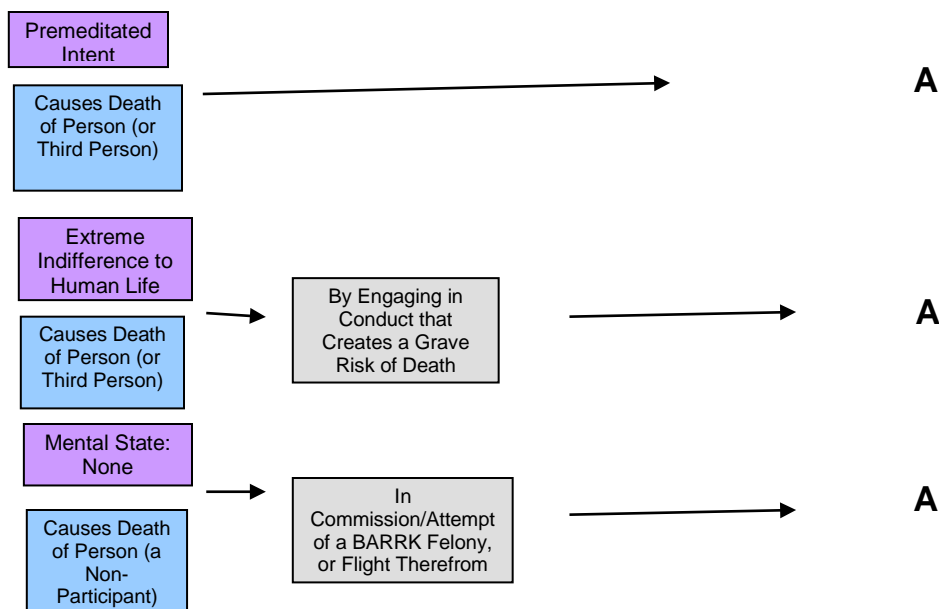
 - b. Under circumstances manifesting *an extreme indifference to human life*, he or she engages in conduct which creates a grave risk of death to any person, and thereby causes the death of a person;

Example – Throwing a hand grenade in a crowd of people

Example – Driving a car into a crowd of people.

-OR-

 - c. He or she commits or attempts to commit a BARRK felony and in the course of or in furtherance of such crime or in immediate flight therefrom the suspect or another participant causes the death of a non-participant.



10 - Homicide

Definition of Aggravated 1st Degree Murder

– RCW 10.95.020

1. A person is guilty of Aggravated First Degree Murder if he or she commits First Degree Murder as defined by RCW 9A.32.030(1)(a), and one or more of the following aggravating circumstances exist:
 - a. Victim is a law enforcement officer, corrections officer, or fire fighter performing their official duties at the time of the act resulting in death and the victim was known or reasonably should have been known to be such by the slayer the time of the killing;
-OR-
 - b. Person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons convicted of crimes;
-OR-
 - c. The person was in custody in a county or county-city jail after having been found guilty of a felony crime;
-OR-
 - d. Murder was committed for money or anything of value;
-OR-
 - e. Solicited another person to commit the murder for money or any thing of value;
-OR-
 - f. To obtain or maintain membership or advance their position in the hierarchy of an organization, association or identifiable group;
-OR-
 - g. Murder was committed from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene;
-OR-
 - h. The victim was a judge, juror, witness, prosecutor, defense attorney, member of sentence review board or probation or parole officer and the murder was related to the exercise of official duties performed or to be performed by the victim;
-OR-
 - i. To conceal the commission of a crime or to protect or conceal the identity of any person committing a crime or any attempt to avoid prosecution as a persistent offender;
-OR-
 - j. More than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;
-OR-

10 - Homicide

Definition of Aggravated 1st Degree Murder

– RCW 10.95.020

-continued from previous page-

- k. Was committed in the course of, in furtherance of or in immediate flight from a Robbery 1st or 2nd; Rape 1st or 2nd; Burglary 1st, 2nd or Residential, Kidnapping 1st or Arson 1st Degree;
- OR-
- l. Victim was a news reporter and the murder was committed to obstruct or hinder the investigation or reporting activities of the victim;
- OR-
- m. At the time the person committed the murder, there existed a court order, issued in this state or other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;
- OR-
- n. At the time the person committed the murder, the person and the victim were “family or household members” as that term is defined in RCW 10.99.020(1) and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five- year period, regardless of whether a conviction resulted:
- Harassment as defined in RCW 9A.46.020, or
 - Any criminal assault

10 - Homicide

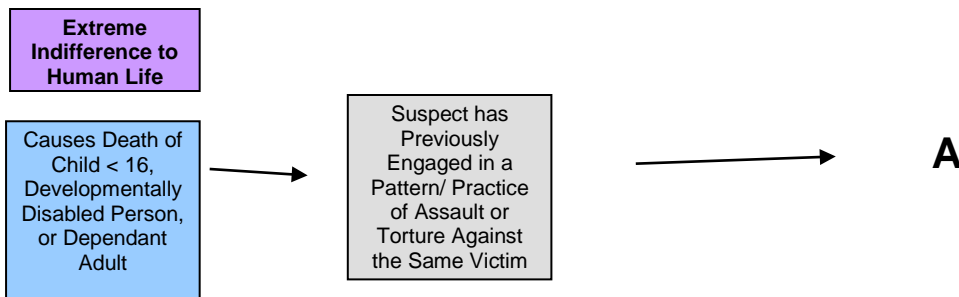
Homicide by Abuse

– RCW 9A.32.055 (Class A Felony)

1. With extreme indifference to human life:
 - a. A person causes the death of a child or person under the age of 16, a developmentally disabled person or a dependent adult; AND
 - b. The person has previously engaged in a pattern or practice of assault or torture against the victim.

2. **“Dependent Adult”** means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

3. **“Pattern”** means more than one occurrence.

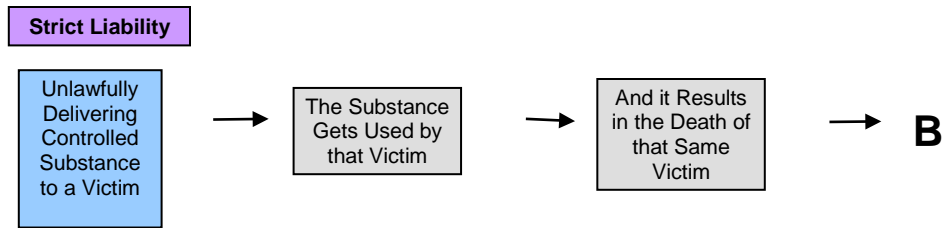


10 - Homicide

Controlled Substances Homicide

– RCW 69.50.415 (Class B Felony)

1. A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(2)(a) (b), or (c) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.



11 – Assault & Physical Harm

Definitions

1. “Assault”

a. An act with unlawful force with *intent to inflict bodily injury upon another*, tending but failing to accomplish it accompanied with the apparent present ability to inflict the bodily injury if not prevented;

- It is not necessary that bodily injury actually be inflicted.
- It is sufficient if an apprehension and fear of bodily injury is created.

-OR-

b. The intentional touching, or striking, or cutting, or shooting of a person, regardless of whether any actual physical harm is done to the other person;

-OR-

c. An intentional act, with unlawful force, which creates in another reasonable apprehension and fear of bodily injury, even if the actor did not actually intend to inflict any bodily injury.

d. *Washington Pattern Jury Instructions (WPIC)
35.50 Assault—Definition

An assault is an intentional touching or striking or cutting or shooting of another person, with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking or cutting or shooting is offensive if the touching or striking or cutting or shooting would offend an ordinary person who is not unduly sensitive.

An assault is also an act, with unlawful force done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

An act is not an assault, if it is done with the consent of the person alleged to be assaulted.

3 Ways to Assault

Act + intent to harm, and suspect has the ability to carry it out – but for whatever reason, hasn't yet; or was unsuccessful.

*This working definition of “Assault” is based on case law, common law, current interpretation of the RCWs and the *Washington Pattern Jury Instructions.*

11 – Assault & Physical Harm

2. **“Great bodily harm”** means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.

3. **“Substantial bodily harm”** means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

4. **“Bodily harm,” “physical injury,” or “bodily injury”** means physical pain or injury, illness, or an impairment of physical condition.

11 – Assault & Physical Harm

Assault 4th Degree

– RCW 9A.36.041 (Gross Misdemeanor)

1. A person is guilty of Assault in the Fourth Degree if, under circumstances not amounting to Assault in the First, Second, or Third Degree, or Custodial Assault, he or she assaults another.

Intent

Assaults a Person



GM

Misdemeanor Presence Exception?

Based on case law and common law, "Unwanted Touching" is included in Assault 4th Degree.

11 – Assault & Physical Harm

Assault 3rd Degree

– RCW 9A.36.031 (Class C Felony)

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

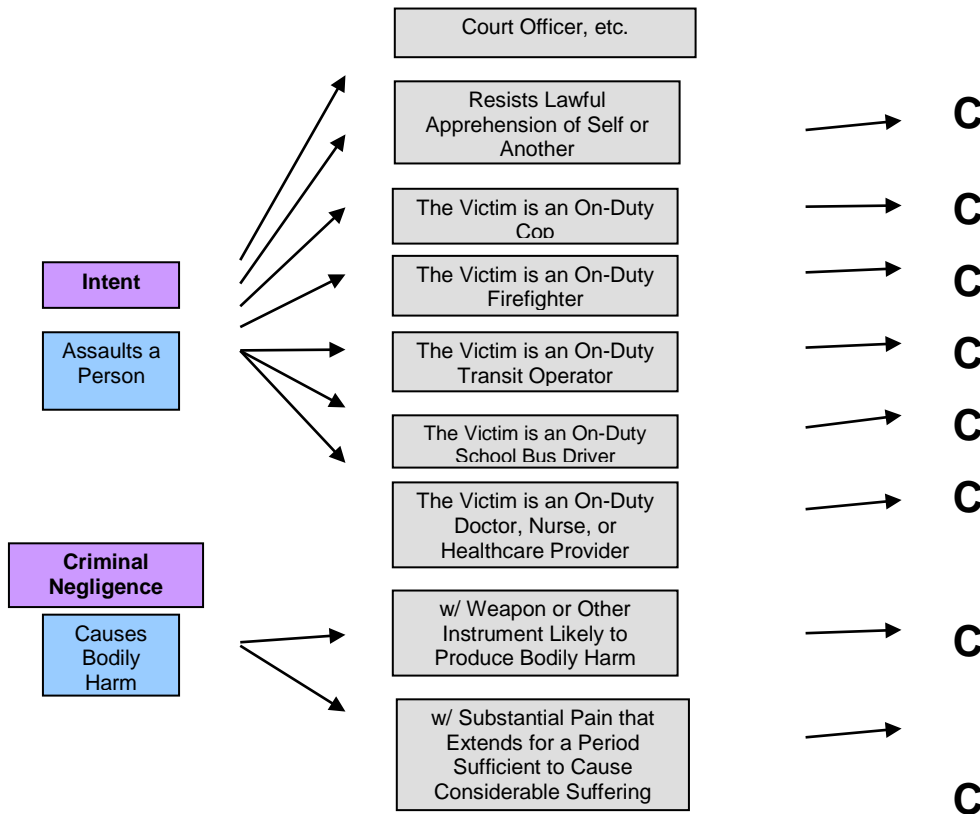
(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter [18.79](#) RCW; "physician" means a person licensed under chapter [18.57](#) or [18.71](#) RCW; and "health care provider" means a person certified under chapter [18.71](#) or [18.73](#) RCW who performs emergency medical services or a person regulated under Title [18](#) RCW and employed by, or contracting with, a hospital licensed under chapter [70.41](#) RCW; or

What's Covered?

1. Resist Apprehension
2. Police Officer
3. Firefighter
4. Transit Operator
5. School Bus Driver
6. Doctor/Nurse
7. Neg. + Weapon or Instrument
8. Neg. + Suffering
9. Police Officer with a stun gun
10. Judicial Officer, etc.....

11 – Assault & Physical Harm

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions.

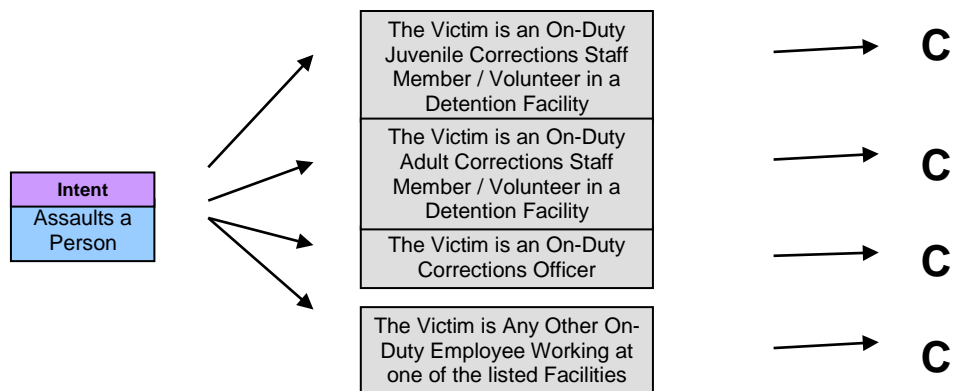


11 – Assault & Physical Harm

Custodial Assault

– RCW 9A.36.100 (Class C Felony)

1. Custodial Assault has been committed if the person is not guilty of Assault 1st or 2nd Degree, and where the person:
 - a. Assaults a full or part-time staff member or volunteer in a juvenile corrections institution or detention facility in the performance of their official duties;
-OR-
 - b. Assaults a full or part-time staff member or volunteer in a adult corrections institution or detention facility in the performance of their official duties;
-OR-
 - c. Assaults full or part-time community corrections officer while the officer is performing official duties;
-OR-
 - d. Assaults any other employee of the above facilities while performing official duties.



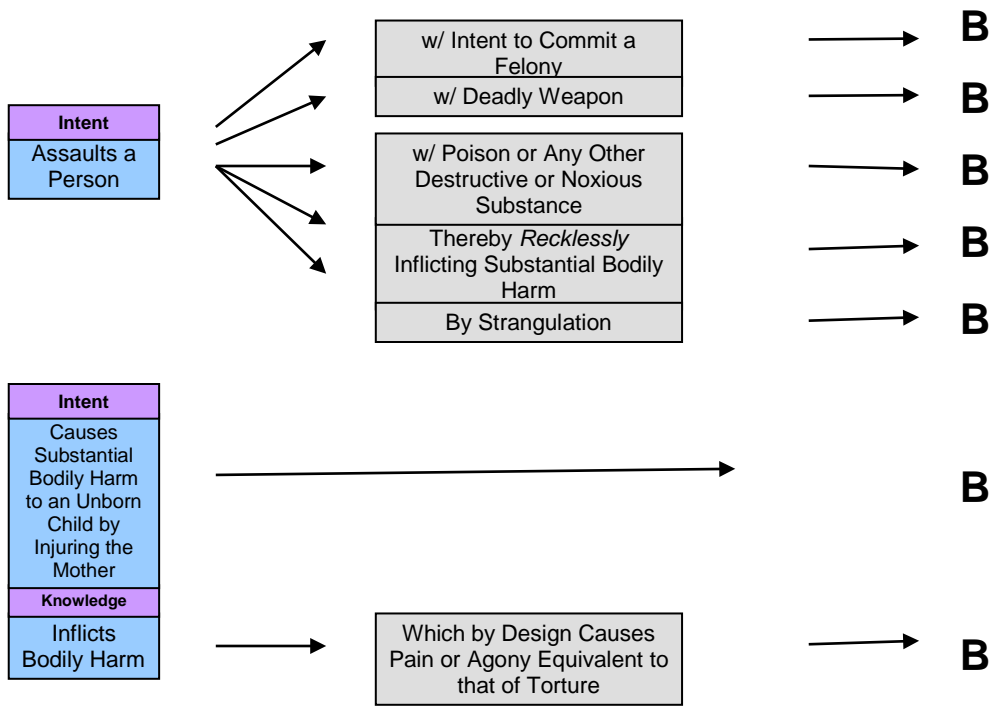
11 – Assault & Physical Harm

Assault 2nd Degree

– RCW 9A.36.021 (Class B Felony / Class A Felony)

1. With intent to commit a felony, assaults another;
-OR-
2. Assaults another with a deadly weapon;
-OR-
3. With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance;
-OR-
4. Intentionally and unlawfully causes substantial bodily harm to an unborn quick child, by intentionally and unlawfully inflicting any injury upon the mother of such child;
-OR-
5. *Intentionally* assaults another AND *recklessly* inflicts *substantial bodily harm*;
-OR-
6. Assaults another by strangulation or suffocation;
-OR-
7. *Knowingly* inflicts bodily harm, which by design causes pain or agony equivalent to that of torture.

Note - Assault 2nd Degree with sexual motivation is a Class A Felony



11 – Assault & Physical Harm

Assault 1st Degree

– RCW 9A.36.011 (Class A Felony)

1. With *intent to inflict great bodily harm*, a person:

a. Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death;

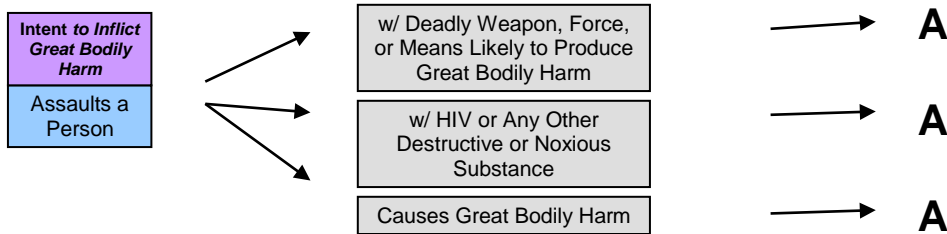
-OR-

b. Administers, exposes, or transmits to or causes to be taken by another, poison, the human immunodeficiency virus (HIV) as defined in RCW 70.24, or any other destructive or noxious substance;

-OR-

c. Assaults another and inflicts *great bodily harm*.

Must be able to show specific intent to cause great bodily harm; for example, suspect statements or actions.



11 – Assault & Physical Harm

Comparison of Assault 1^o and Assault 2^o

	Assault 1	vs.	Assault 2
Result-Based:	Great Bodily Harm	vs.	Substantial Bodily Harm
Assault w/ Firearm / Deadly Weapon / Deadly Force:	Intent to inflict Great Bodily Harm	vs.	No Articulate Intent
Poison / Noxious Substance:	Intent to inflict Great Bodily Harm	vs.	Intent to Inflict Bodily Harm

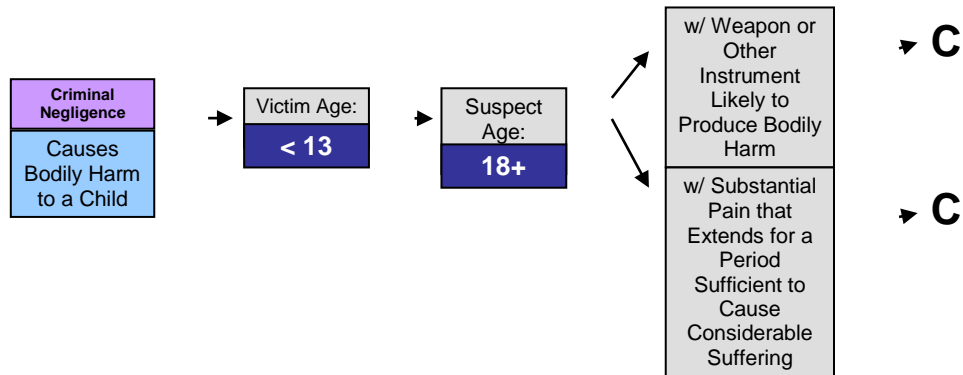
11 – Assault & Physical Harm

Assault of a Child 3rd Degree – RCW 9A.36.140 (Class C Felony)

1. A person 18 years of age or older is guilty of the crime of Assault of a Child in the Third Degree if the child is under the age of 13 and the person:
 - a. With *criminal negligence*, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm;

-OR-

- b. With *criminal negligence*, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.



11 – Assault & Physical Harm

Assault of a Child 2nd Degree

– RCW 9A.36.130 (Class B Felony)

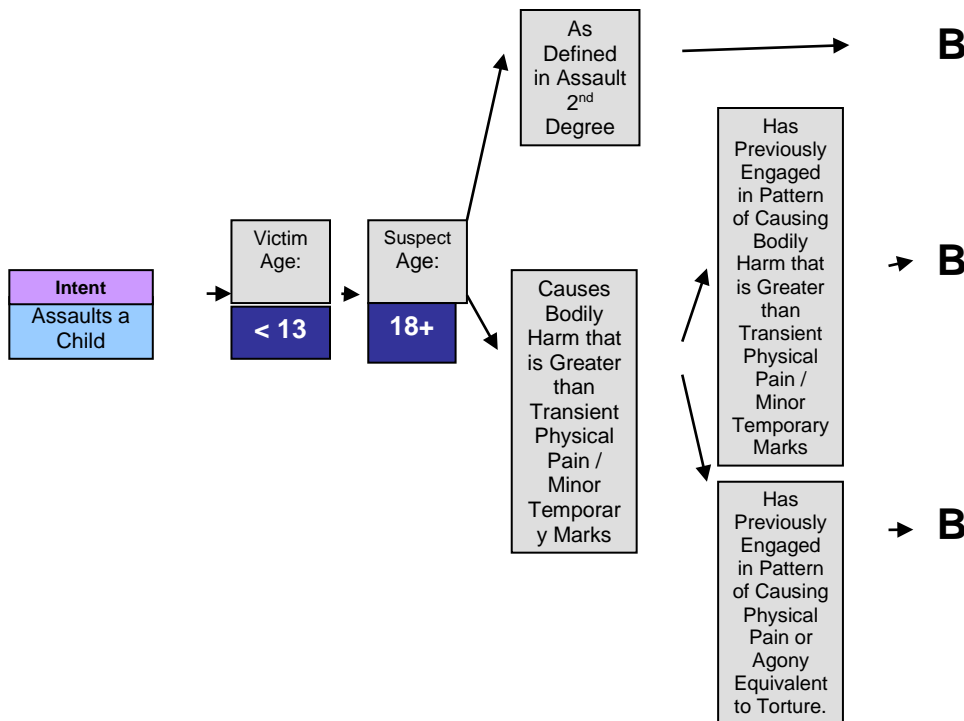
1. A person 18 years of age or older is guilty of the crime of Assault of a Child in the Second Degree if the child is under the age of 13 and the person:

a. Commits Assault in the 2nd Degree defined in RCW 9A.36.021,

-OR-

b. *Intentionally* assaults the child, AND

- Causes bodily harm that is greater than transient physical pain / minor temporary marks, AND
- The person has previously engaged in a pattern or practice of either:
 - Assaulting the child which has resulted in bodily harm that is greater than transient pain / minor temporary marks; OR
 - Causing the child physical pain or agony equivalent to torture.



11 – Assault & Physical Harm

Assault of a Child 1st Degree

– RCW 9A.36.120 (Class A Felony)

1. A person 18 years of age or older is guilty of the crime of Assault of a Child in the First Degree if the child is under the age of 13 and the person:

- a. Commits Assault in the 1st Degree, as defined in RCW 9A.36.011, against the child;

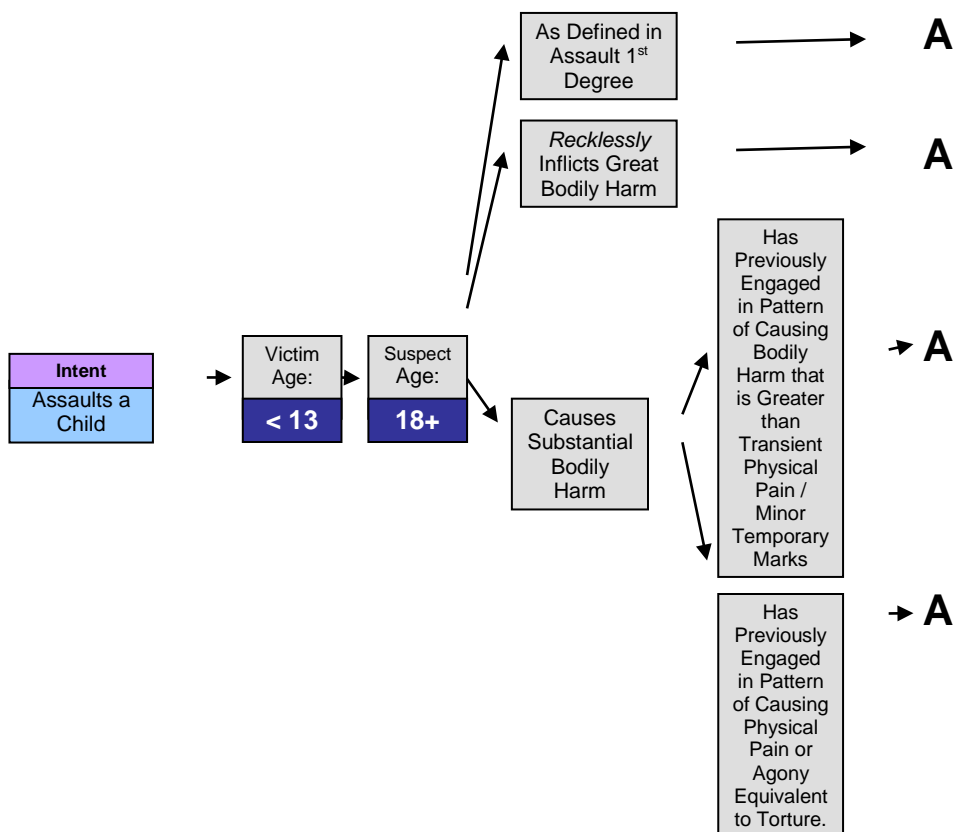
-OR-

b. *Intentionally* assaults the child and either:

- *Recklessly* inflicts great bodily harm;

-OR-

- Causes substantial bodily harm and the person has previously engaged in a pattern or practice either of:
 - Assaulting the child which has resulted in bodily harm that is greater than transient physical pain or minor temporary marks; OR
 - Causing the child physical pain or agony equivalent to torture.



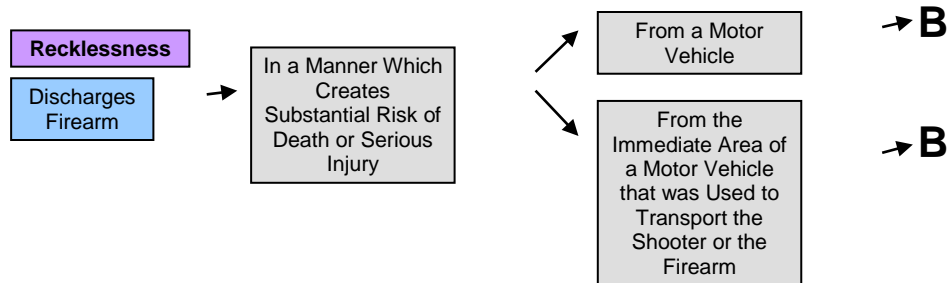
11 – Assault & Physical Harm

Drive-by Shooting

– RCW 9A.36.045 (Class B Felony)

1. Recklessly discharges a firearm in a manner which creates a substantial risk of death or serious injury to another; AND
 - a. Discharge is from a motor vehicle;
-OR-
 - b. Discharge is from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of discharge.

2. A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

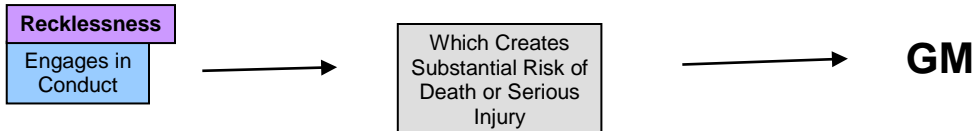


11 – Assault & Physical Harm

Reckless Endangerment

– RCW 9A.36.050 (Gross Misdemeanor)

1. A person recklessly engages in conduct, not amounting to Drive-by Shooting, which creates a substantial risk of death or serious physical injury to another.



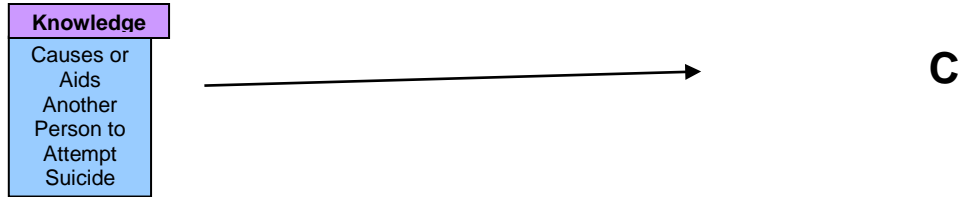
Misdemeanor Presence
Exception?

11 – Assault & Physical Harm

Promoting a Suicide Attempt

– RCW 9A.36.060 (Class C Felony)

1. Knowingly causes or aids another person to attempt suicide.



11 – Assault & Physical Harm

Coercion

– RCW 9A.36.070 (Gross Misdemeanor)

1. By use of a threat, a person compels or induces a person to engage in conduct which they have a legal right to abstain from or to abstain from conduct which they have a right to engage in.
2. **“Threat”** means to communicate, directly or indirectly, the intent to:
 - a. Immediately use force against any person present at the time;
-OR-
 - b. Cause bodily injury in the future to the person threatened or to any other person;
-OR-
 - c. Cause physical damage to the property of another;
-OR-
 - d. Subject someone to physical confinement or restraint.

Misdemeanor Presence
Exception?

Strict Liability

By Use of a
Threat,
Compels or
Induces a
Person to
Do or Not
Do
Something



GM

11 – Assault & Physical Harm

Malicious Harassment

– RCW 9A.36.080 (Class C Felony)

Also commonly called a "Hate Crime"

1. *Maliciously and intentionally* causes:
 - a. Physical injury to the victim or another person;
-OR-
 - b. Physical damage to property of the victim or another person;
-OR-
 - c. Threatens a person and puts that person in reasonable fear of injury or damage to property. The fear must be a fear that a *reasonable person* would have under all the circumstances.
 - **"Reasonable person"** means a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical or sensory handicap as the victim.
 - Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat that may be carried out.

2. Because of the actor's perception of the victim's:
 - a. Race, or
 - b. Color, or
 - c. Religion, or
 - d. Ancestry, or
 - e. National origin, or
 - f. Gender, or
 - g. Sexual orientation, or
 - h. Handicap (mental, sensory, physical).

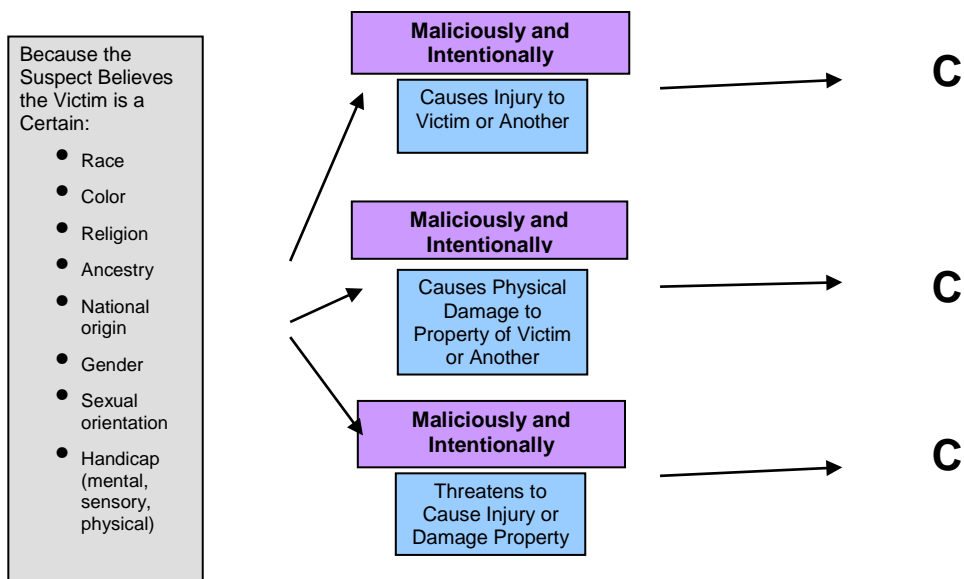
- ⊗ It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, or sexual orientation, or had a mental, physical, or sensory handicap.

11 – Assault & Physical Harm

Malicious Harassment

– RCW 9A.36.080 (Class C Felony)

-continued from previous page-



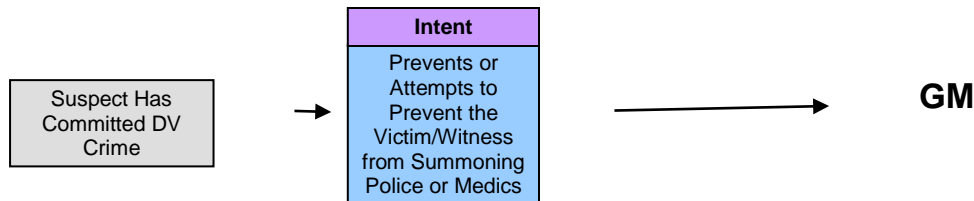
11 – Assault & Physical Harm

Interfering with the Reporting of Domestic Violence – RCW 9A.36.150 (Gross Misdemeanor)

1. A person commits the crime of Interfering with Reporting of Domestic Violence if the person:
 - a. Commits a crime of domestic violence; AND
 - b. Prevents or attempts to prevent the victim or witness from calling 911, obtaining medical assistance, or making a report to law enforcement.

2. Commission of a crime of domestic violence is a necessary element of the crime of Interfering with Reporting of Domestic Violence.

Misdemeanor Presence
Exception?

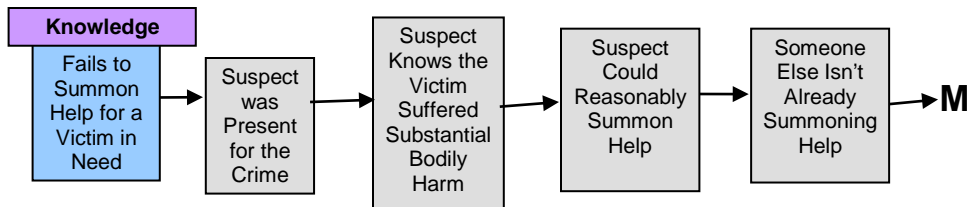


11 – Assault & Physical Harm

Failure to Summon Assistance – RCW 9A.36.160 (Misdemeanor)

1. A person is guilty of the crime of Failing to Summon Assistance if:
 - a. He or she was present when a crime was committed against another person; AND
 - b. He or she knows that the other person has suffered substantial bodily harm as a result of the crime committed against the other person and that the other person is in need of assistance; AND
 - c. He or she could reasonably summon assistance for the person in need without danger to himself or herself and without interference with an important duty owed to a third party; AND
 - d. He or she fails to summon assistance for the person in need; AND
 - e. Another person is not summoning, or has not already summoned, assistance for the person in need of such assistance.

Misdemeanor Presence Exception?



11 – Assault & Physical Harm

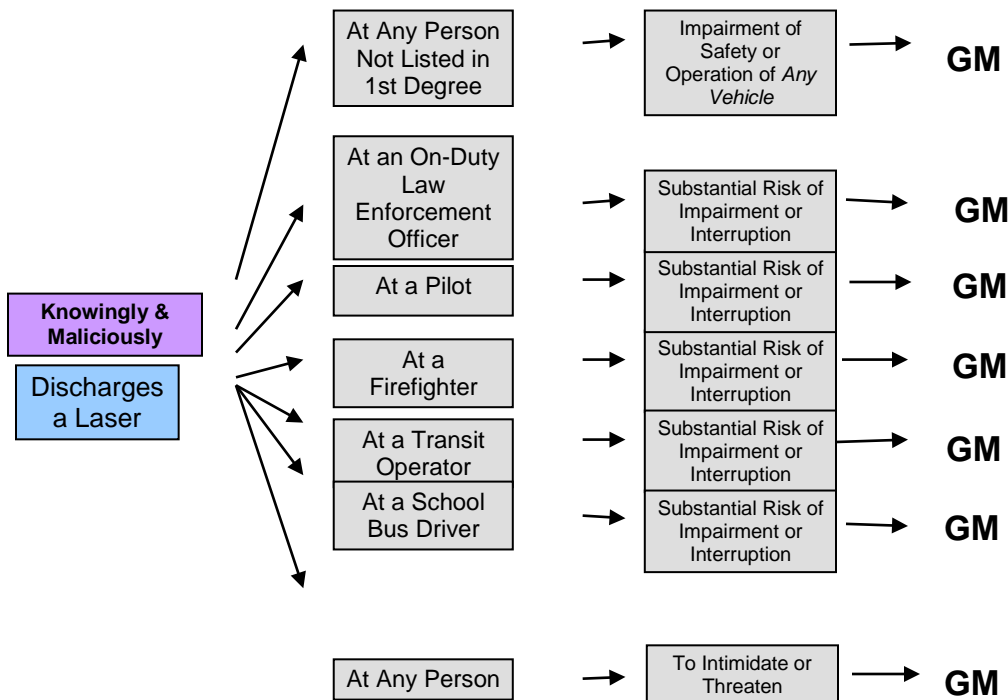
Unlawful Discharge of a Laser 2nd Degree – RCW 9A.49.030 (Infraction / Gross Misdemeanor)

Misdemeanor Presence Exception?

1. A person is guilty of Unlawful Discharge of a Laser in the Second Degree if he or she *knowingly and maliciously* discharges a laser, under circumstances not amounting to Unlawful Discharge in the First Degree or Malicious Mischief in the First or Second Degree:
 - a. At a person, not listed in RCW 9A.49.020 (1) (a) through (f), who is operating a motor vehicle at the time, causing an impairment of the safety or operation of the vehicle by negatively affecting the driver;

-OR-
 - b. At a person, listed in RCW 9A.49.020 (1) (b) through (f), causing a substantial risk of an impairment or interruption as described in 9A.49.020;

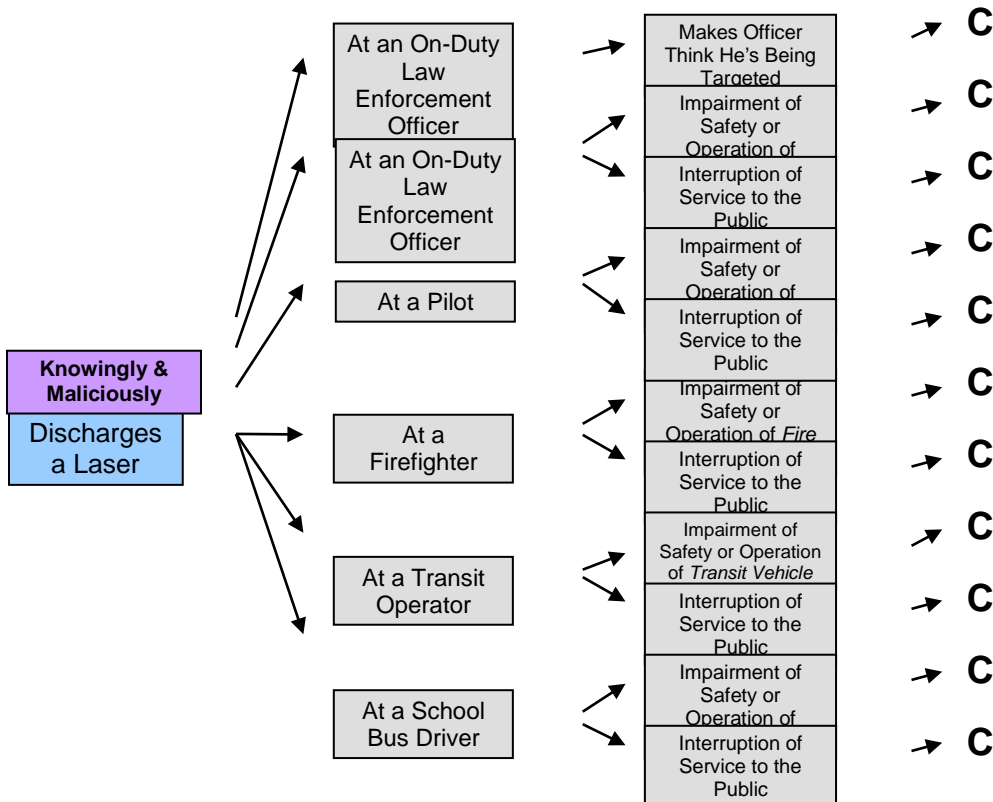
-OR-
 - c. At a person in order to intimidate or threaten that person.



11 – Assault & Physical Harm

Unlawful Discharge of a Laser 1st Degree – RCW 9A.49.020 (Infraction / Class C Felony)

1. A person is guilty of Unlawful Discharge of a Laser in the First Degree if he or she *knowingly and maliciously* discharges a laser, under circumstances not amounting to Malicious Mischief in the First Degree:
 - a. At a law enforcement officer in the performance of his or her duties, in a manner that would support that officer’s belief that he or she is targeted with a laser sighting device;
-OR-
 - b. At a law enforcement officer in the performance of his or her duties causing an impairment of the safety or operation of a law enforcement vehicle or interruption of service to the public by negatively affecting the officer;
-OR-
 - c. At a pilot, causing an impairment of the safety or operation of an aircraft;
-OR-
 - d. At a firefighter, causing an impairment of the safety or operation of an emergency vehicle or interruption of service to the public;
-OR-
 - e. At a transit operator or driver of a public or private transit company causing an impairment of the safety or operation of a transit vehicle or causing an interruption of service to the public;
-OR-
 - f. At a school bus driver causing an impairment of the safety or operation of a school bus or interruption of service by negatively affecting the bus driver.



11 – Assault & Physical Harm

[Unlawful Discharge of a Laser, When] Civil Infraction **– RCW 9A.49.040**

1. Unlawful Discharge of a Laser in the First or Second Degree is a civil infraction if committed by a juvenile who has not before committed either offense. The monetary penalty imposed upon a juvenile may not exceed one hundred dollars.

12 – Abuse & Neglect

Definitions

– RCW 9A.42.010

1. **“Basic Necessities of Life”**
 - a. Food
 - b. Water
 - c. Shelter
 - d. Clothing
 - e. Medically necessary health care including:
 - Health related treatment or activities
 - Hygiene
 - Oxygen
 - Medication
2. **“Bodily Injury”** means physical pain or injury, illness, or an impairment of physical condition.
3. **“Substantial Bodily Harm”** means bodily injury which involves a temporary but substantial disfigurement or which causes a temporary but substantial loss or impairment of the functions of any bodily part or organ or which causes a fracture of any bodily part.
4. **“Great Bodily Harm”** means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement or which causes permanent or protracted loss or impairment of the function of any bodily part or organ.
5. **“Dependent Person”** means a person who because of physical or mental disability or because of extreme advanced age, is dependent upon another for the basic necessities of life. Includes:
 - a. Resident of a nursing home or adult home
 - b. Frail elder or vulnerable adult
6. **“Abandon”** means leaving a child or other dependent person without the means or ability to obtain one or more of the basic necessities of life.

12 – Abuse & Neglect

Christian Science Treatment

– RCW 9A.42.005

- √ 1. A person who, in good faith, is furnished Christian Science treatment by a duly accredited Christian Science practitioner in lieu of medical care is not considered deprived of medically necessary health care or abandoned.

Abandonment Defense

– RCW 9A.42.090

- √ 2. It is an affirmative defense to the charge of Abandonment of a Dependent Person, that the person employed to provide any of the basic necessities of life to the child or other dependent person, gave reasonable notice of termination of services and the services were not terminated until after the termination date specified in the notice.
 - The defendant bears the burden of proving this defense by a preponderance of evidence.

12 – Abuse & Neglect

Criminal Mistreatment 4th Degree – RCW 9A.42.037 (Misdemeanor)

1. A person is guilty of Criminal Mistreatment in the Fourth Degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, AND either:

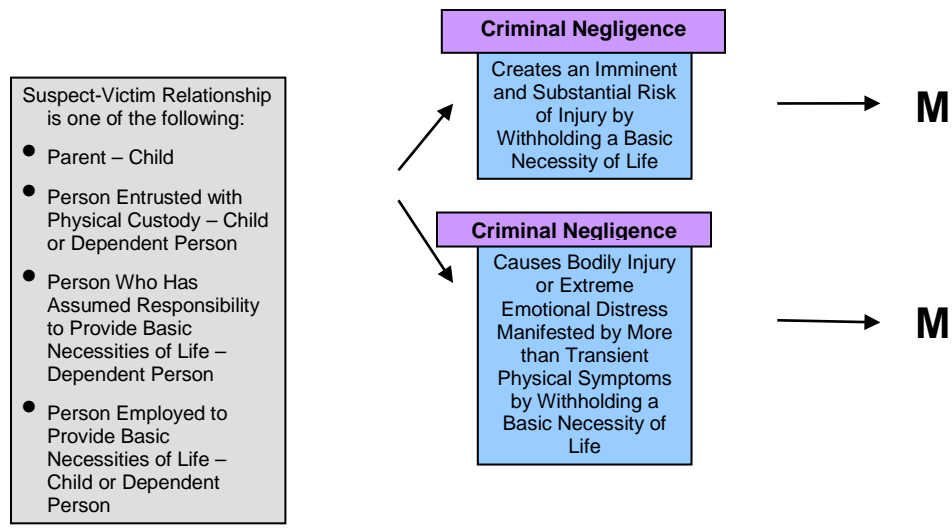
- a. With *criminal negligence*, creates an imminent and substantial risk of bodily injury to a child or dependent person by withholding any of the basic necessities of life;
-OR-
- b. With *criminal negligence*, causes bodily injury or extreme emotional distress manifested by more than transient physical symptoms to a child or dependent person by withholding the basic necessities of life.

Misdemeanor Presence Exception?

Criminal Negligence

*Risks:
Bodily Injury*

*Causes:
Bodily Injury
-OR-
Extreme Emotional Distress Manifested by Physical*



12 – Abuse & Neglect

Criminal Mistreatment 3rd Degree – RCW 9A.42.035 (Gross Misdemeanor)

Misdemeanor Presence Exception?

1. A person is guilty of Criminal Mistreatment in the Third Degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, AND either:

Criminal Negligence

a. With *criminal negligence*, creates an imminent and substantial risk of substantial bodily harm to the child or dependent person by withholding any of the basic necessities of life;

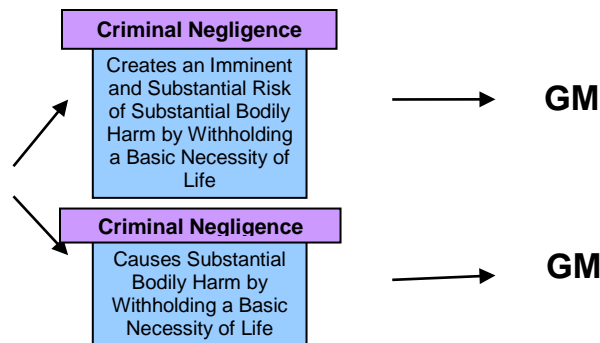
Risks: Substantial Bodily Harm

-OR-

b. With *criminal negligence*, causes substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life.

Causes: Substantial Bodily Harm

- Suspect-Victim Relationship is one of the following:
- Parent – Child
 - Person Entrusted with Physical Custody – Child or Dependent Person
 - Person Who Has Assumed Responsibility to Provide Basic Necessities of Life – Dependent Person
 - Person Employed to Provide Basic Necessities of Life – Child or Dependent Person



12 – Abuse & Neglect

Criminal Mistreatment 2nd Degree – RCW 9A.42.030 (Class C Felony)

1. A person is guilty of Criminal Mistreatment in the Second Degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, AND either:

a. *Recklessly* creates an imminent and substantial risk of death or great bodily harm by withholding any of the basic necessities of life;

-OR-

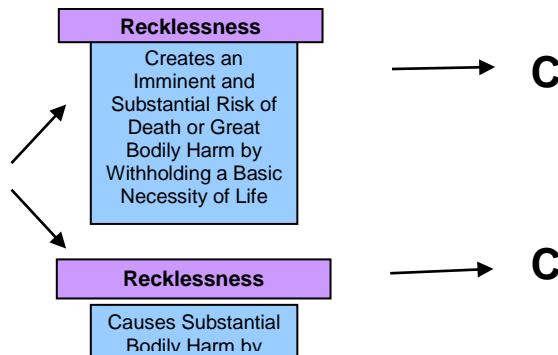
b. *Recklessly* causes substantial bodily harm by withholding any of the basic necessities of life.

Recklessly

*Risks:
Death -OR-
Great Bodily Harm*

*Causes:
Substantial Bodily
Harm*

- Suspect-Victim Relationship is one of the following:
- Parent – Child
 - Person Entrusted with Physical Custody – Child or Dependent Person
 - Person Who Has Assumed Responsibility to Provide Basic Necessities of Life – Dependent Person
 - Person Employed to Provide Basic Necessities of Life – Child or Dependent Person



12 – Abuse & Neglect

Criminal Mistreatment 1st Degree – RCW 9A.42.020 (Class B Felony)

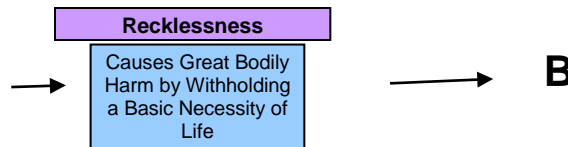
1. A person is guilty of Criminal Mistreatment in the First Degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, AND

- a. *Recklessly* causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life.

Recklessly

*Causes:
Great Bodily Harm*

- Suspect-Victim Relationship is one of the following:
- Parent – Child
 - Person Entrusted with Physical Custody – Child or Dependent Person
 - Person Who Has Assumed Responsibility to Provide Basic Necessities of Life – Dependent Person
 - Person Employed to Provide Basic Necessities of Life – Child or Dependent Person



12 – Abuse & Neglect

Endangerment with a Controlled Substance – RCW 9A.42.100 (Class B Felony)

1. A person is guilty of the crime of Endangerment with a Controlled Substance if he or she *knowingly or intentionally* permits the dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, that are being used to manufacture methamphetamine.

Knowingly or Intentionally

Permits a Dependent Child or Dependent Adult to be Exposed to, Ingest, Inhale, or Have Contact with Methamphetamine or Ephedrine, Pseudoephedrine, or Anhydrous Ammonia Being Used in the Manufacture of Methamphetamine



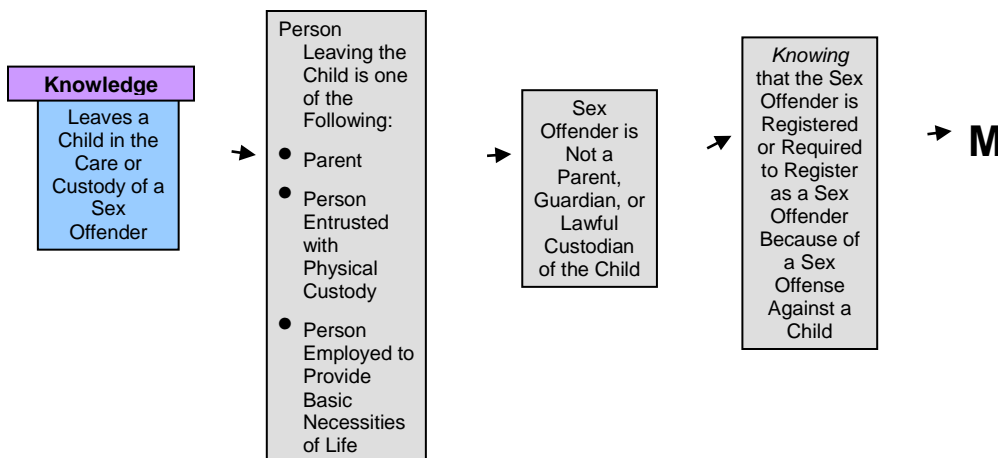
B

12 – Abuse & Neglect

Leaving a Child in the Care of a Sex Offender – RCW 9A.42.110 (Misdemeanor)

Misdemeanor Presence
Exception?

1. A person is guilty of the crime of Leaving a Child in the Care of a Sex Offender if the person is the parent of a child, person entrusted with physical custody of a child or employed to provide to the child the basic necessities of life, AND
2. Leaves the child in the care or custody of another person who is not a parent, guardian, or lawful custodian of the child, AND
3. *Knowing* that the person is registered or required to register as a sex offender under the laws of this state, or a law or ordinance in another jurisdiction with similar requirements, because of a sex offense against a child.



12 – Abuse & Neglect

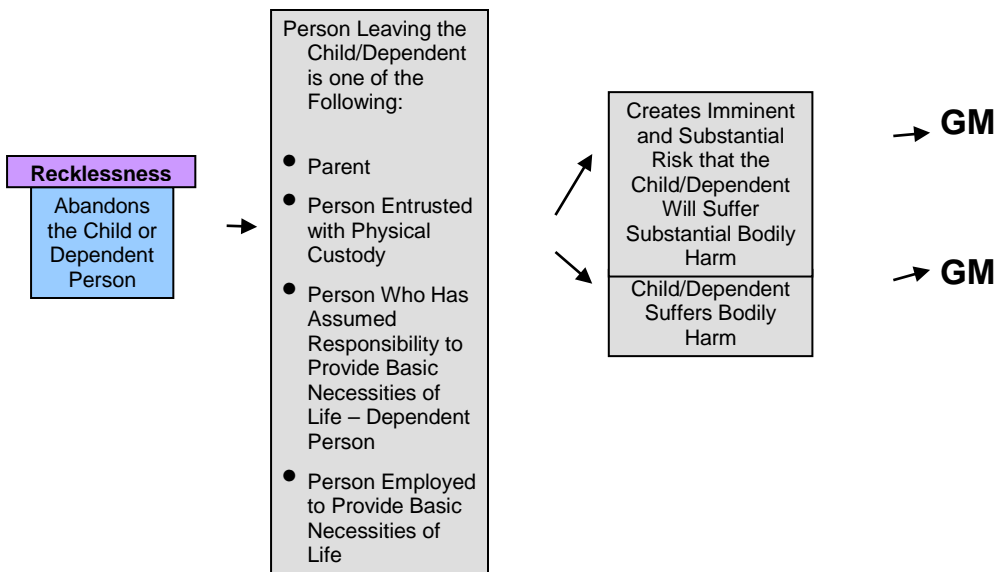
Abandonment of a Dependent Person 3rd Degree – RCW 9A.42.080 (Gross Misdemeanor)

Misdemeanor Presence Exception?

1. A person is guilty of Abandonment of a Dependent Person 3rd Degree if:
 - a. The person is the parent, person entrusted with physical custody of a child or dependent person, person who has assumed responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide the child or dependent person any of the basic necessities of life, AND
 - b. The person *recklessly* abandons a child or dependent person, AND
 - c. As a result of being abandoned:
 - Creates an imminent and substantial risk that the child or dependent person will suffer substantial bodily harm;
 - OR-
 - The child or dependent person suffers *bodily harm*.

Recklessly

Risks: Substantial



Note – A parent of a newborn who transfers the newborn to a qualified person at an appropriate location is not subject to criminal liability under this section.

12 – Abuse & Neglect

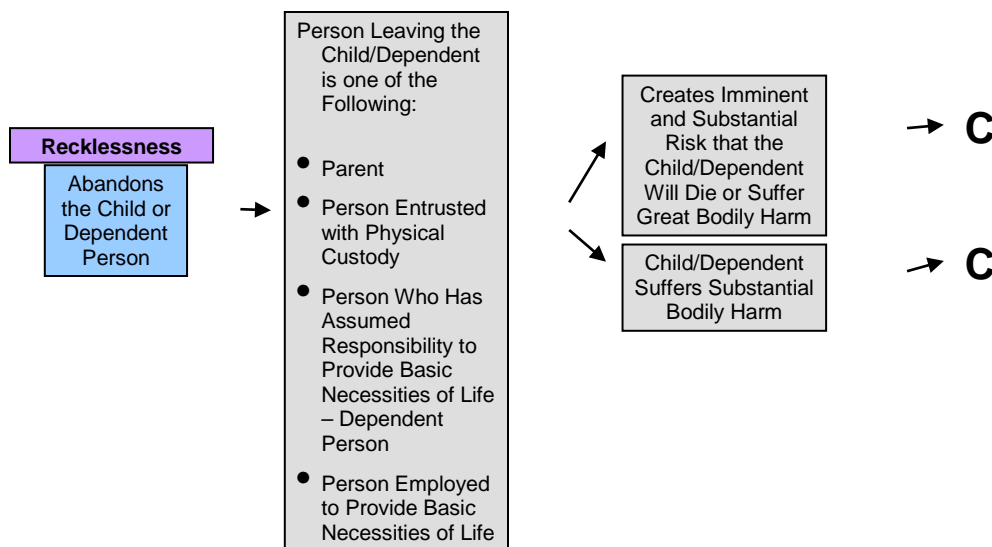
Abandonment of a Dependent Person 2nd Degree – RCW 9A.42.070 (Class C Felony)

1. A person is guilty of Abandonment of a Dependent Person 2nd Degree if:
 - d. The person is the parent, person entrusted with physical custody of a child or dependent person, person who has assumed responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide the child or dependent person any of the basic necessities of life, AND
 - a. The person *recklessly* abandons a child or dependent, AND
 - b. As a result of being abandoned, either:
 - Creates an imminent and substantial risk that the child or other dependent will die or suffer great bodily harm;
 - OR-
 - The child or other dependent person suffers *substantial bodily harm*.

Recklessly

Risks: Death -OR- Great Bodily Harm

Causes: Substantial Bodily Harm



Note – A parent of a newborn who transfers the newborn to a qualified person at an appropriate location is not subject to criminal liability under this section.

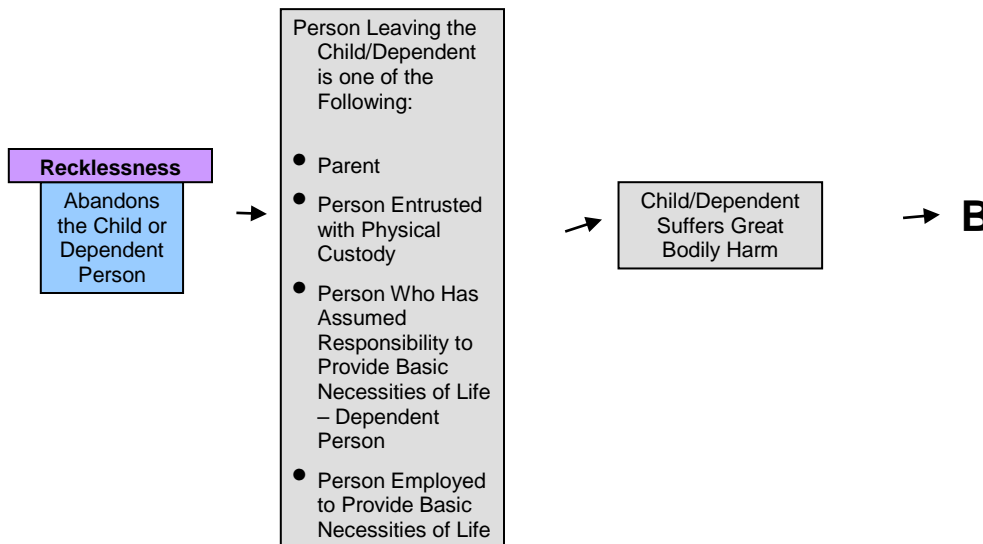
12 – Abuse & Neglect

Abandonment of a Dependent Person 1st Degree – RCW 9A.42.060 (Class B Felony)

1. A person is guilty of Abandonment of a Dependent Person 1st Degree if:
 - e. The person is the parent, person entrusted with physical custody of a child or dependent person, person who has assumed responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide the child or dependent person any of the basic necessities of life, AND
 - a. The person *recklessly* abandons the child or other dependent person, AND
 - b. As a result of being abandoned the child or other dependent person suffers *great bodily harm*.

Recklessly

*Causes:
Great Bodily
Harm*



Note – A parent of a newborn who transfers the newborn to a qualified person at an appropriate location is not subject to criminal liability under this section.

13 - Burglary, Trespass & Vehicle Prowling

Definitions

– RCW 9A.52.010

1. **“Premises”** includes any building, dwelling, structure used for commercial aquaculture, or any real property.
2. **“Enter”** – The word “enter” when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property.
3. **“Enters or remains unlawfully”** – A person “enters or remains unlawfully” in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain.
 - a. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public.
 - b. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner. Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given by posting in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land.
 - c. A license or privilege to enter or remain on improved and apparently used land that is open to the public at particular times, which is neither fenced nor otherwise enclosed in a manner to exclude intruders, is not a license or privilege to enter or remain on the land at other times if notice of prohibited times of entry is posted in a conspicuous manner.
4. **“Data”** means a representation of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a computer.
5. **“Computer program”** means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.
6. **“Access”** means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means.

Common sense must apply. If a person should've known the property belonged to someone else, it's not necessary that signs were posted.

13 - Burglary, Trespass & Vehicle Prowling

Inference of Intent

– RCW 9A.52.040

1. In any prosecution for Burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent.

This "inference of intent" also applies to Vehicle Prowl. (Even though RCW 9A.52.040 doesn't specifically mention Vehicle Prowl by name – it still works because Vehicle Prowl is written using the same type of wording as Burglary.)

[Burglary -] Other Crime(s) Punishable

– RCW 9A.52.050

1. Every person who, in the commission of a burglary shall commit any other crime, may be punished therefore as well as for the burglary, and may be prosecuted for each crime separately.

Computer Trespass--Commission of Other Crime

– RCW 9A.52.130

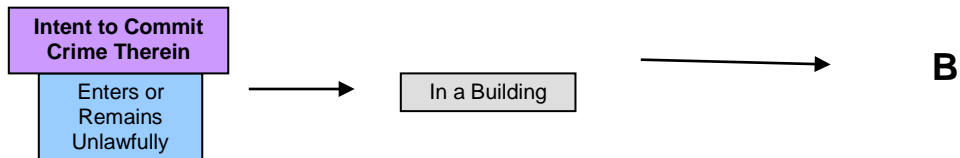
1. A person who, in the commission of Computer Trespass, commits any other crime may be punished for that other crime as well as for the computer trespass and may be prosecuted for each crime separately.

13 - Burglary, Trespass & Vehicle Prowling

Burglary 2nd Degree

– RCW 9A.52.030 (Class B Felony)

1. With *intent to commit a crime against a person or property therein*, he enters or remains unlawfully in a building other than a vehicle or a dwelling.

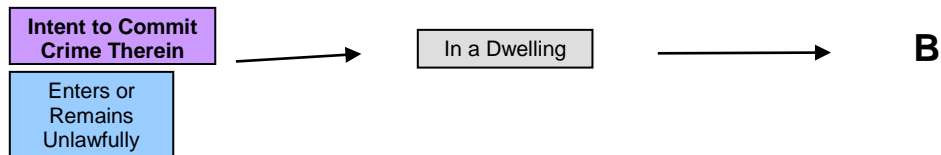


13 - Burglary, Trespass & Vehicle Prowling

Residential Burglary

– RCW 9A.52.025 (Class B Felony)

1. A person is guilty of Residential Burglary if, with *intent to commit a crime against a person or property therein*, the person enters or remains unlawfully in a *dwelling* other than a vehicle.



13 - Burglary, Trespass & Vehicle Prowling

Burglary 1st Degree

– RCW 9A.52.020 (Class A Felony)

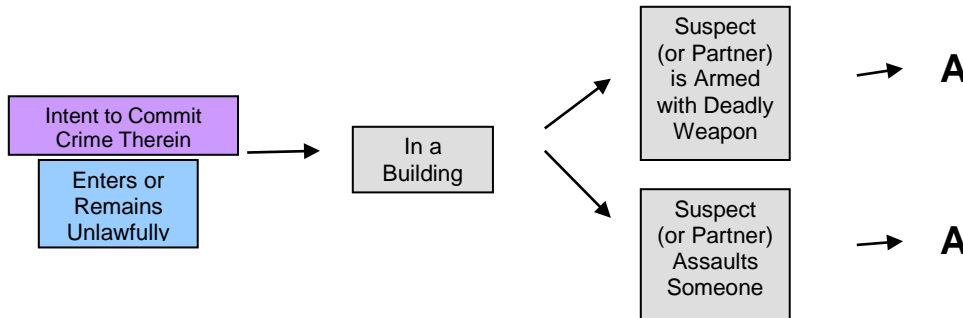
1. Any person with the intent to commit a crime against a person or property therein:
 - a. Enters or remains unlawfully in a building, AND
 - b. If in entering, or while in the building, or in immediate flight therefrom, the actor or another participant in the crime either:

"Armed" means more than just possessed.

- Is armed with a deadly weapon,
-OR-
- Assaults any person.

Simply possessing a firearm is considered "being armed."

For all other deadly weapons, it is based on how the suspect uses the weapon.

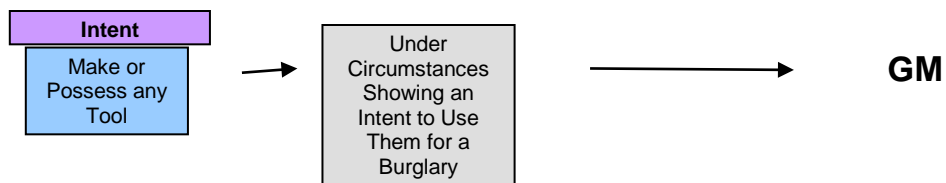


13 - Burglary, Trespass & Vehicle Prowling

Making or Having Burglar Tools

– RCW 9A.52.060 (Gross Misdemeanor)

1. Every person who shall make or mend or cause to be made or mended, or have in his possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of Burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of Making or Having Burglar Tools.



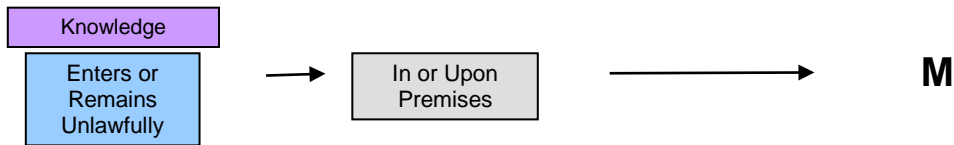
Misdemeanor Presence Exception?

13 - Burglary, Trespass & Vehicle Prowling

Criminal Trespass 2nd Degree

– RCW 9A.52.080 (Misdemeanor)

1. A person is guilty of Criminal Trespass in the Second Degree if he knowingly enters or remains unlawfully *in or upon premises* of another under circumstances not constituting criminal trespass in the first degree.



Misdemeanor Presence Exception?

Outside

13 - Burglary, Trespass & Vehicle Prowling

Criminal Trespass 1st Degree

– RCW 9A.52.070 (Gross Misdemeanor)

1. A person is guilty of Criminal Trespass in the First Degree if he knowingly enters or remains unlawfully *in a building*.



Misdemeanor Presence Exception?

Inside

13 - Burglary, Trespass & Vehicle Prowling

Criminal Trespass Defenses

– RCW 9A.52.090

- √ 1. The building involved in an offense under RCW 9A.52.070 was abandoned;

-OR-

- √ 2. The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises;

-OR-

- √ 3. The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain;

-OR-

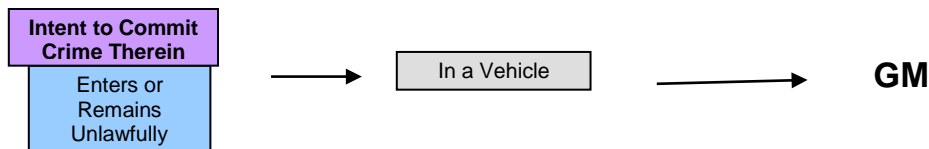
- √ 4. The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process.

13 - Burglary, Trespass & Vehicle Prowling

Vehicle Prowling 2nd Degree

– RCW 9A.52.100 (Gross Misdemeanor)

1. A person is guilty of Vehicle Prowling in the Second Degree if, *with intent to commit a crime against a person or property therein*, he enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.



Misdemeanor Presence Exception?

Think of Vehicle Prowl as "Vehicle Burg." It's exactly like Burglary – except it's for vehicles instead of buildings or dwellings.

*This RCW was amended in 2013 to increase the classification to a **Class C Felony for repeat offenders.***

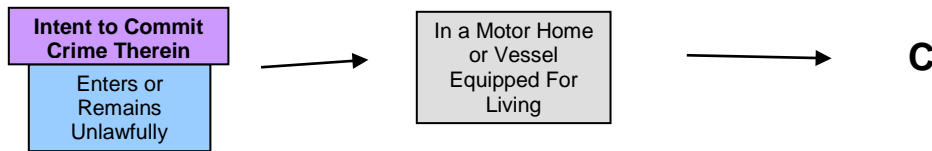
13 - Burglary, Trespass & Vehicle Prowling

Vehicle Prowling 1st Degree

– RCW 9A.52.095 (Class C Felony)

1. A person is guilty of Vehicle Prowling in the First Degree if, *with intent to commit a crime against a person or property therein*, he enters or remains unlawfully in a motor home, as defined in RCW 46.04.305, or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

Think of Vehicle Prowl as "Vehicle Burg."

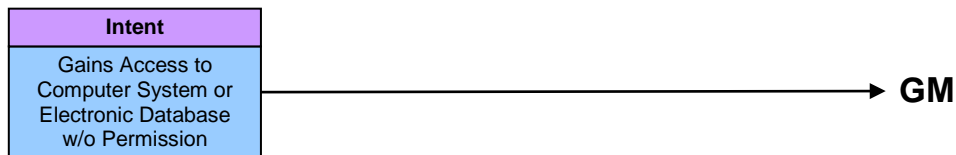


13 - Burglary, Trespass & Vehicle Prowling

Computer Trespass 2nd Degree

– RCW 9A.52.120 (Gross Misdemeanor)

1. A person is guilty of Computer Trespass in the Second Degree if the person, without authorization, intentionally gains access to a computer system or electronic database of another under circumstances not constituting the offense in the first degree.

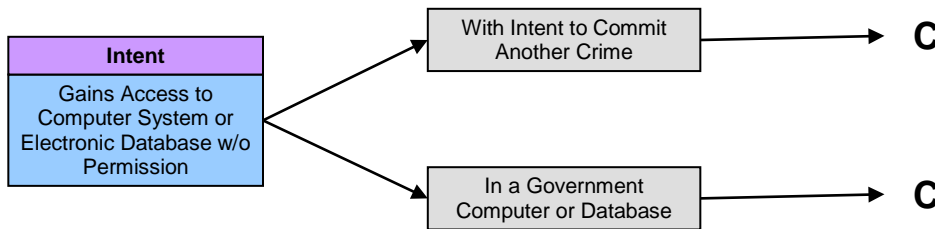


Misdemeanor Presence
Exception?

13 - Burglary, Trespass & Vehicle Prowling

Computer Trespass 1st Degree – RCW 9A.52.110 (Class C Felony)

1. A person is guilty of Computer Trespass in the First Degree if the person, without authorization, intentionally gains access to a computer system or electronic data base of another; AND
 - a. The access is made with the *intent to commit another crime*;
 - OR-
 - b. The violation involves a computer or database maintained by a government agency.



*Caution: Accessing someone's wireless network to use their internet service without permission is technically "accessing with an intent to commit another crime therein" (it is theft of services) **BUT** the RCWs and the courts are not ready to handle this. The laws were written before wireless networks were prevalent. In order to apply Computer Trespass 1st Degree, the "crime therein" should be **MORE** than simply using internet access without permission.*

Do use Computer Trespass 1st if a suspect accesses a computer with intent to:

- *Spread a malicious computer virus, or*
- *Commit Identity Theft, or*
- *Transmit child porn, or*
- *Some other crime.*

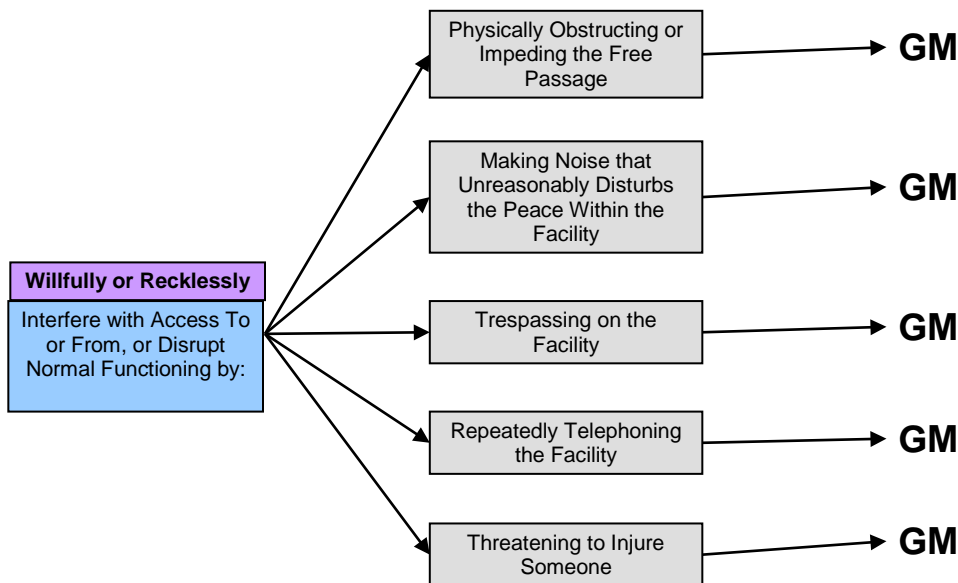
Don't use Computer Trespass 1st if a person accesses a wireless network solely to access the Internet.

13 - Burglary, Trespass & Vehicle Prowling

Interference with a Health Care Facility – RCW 9A.50.020 (Gross Misdemeanor)

Misdemeanor Presence
Exception:

1. It is unlawful for any person, alone or in concert with others, to willfully or recklessly interfere with access to or from a health care facility; or willfully or recklessly disrupt the normal functioning of such facility by:
 - a. Physically obstructing or impeding the free passage of a person seeking to enter or depart from the facility or from the common areas of the real property upon which the facility is located;
-OR-
 - b. Making noise that unreasonably disturbs the peace within the facility;
-OR-
 - c. Trespassing on the facility or the common areas of the real property upon which the facility is located;
-OR-
 - d. Telephoning the facility repeatedly, or knowingly permitting any telephone under his or her control to be used for such purpose;
-OR-
 - e. Threatening to inflict injury on the owners, agents, patients, employees, or property of the facility or knowingly permitting any telephone under his or her control to be used for such purpose.



14 - Sex Offenses

Definitions

– RCW 9A.44.010

1. **“Sexual Intercourse”** holds its ordinary meaning and includes:
 - a. Penetration of the vagina or anus (however slight) by an object when committed by one person against another, whether such persons are of the same or opposite sex;
 - OR-
 - b. Contact of sex organs of one person and the mouth of another, whether such persons are of the same or opposite sex.
2. **“Sexual Contact”** means the touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party – even through clothing.
3. **“Married”** means one who is legally married to another, but does not include a person who is living separate and apart and who has filed in court for dissolution of marriage.
 - RCW 9A.44.904 Construction — Chapter applicable to state registered domestic partnerships — 2009 c 521.

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

4. **“Mental Incapacity”** means a condition that exists at the time of the offense which prevents a person from understanding the consequences of an act of sexual intercourse whether that condition is produced by:
 - a. Illness,
 - OR-
 - b. Defect,
 - OR-
 - c. Influence of a substance,
 - OR-
 - d. Any other cause.

14 - Sex Offenses

Definitions

– RCW 9A.44.010

-continued from previous page

5. **“Physically Helpless”** means a person who is unconscious or for some reason is physically unable to communicate unwillingness to an act.
6. **“Forcible Compulsion”**
- a. Physical force that overcomes resistance,
- OR-*
- b. Threat, expressed or implied, that places a person in fear:
 - Of death or physical injury to himself or herself or another person, or
 - That he or she or another person will be kidnapped.
7. **“Consent”** means at the time of the sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.
8. **“Significant Relationship”** means a situation where the perpetrator is:
- a. A person who undertakes the responsibility, professionally or voluntarily, to provide (principally) minors with:
 - Education, or
 - Health, or
 - Welfare, or
 - Organized activities.

-OR-

A person who in the course of his or her employment supervises minors,

-OR-

- b. A person who provides, professionally or voluntarily, frail elders or vulnerable adults with:
 - Welfare, or
 - Health or residential assistance, or
 - Personal care, or
 - Organized recreational activities.

Note – “Age of Consent” is not specifically defined by an RCW. However, it is understood to be 16 based on the Rape of a Child statutes.

14 - Sex Offenses

Definitions

– RCW 9A.44.010

-continued from previous page

9. **“Abuse of Supervisory Position”** means:

- a. To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor,

-OR-

- b. To exploit a significant relationship in order to obtain consent of a minor.

10. **“Frail Elder or Vulnerable Adult”**

- a. A person 60 years or older who has the functional, mental, or physical inability to care for himself;

-OR-

- b. A person who is found incapacitated under RCW 11.88 (Guardianship — appointment, qualification, removal of guardians);

-OR-

- c. A person over 18 who has developmental disability;

-OR-

- d. A person admitted to a long-term care facility that is licensed or required to be licensed;

-OR-

- e. A person receiving services from a home health, hospice or home care agency licensed or required to be licensed.

Defenses to Prosecution

– RCW 9A.44.030

- √ 1. In a prosecution involving lack of consent based solely upon the victim’s mental incapacity or being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that *at the time of the offense* the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

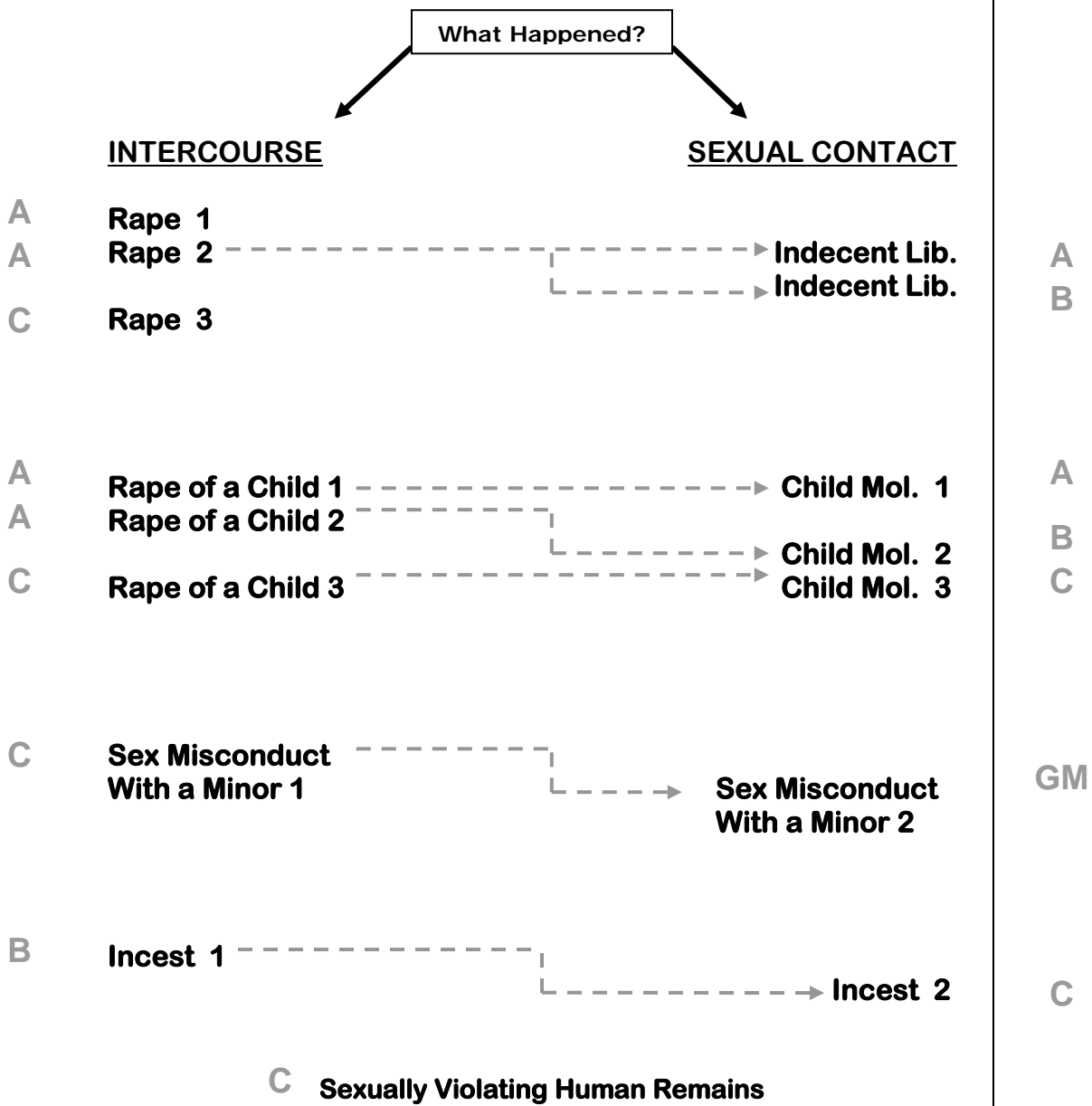
14 - Sex Offenses

- √ 2. *It is a defense, which the defendant must prove by a preponderance of the evidence, that the defendant reasonably believed the victim to be older than his/her actual age based upon declarations as to age by the alleged victim (refer to RCW for specifics).*
 - a. The victim may be presented to the court to support the defendant's claim that the victim was older than they really are.

- ⊗ 3. In a prosecution for an offense reliant upon the victim's age, *it is no defense that the perpetrator did not know the victim's age or believed the victim to be older.*

14 - Sex Offenses

Comparison of the Sex Offenses



14 - Sex Offenses

Rape 3rd Degree

– RCW 9A.44.060 (Class C Felony)

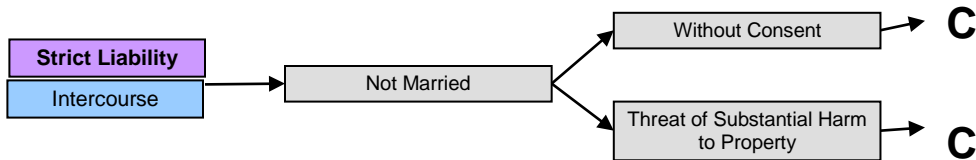
(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:

(a) Where the victim did not consent as defined in RCW [9A.44.010\(7\)](#), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or

(b) Where there is threat of substantial unlawful harm to property rights of the victim.

(2) Rape in the third degree is a class C felony.

[2013 c 94 § 1; 1999 c 143 § 34; 1979 ex.s. c 244 § 3; 1975 1st ex.s. c 14 § 6. Formerly RCW [9.79.190.](#)]



14 - Sex Offenses

Rape 2nd Degree – RCW 9A.44.050 (Class A Felony)

1. Sexual intercourse with another person:

a. By forcible compulsion;

Forcible Compulsion

-OR-

b. Victim is incapable of consent by reason of being physically helpless or mentally incapacitated;

Taking-Advantage Situation #1

-OR-

c. Where:

- Victim is a person with a developmental disability, AND
- Suspect has supervisory authority over the victim or was providing transportation, within the course of his or her employment, to the victim at the time of the offense, AND
- Suspect is not married to the victim.

Taking-Advantage Situation #2

-OR-

d. Where:

- Victim is a patient or client, AND
- Suspect is a health care provider, AND
- Intercourse occurs during a treatment session, interview, consultation or exam.

Taking-Advantage Situation #3

√ *An Affirmative defense (must be proven by a preponderance of the evidence) is that the client or patient consented to the sexual intercourse with the knowledge that it was not for the purpose of treatment.*

-OR-

e. Where:

- Victim is a resident of a facility for persons with a mental disorder or chemical dependency, AND
- Suspect has supervisory authority over the victim, AND
- Suspect is not married to the victim.

Taking-Advantage Situation #4

-OR-

14 - Sex Offenses

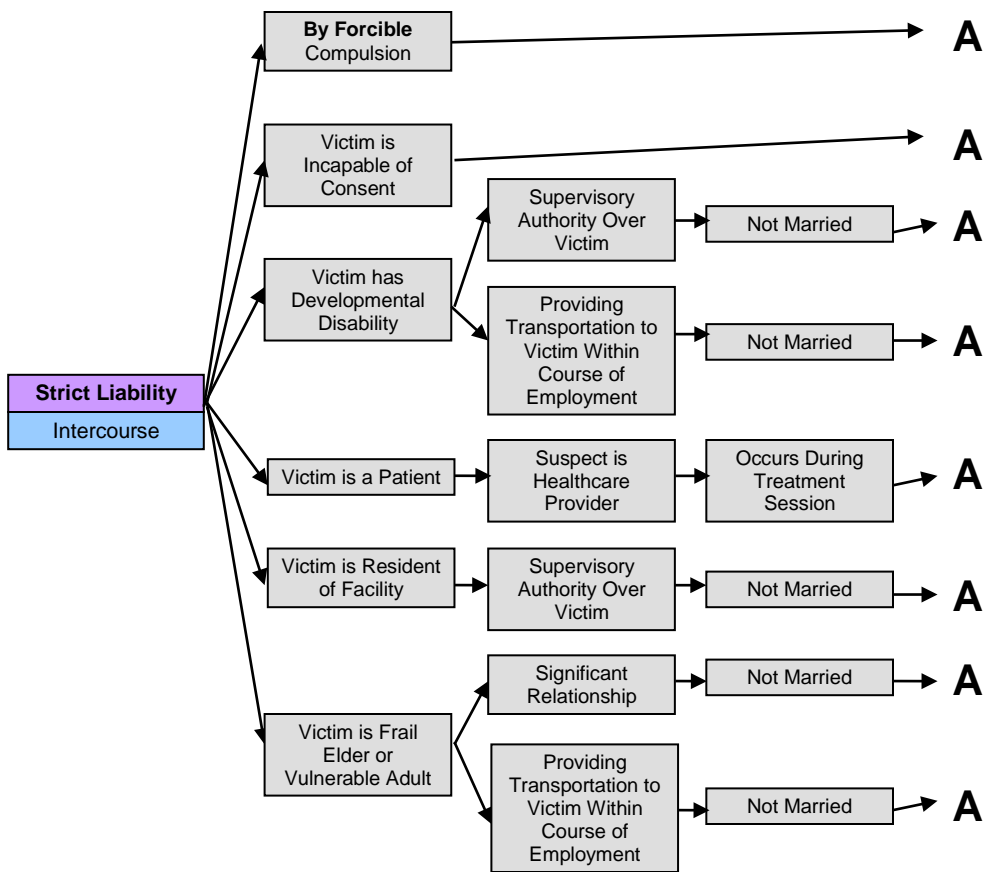
Rape 2nd Degree – RCW 9A.44.050 (Class A Felony)

-continued from previous page-

f. Where:

- Victim is frail elder or vulnerable adult, AND
- Suspect has a significant relationship with the victim or was providing transportation, within the course of his or her employment, to the victim at the time of the offense, AND
- Suspect is not married to the victim.

Taking-Advantage Situation #5



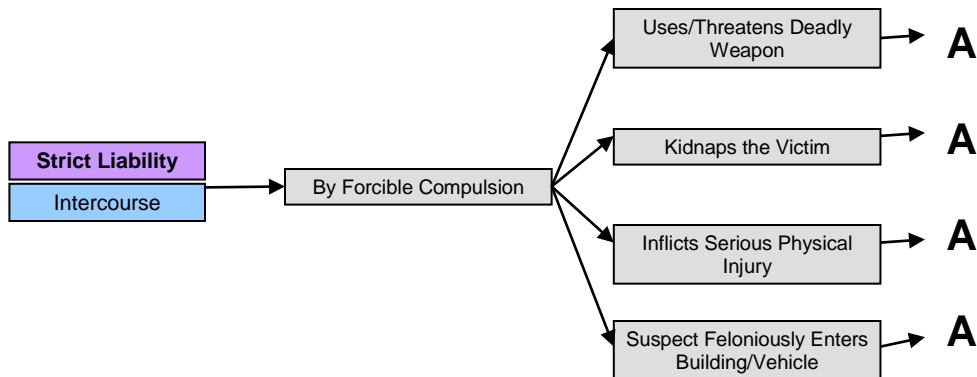
14 - Sex Offenses

Rape 1st Degree

– RCW 9A.44.040 (Class A Felony)

1. Sexual intercourse with another person by forcible compulsion, where the perpetrator or an accessory:
 - a. Uses or threatens to use a deadly weapon or what appears to be a deadly weapon;
-OR-
 - b. Kidnaps the victim;
-OR-
 - c. The suspect inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious;
-OR-
 - d. The suspect feloniously enters the building or vehicle where the victim is situated.

Note - Attempted Rape 1st Degree is a Class A Felony.



14 - Sex Offenses

Indecent Liberties

– RCW 9A.44.100 (Class B Felony / Class A Felony)

1. Knowingly causes another person who is not his or her spouse to have *sexual contact* with him or her or another:

a. By forcible compulsion;

-OR-

b. Victim is incapable of consent by reason of being physically helpless, mentally defective, or mentally incapacitated;

-OR-

c. Where:

- Victim is a person with a developmental disability, AND
- Suspect has supervisory authority over the victim or was providing transportation, within the course of his or her employment, to the victim at the time of the offense, AND
- Suspect is not married to the victim.

-OR-

d. Where:

- Victim is a patient or client, AND
- Suspect is a health care provider, AND
- Sexual contact occurs during a treatment session, interview, consultation or exam.

-OR-

e. Where:

- Victim is a resident of a facility for persons with a mental disorder or chemical dependency, AND
- Suspect has supervisory authority over the victim, AND
- Suspect is not married to the victim.

-OR-

Forcible Compulsion

Taking-Advantage Situation #1

Taking-Advantage Situation #2

Taking-Advantage Situation #3

√ An Affirmative defense (must be proven by a preponderance of the evidence) is that the client or patient consented to the sexual contact with the knowledge that it was not for the purpose of treatment.

Taking-Advantage Situation #4

14 - Sex Offenses

Indecent Liberties

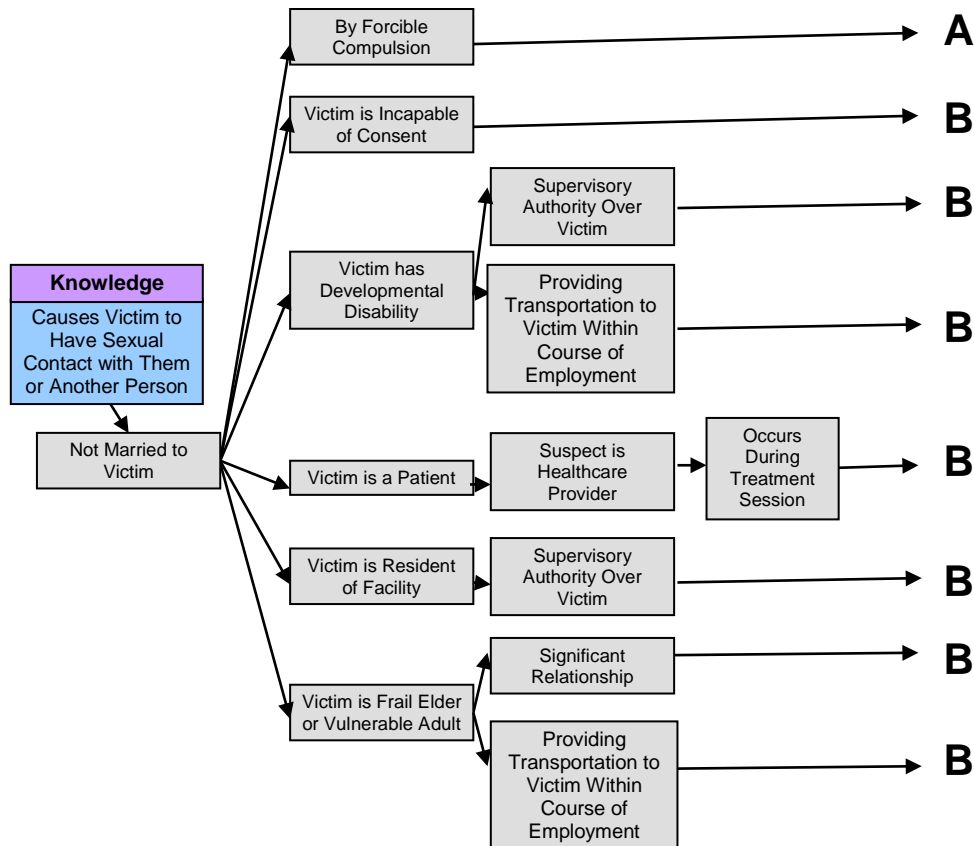
– RCW 9A.44.100 (Class B Felony / Class A Felony)

-continued from previous page-

f. Where:

- Victim is frail elder or vulnerable adult, AND
- Suspect has a significant relationship with the victim or was providing transportation, within the course of his or her employment, to the victim at the time of the offense, AND
- Suspect is not married to the victim.

Taking-Advantage Situation #5



14 - Sex Offenses

Rape of a Child 3rd Degree ["Underage Sex"] – RCW 9A.44.079 (Class C Felony)

- 1. Sexual intercourse where:
 - a. Victim is at least fourteen years old but less than sixteen years old, AND
 - b. Suspect is at least 48 months older than the victim, AND
 - c. Suspect is not married to the victim.

Note - It is an *affirmative defense* that the defendant did not voluntarily engage in intercourse because he/she was asleep or unconscious at the time. The defendant must establish this defense by a preponderance of the evidence. (State v Deer No. 85511-1_Wn2d__P3d October 25, 2012)



Rape of a Child 1, 2, & 3 are sometimes called "Statutory Rape"

Attempted rape is available even if the "victim" is an adult merely pretending to be a child.

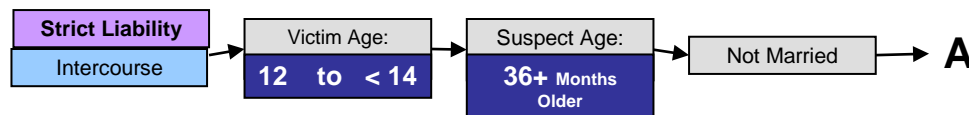
Forcible compulsion or lack of consent is not present. If either were present, 'regular' Rape would be the more appropriate charge.

Note – the "Victim" is, by default, considered to be the younger of the two.

14 - Sex Offenses

Rape of a Child 2nd Degree ["Underage Sex"] – RCW 9A.44.076 (Class A Felony)

1. Sexual intercourse where:
 - a. Victim is at least twelve years old but less than fourteen years old, AND
 - b. Suspect is at least 36 months older than the victim, AND
 - c. Suspect is not married to the victim.



Note - Attempted Rape of a Child 1st and 2nd Degrees are Class A Felonies.

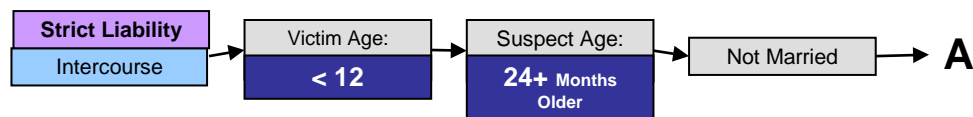
Attempted rape is available even if the "victim" is an adult merely pretending to be a child.

Forcible compulsion or lack of consent is not present. If either were present, 'regular' Rape would be the more appropriate charge.

14 - Sex Offenses

Rape of a Child 1st Degree ["Underage Sex"] – RCW 9A.44.073 (Class A Felony)

1. Sexual intercourse where:
 - a. Victim is less than twelve years old, AND
 - b. Suspect is at least 24 months older than the victim, AND
 - c. Suspect is not married to the victim.



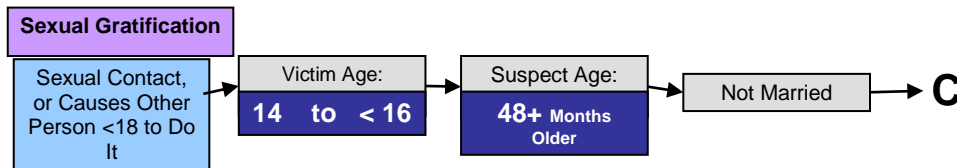
Attempted rape is available even if the "victim" is an adult merely pretending to be a child.

Forcible compulsion or lack of consent is not present. If either were present, 'regular' Rape would be the more appropriate charge.

14 - Sex Offenses

Child Molestation 3rd Degree ["Underage Touching"] – RCW 9A.44.089 (Class C Felony)

1. A person has, or knowingly causes another person under the age of 18 to have, sexual contact with a person where:
 - a. Victim is at least fourteen years old but less than sixteen years old, AND
 - b. Suspect is at least 48 months older than the victim, AND
 - c. Suspect is not married to the victim.

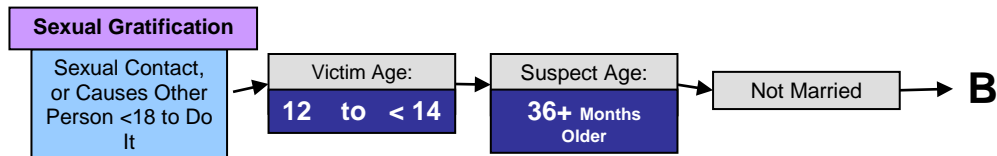


Forcible compulsion or lack of consent is not present. If either were present, Indecent Liberties would be the more appropriate charge.

14 - Sex Offenses

Child Molestation 2nd Degree ["Underage Touching"] – RCW 9A.44.086 (Class B Felony)

1. A person has, or knowingly causes another person under the age of 18 to have, sexual contact with a person where:
 - a. Victim is at least twelve years old but less than fourteen,
AND
 - b. Suspect is at least 36 months older than the victim, AND
 - c. Suspect is not married to the victim.

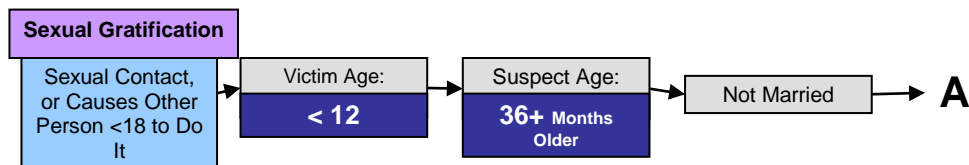


Forcible compulsion or lack of consent is not present. If either were present, Indecent Liberties would be the more appropriate charge.

14 - Sex Offenses

Child Molestation 1st Degree ["Underage Touching"] – RCW 9A.44.083 (Class A Felony)

1. A person has, or knowingly causes another person under the age of 18 to have, sexual contact with a person where:
 - a. Victim is less than twelve years of age, AND
 - b. Suspect is at least 36 months older than the victim, AND
 - c. Suspect is not married to the victim



Forcible compulsion or lack of consent is not present. If either were present, Indecent Liberties would be the more appropriate charge.

14 - Sex Offenses

Rape of a Child / Child Molestation Age Matrix

<u>DEGREE</u>	<u>VICTIM AGE</u>	<u>SUSPECT AGE RAPE</u>	<u>SUSPECT AGE MOLESTATION</u>
1 <input type="checkbox"/>	< 12	24+ Months Older	36+ Months Older
2 <input type="checkbox"/>	12 to < 14	36+ Months Older	36+ Months Older
3 <input type="checkbox"/>	14 to < 16	48+ Months Older	48+ Months Older

14 - Sex Offenses

Sexual Misconduct with a Minor 2nd Degree – RCW 9A.44.096 (Gross Misdemeanor)

Misdemeanor Presence
Exception?

1. The person has, or knowingly causes another person under the age of eighteen to have, *sexual contact* with another where:
 - a. Victim is at least sixteen but less than eighteen years old, AND
 - b. Suspect is at least sixty months older than the victim, AND
 - c. Suspect is not married to the victim, AND
 - d. Suspect is in a significant relationship with the victim, AND
 - e. Suspect abuses the supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim.

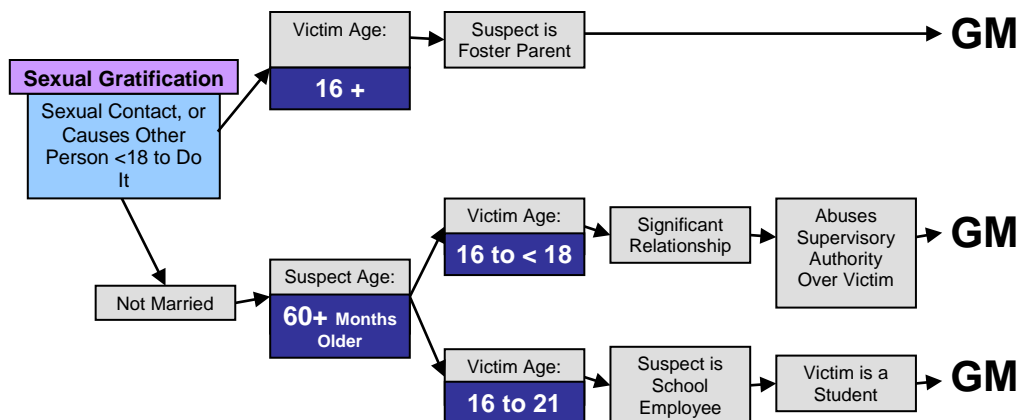
-OR-

2. The person has, or knowingly causes another person under the age of 18 to have, *sexual contact* with another person where:
 - a. Victim is at least 16 and not more than 21 years old, AND
 - b. Victim is an enrolled student of the school, AND
 - c. Suspect is at least 60 months older than the victim, AND
 - d. Suspect is not married to the victim, AND
 - e. Suspect is a school employee.

-OR-

3. The person has, or knowingly causes another person under the age of 18 to have, *sexual contact* with another person where:
 - a. Victim is at least 16 years old, AND
 - b. Suspect is a foster parent.

4. **“School employee”** means an employee of a common school, or a grade kindergarten through twelve employee of a private school who is not enrolled as a student of the common school or private school.



14 - Sex Offenses

Sexual Misconduct with a Minor 1st Degree – RCW 9A.44.093 (Class C Felony)

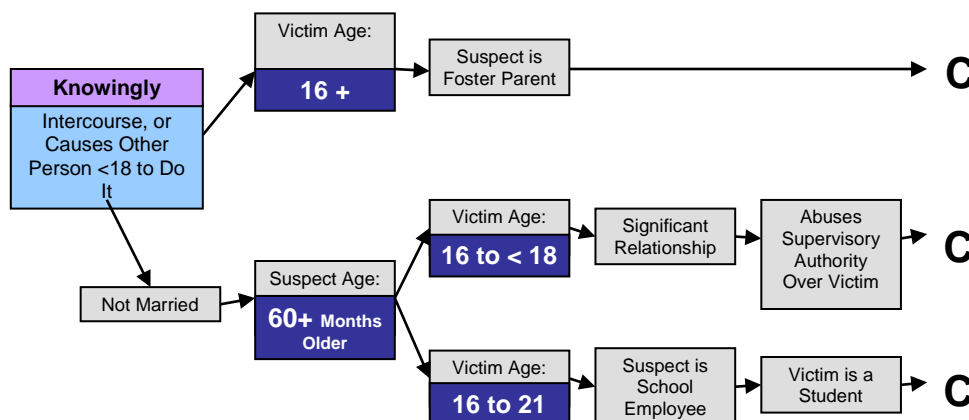
1. The person has, or knowingly causes another person under the age of eighteen to have, *intercourse* with another where:
 - a. Victim is at least sixteen but less than eighteen years old, AND
 - b. Suspect is at least sixty months older than the victim, AND
 - c. Suspect is not married to the victim, AND
 - d. Suspect is in a significant relationship with the victim, AND
 - e. Suspect abuses the supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim.

-OR-

2. The person has, or knowingly causes another person under the age of 18 to have, *intercourse* with another person where:
 - a. Victim is at least 16 and not more than 21 years old, AND
 - b. Victim is an enrolled student of the school, AND
 - c. Suspect is at least 60 months older than the victim, AND
 - d. Suspect is not married to the victim, AND
 - e. Suspect is a school employee.

-OR-

3. The person has, or knowingly causes another person under the age of 18 to have, *intercourse* with another person where:
 - a. Victim is at least 16 years old, AND
 - b. Suspect is a foster parent.



14 - Sex Offenses

Criminal Trespass Against Children – RCW 9A.44.196 (Class C Felony)

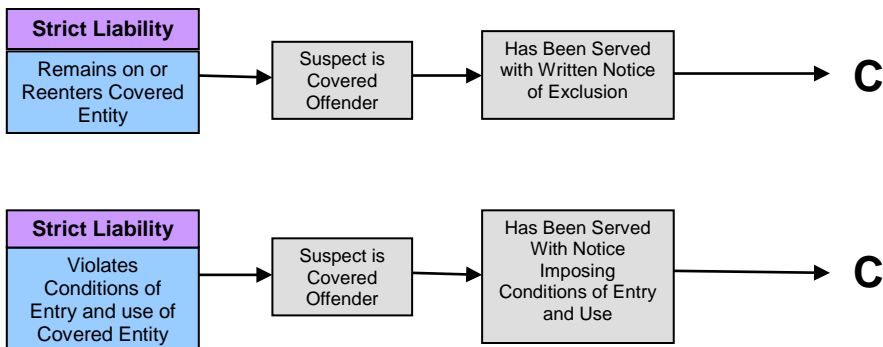
1. A person commits the crime of criminal trespass against children if he or she:
 - a. Is a covered offender who has been personally served with written notice excluding the covered offender from the legal premises of the covered entity and remains upon or reenters the legal premises of the covered entity;

-OR-

 - b. Is covered offender who has been personally served with written notice that imposes conditions of entry and use and the covered offender violates such conditions.

2. **“Covered Offender”** means:
 - a. Suspect is 18 or older, AND
 - b. Suspect is required to register as a sex offender, AND
 - c. Suspect is not under the jurisdiction of the juvenile rehabilitation authority or serving a special sex offender disposition alternative, AND
 - d. Suspect is a level II or level III sex offender, AND
 - e. Suspect has been convicted of a sex offense involving children or child pornography.

3. **“Covered Entity”** means a public or private facility whose primary purpose, at any time, is to provide for the education, care, or recreation of children. This includes community and recreation centers, playgrounds, schools, swimming pools, and state or municipal parks.

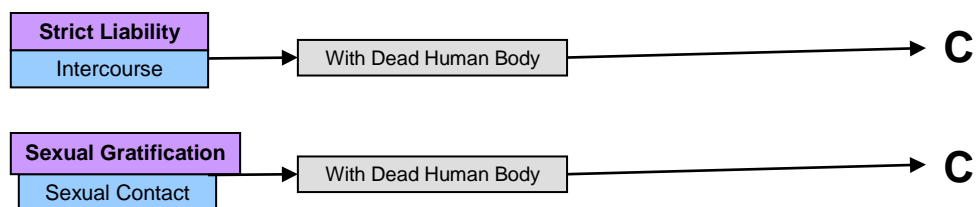


14 - Sex Offenses

Sexually Violating Human Remains

– RCW 9A.44.105 (Class C Felony)

1. Sexual intercourse or sexual contact with a dead human body.



14 - Sex Offenses

Voyeurism

– RCW 9A.44.115 (Class C Felony)

1. A person commits the crime of Voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly:
 - a. Views, photographs, or films another person without that person's knowledge and consent; AND
 - b. While the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy;

-OR-
 - c. Views, photographs or films the intimate areas of another person without that person's knowledge or consent; AND
 - d. Under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

2. **"Intimate areas"** means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

3. **"Photographs"** or **"films"** mean the making of photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person.

4. **"Place where he or she would have a reasonable expectation of privacy"**
 - a. A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another;

-OR-
 - b. A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.

5. **"Surveillance"** means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

This RCW calls for specific intent.

Protects Private Places

Protects "Private Parts" (Intimate Areas)

14 - Sex Offenses

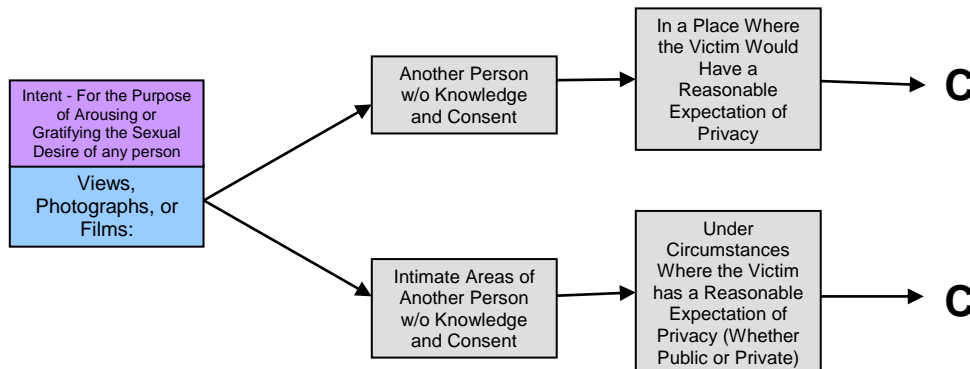
Voyeurism

– RCW 9A.44.115 (Class C Felony)

-continued from previous page-

- 6. **“Views”** means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

- 7. **Statute of Limitations Exception:** If the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time of the person who was viewed or in the photograph of film first learns that he or she was viewed, photographed or filmed.

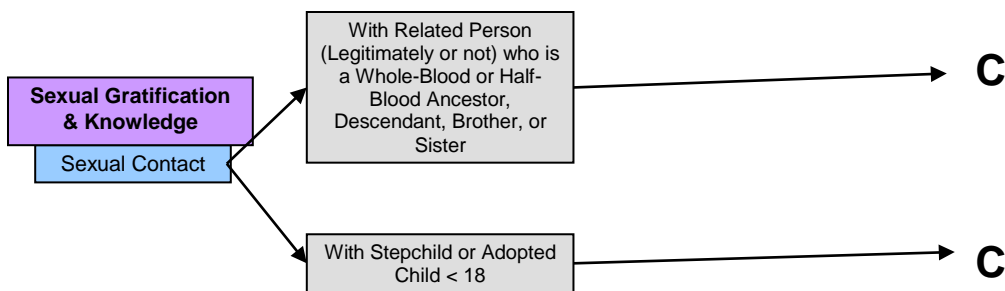


14 - Sex Offenses

Incest 2nd Degree

– RCW 9A.64.020 (Class C Felony)

1. Knowingly engages in *sexual contact* with:
 - a. A person related to them either legitimately or illegitimately who is an ancestor, descendant, brother, or sister of either whole or half blood.
 - Including stepchildren and adopted children under the age of 18.

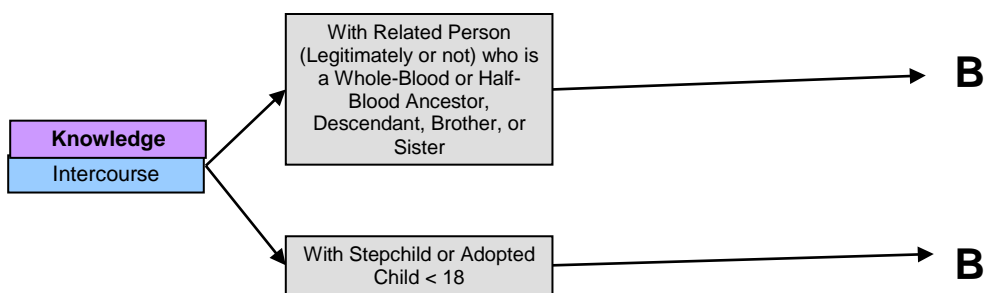


14 - Sex Offenses

Incest 1st Degree

– RCW 9A.64.020 (Class B Felony)

1. Knowingly engages in *sexual intercourse* with:
 - a. A person related to them either legitimately or illegitimately who is an ancestor, descendant, brother, or sister of either whole or half blood.
 - Including stepchildren and adopted children under the age of 18.



14 - Sex Offenses

Special Allegation – Sexual Motivation

– RCW 9.94A.835

1. The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, other than sex offenses, when sufficient evidence exists which would justify a finding of sexual motivation by a reasonable and objective fact finder.
2. In a criminal case where there has been a special allegation, the state shall prove beyond a reasonable doubt the accused committed the crime with a sexual motivation.
3. **“Sexual Motivation”** means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

This RCW is not a crime – it only pertains to sentencing.

15 - Sexual Exploitation of Children

Definitions

– RCW 9.68A.011

1. **“Photograph”** means to make a print, negative, slide, digital image, motion picture, or videotape. A photograph means anything tangible or intangible produced by photographing.
2. **“Visual or printed matter”** means any photograph or other material that contains a reproduction of a photograph.
3. **“Sexually explicit conduct”** means actual or simulated:
 - a. Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
-OR-
 - b. Penetration of the vagina or rectum by any object;
-OR-
 - c. Masturbation;
-OR-
 - d. Sadomasochistic abuse;
-OR-
 - e. Defecation or urination for the purpose of sexual stimulation of the viewer;
-OR-
 - f. Depiction of the genitals or unclothed pubic or rectal area of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer (it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it);
-OR-
 - g. Touching of a person’s clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.
4. **“Minor”** means any person under the age of 18.
5. **“Live performance”** means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.
6. **“Internet session”** means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.

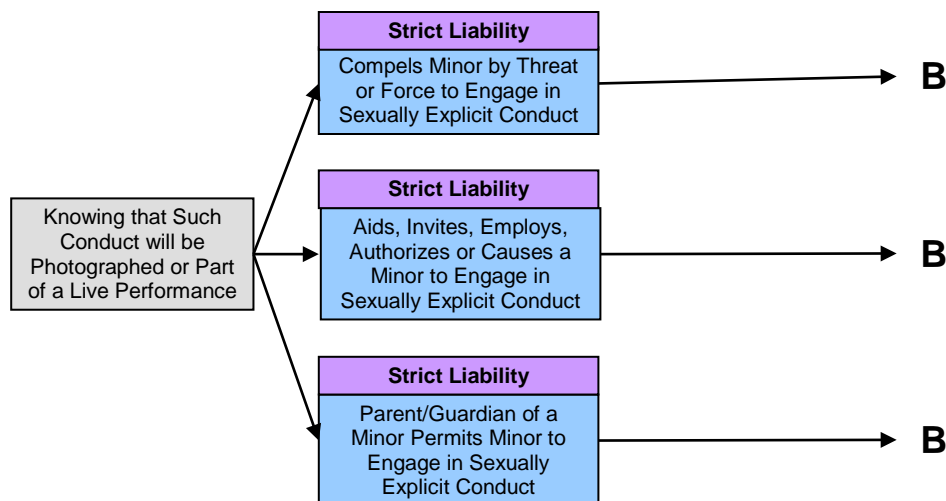
“Consideration” is a legal term that means payment, bargain, or agreement.

Tab Marker:
SEX EXPLOITATION
OF CHILDREN

15 - Sexual Exploitation of Children

Sexual Exploitation of a Minor – RCW 9.68A.040 (Class B Felony)

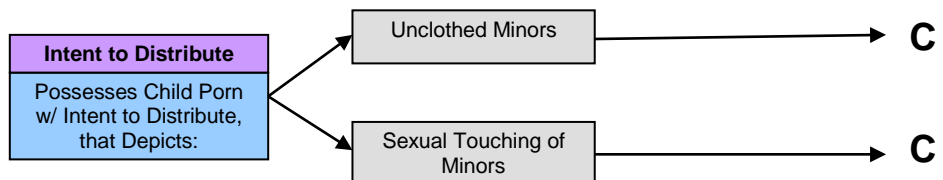
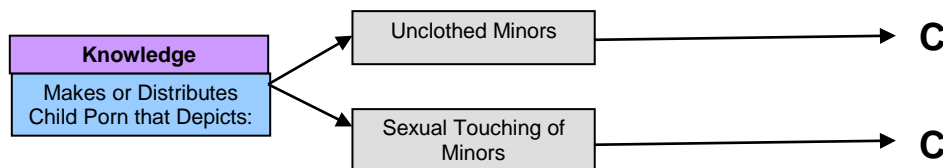
1. A person is guilty of Sexual Exploitation of a Minor if the person:
 - a. Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;
-OR-
 - b. Aids, invites, employs, authorizes or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;
-OR-
 - c. Being a parent or legal guardian of a minor, permits the minor to engage in sexually explicit conduct knowing that the conduct will be photographed or part of a live performance.



15 - Sexual Exploitation of Children

Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2nd Degree – RCW 9.68A.050 (Class C Felony)

1. A person who:
 - a. Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in (f) or (g);
 - OR-
 - b. Possesses with *intent to develop, duplicate, publish, print, disseminate, exchange or sell* any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in (f) or (g).



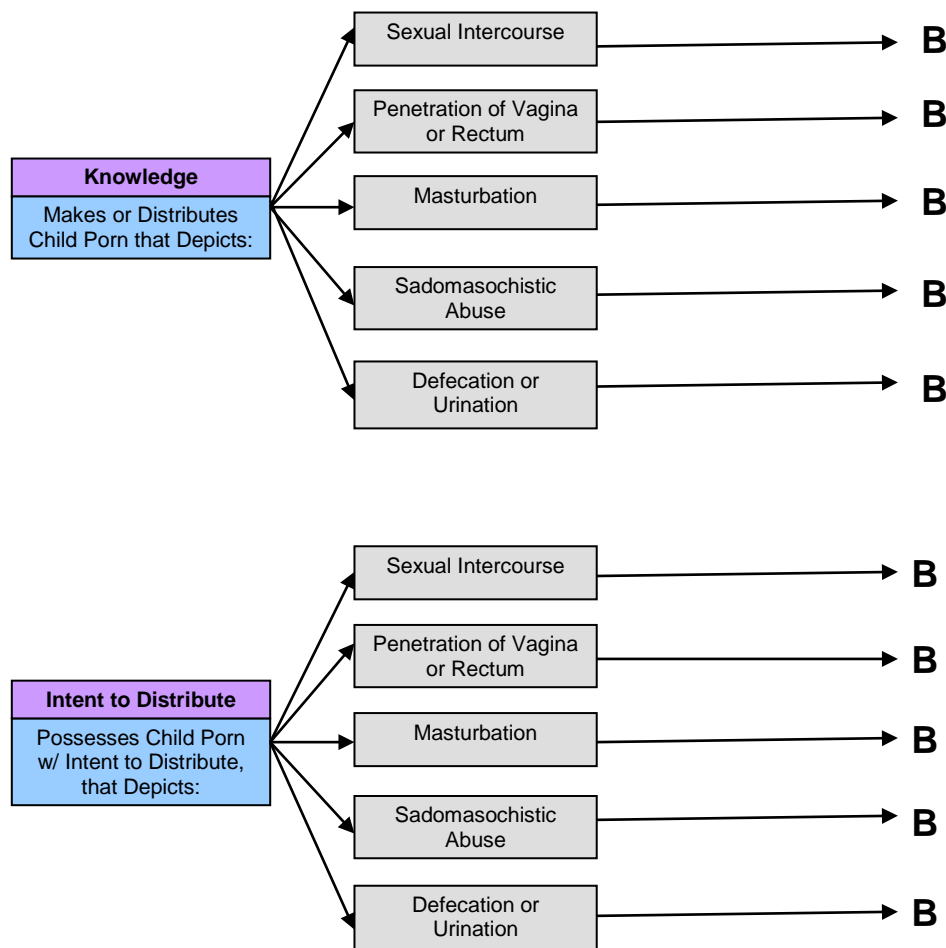
Note – In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

Each incident of dealing constitutes a separate offense.

15 - Sexual Exploitation of Children

Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 1st Degree – RCW 9.68A.050 (Class B Felony)

1. A person who:
 - c. Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in (a) through (e);
 - OR-
 - d. Possesses with *intent to develop, duplicate, publish, print, disseminate, exchange or sell* any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in (a) through (e).



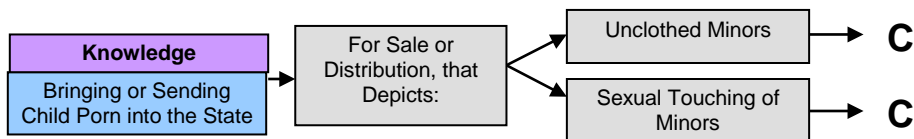
Note – In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

Each incident of dealing constitutes a separate offense.

15 - Sexual Exploitation of Children

Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2nd Degree – RCW 9.68A.060 (Class C Felony)

1. A person who knowingly sends or causes to be sent, or brings or causes to be brought into this state for sale or distribution any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in (f) or (g).



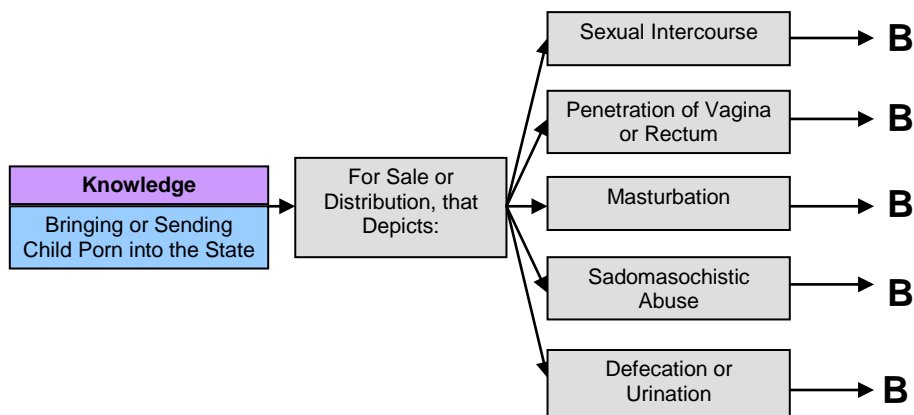
Note – In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

Each incident constitutes a separate offense.

15 - Sexual Exploitation of Children

Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 1st Degree – RCW 9.68A.060 (Class B Felony)

1. A person who knowingly sends or causes to be sent, or brings or causes to be brought into this state for sale or distribution any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in (a) through (e).



Note – In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

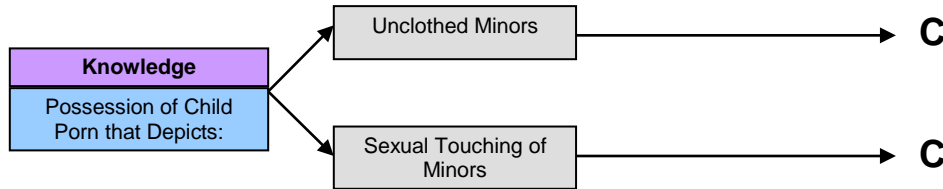
Each incident constitutes a separate offense.

15 - Sexual Exploitation of Children

Possession of Depictions of Minor Engaged in Sexually Explicit Conduct 2nd Degree

– RCW 9.68A.070 (Class C Felony)

1. A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in (f) or (g).



Note – In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

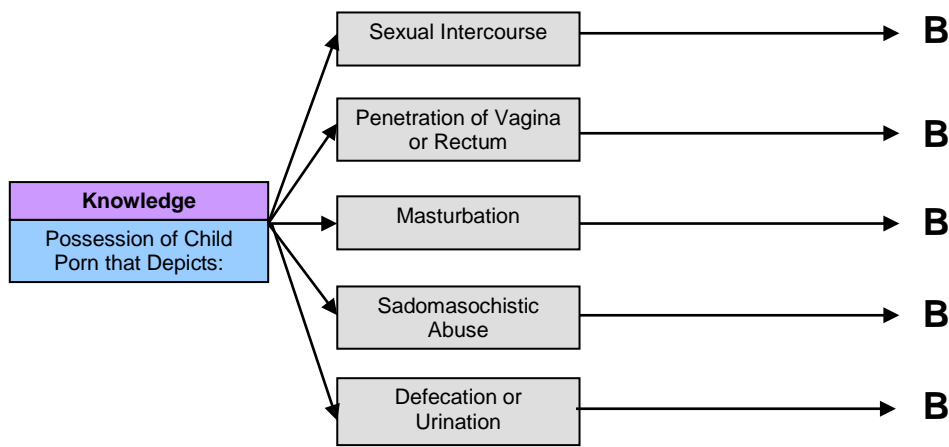
Each depiction or image constitutes a separate offense.

15 - Sexual Exploitation of Children

Possession of Depictions of Minor Engaged in Sexually Explicit Conduct 1st Degree

– RCW 9.68A.070 (Class B Felony)

1. A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in (a) through (e).



Note – In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

Each depiction or image constitutes a separate offense.

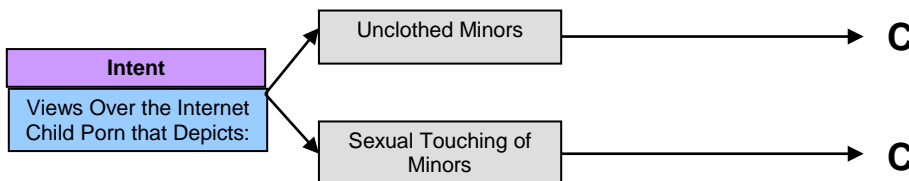
15 - Sexual Exploitation of Children

Viewing Depictions of Minor Engaged in Sexually Explicit Conduct 2nd Degree

– RCW 9.68A.075 (Class C Felony)

1. A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in (f) or (g).
2. The prosecution must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

Note – In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.



Each separate internet session constitutes a separate offense.

15 - Sexual Exploitation of Children

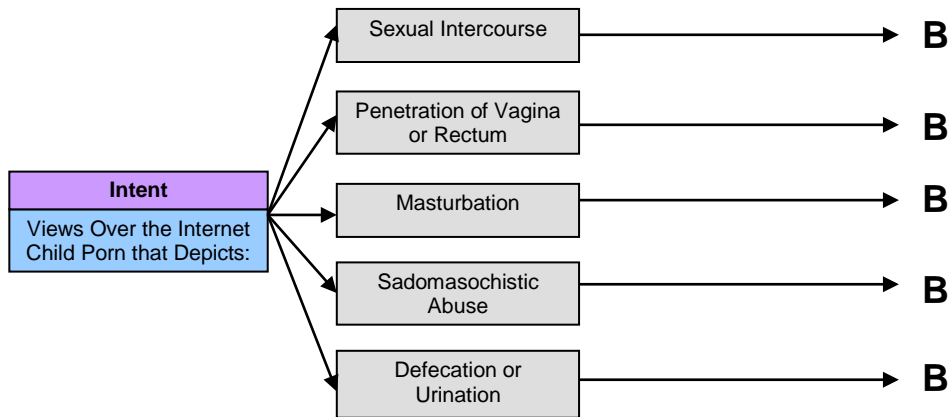
Viewing Depictions of Minor Engaged in Sexually Explicit Conduct 1st Degree

– RCW 9.68A.075 (Class B Felony)

1. A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in (a) through (e).
2. The prosecution must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

Note – In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

Each separate internet session constitutes a separate offense.

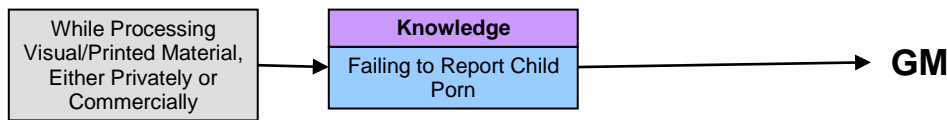


15 - Sexual Exploitation of Children

[Failing to] Report Depictions of Minor Engaged in Sexually Explicit Conduct

– RCW 9.68A.080 (Gross Misdemeanor)

1. A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter depicts a minor engaged in sexually explicit conduct shall immediately report such incident to the proper law enforcement agency.



Misdemeanor Presence Exception?

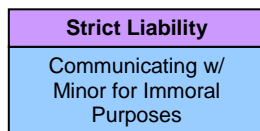
A person who makes a report in good faith is immune from civil liability.

A person repairing, modifying, or maintaining a computer who has reasonable cause to believe the computer stores visual or printed matter that depicts a minor engaged in sexually explicit conduct may, but is not required, to make a report to law enforcement.

15 - Sexual Exploitation of Children

Communicating with a Minor for Immoral Purposes – RCW 9.68A.090 (Gross Misd. / Class C Felony)

1. A person communicates with a minor, or someone the person believes to be a minor, for immoral purposes.
 - a. This RCW has been challenged in court and found to be *not* unconstitutionally vague. This RCW prohibits a course of conduct or spoken word with a minor for purposes of sexual misconduct.
 - b. If the topic of the communication (the behavior being discussed) is illegal, then the communication about it to a minor will also be illegal.
2. Affirmative Defense:
 - √ a. Is available if the suspect made a reasonable attempt to ascertain the victim's age (via ID, certificate, etc.) and didn't rely solely on the victim's assertions.
 - ⊗ b. Is not available just because the suspect did not know the victim's age.



Misdemeanor Presence
Exception?

Class C Felony if:

- *Suspect has previously been convicted of a felony sexual offense in this or any other state.*
- *The communication was through electronic means (like email or text message).*

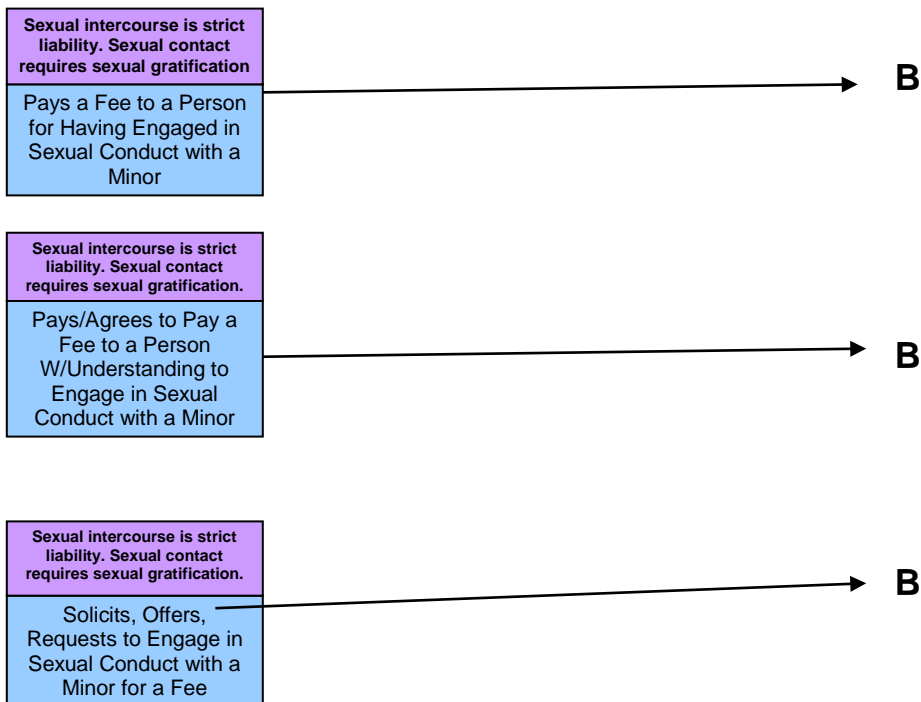
15 - Sexual Exploitation of Children

Commercial Sexual Abuse of a Minor – RCW 9.68A.100 (Class B Felony)

1. A person:
 - a. Pays a fee to a minor or third person as compensation for a minor having engaged in sexual conduct with him or her;

-OR-
 - b. Pays or agrees to pay a fee to a minor or third person pursuant to an understanding that a minor will engage in sexual conduct with him or her;

-OR-
 - c. Solicits, offers, or requests to engage in sexual conduct with a minor for a fee.
2. **"Sexual conduct"** means sexual intercourse or sexual contact.
3. The state does not have to prove the defendant knew the victim was a child.

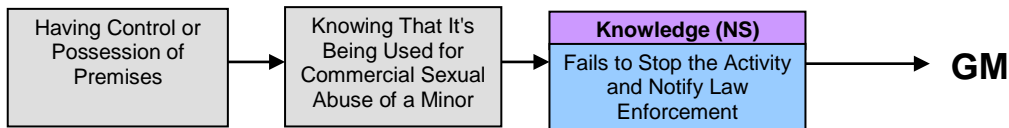


15 - Sexual Exploitation of Children

Permitting Commercial Sexual Abuse of a Minor – RCW 9.68A.103 (Gross Misdemeanor)

1. A person, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

Misdemeanor Presence
Exception?

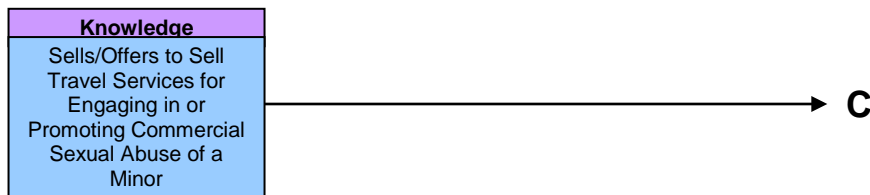


15 - Sexual Exploitation of Children

Promoting Travel for Commercial Sexual Abuse of a Minor

– RCW 9.68A.102 (Class C Felony)

1. A person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor in this state.



15 - Sexual Exploitation of Children

Promoting Commercial Sexual Abuse of a Minor – RCW 9.68A.101 (Class A Felony)

1. A person knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.
2. **"Advances commercial sexual abuse of a minor"** means that a person, acting other than as a prostitute or a customer:
 - a. Causes or aids a person to commit or engage in commercial sexual abuse of a minor;

-OR-
 - b. Procures or solicits customers for commercial sexual abuse of a minor;

-OR-
 - c. Provides persons or premises for commercial sexual abuse of a minor;

-OR-
 - d. Assists in the operation of a house or enterprise for commercial sexual abuse of a minor;

-OR-
 - e. Engages in any other conduct designed to institute, cause, assist, or facilitate commercial sexual abuse of a minor.
3. **"Advances a sexually explicit act of a minor"** means a person:
 - a. Causes or aids a sexually explicit act of a minor;

-OR-
 - b. Procures or solicits customers for a sexually explicit act of a minor;

-OR-
 - c. Provides persons or premises for a sexually explicit act of a minor;

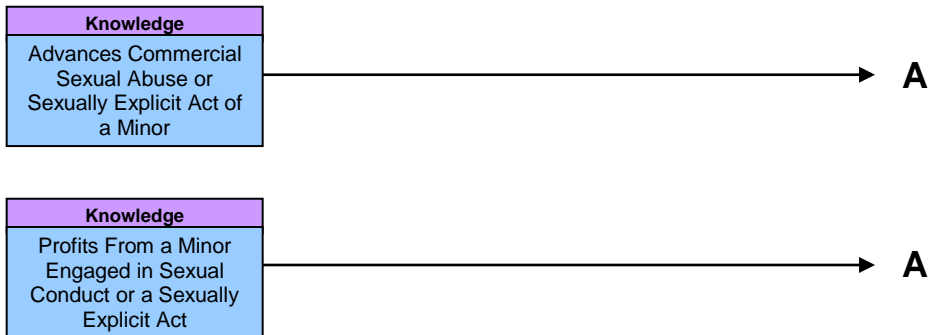
-OR-

15 - Sexual Exploitation of Children

Promoting Commercial Sexual Abuse of a Minor – RCW 9.68A.101 (Class A Felony)

-continued from previous page-

- d. Engages in any other conduct designed to institute, cause, assist, or facilitate a sexually explicit act of a minor.
4. **"Profits from commercial sexual abuse of a minor"** means, acting as other than as a prostitute, a person accepts or receives compensation for an act of commercial sexual abuse of a minor.
5. **"Sexually explicit act"** means a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which something of value is given or received.
6. **"Patron"** means a person who pays or agrees to pay a fee to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.
7. **"Sexual conduct"** means sexual intercourse or sexual contact.

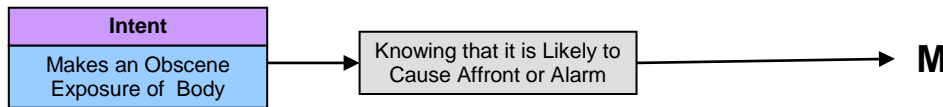


16 - Indecent Exposure & Prostitution

Indecent Exposure

– RCW 9A.88.010 (Misd. / Gross Misd. / Class C Felony)

1. A person makes an *intentional* and obscene exposure of his person knowing that such conduct is likely to cause reasonable affront or alarm.
2. Breastfeeding in public is not indecent exposure.



Misdemeanor Presence Exception?

- *If the victim is under 14 years old, then it is a Gross Misdemeanor for the 1st offense.*
- *If the person has been previously convicted of this offense or of a sex offense as defined in 9.94A.030, then it is a Class C Felony.*

The victim must have actually seen the naked body part(s).

Law enforcement officers usually cannot be considered victims of indecent exposure.

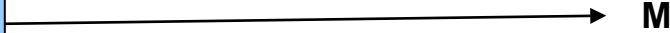
16 - Indecent Exposure & Prostitution

Prostitution

– RCW 9A.88.030 (Misdemeanor)

1. A person engages, or agrees, or offers to engage in sexual conduct with another in return for a fee.

Strict Liability
Engages/Agrees/Offers Sexual Conduct with Another for a Fee



Misdemeanor Presence Exception?

This RCW is for the prostitute (the person offering the sexual conduct for a fee).

Tab Marker:
**INDECENT EXPOSURE
& PROSTITUTION**

16 - Indecent Exposure & Prostitution

Promoting Prostitution 2nd Degree – RCW 9A.88.080 (Class C Felony)

1. A person advances prostitution or profits from prostitution.

Strict Liability
Advances Prostitution or Profits from Prostitution



This RCW is for the "pimp" (a person who benefits/profits from prostitution), or for a business that profits (escort service, massage parlor, etc.).

16 - Indecent Exposure & Prostitution

Promoting Prostitution 1st Degree – RCW 9A.88.070 (Class B Felony)

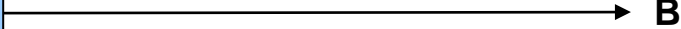
1. A person advances or profits from prostitution by:
 - a. Compelling another to engage in prostitution by force or threats,

-OR-

- b. Compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution.

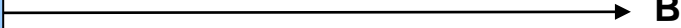
This RCW is also for the "pimp" (a person who benefits/profits from prostitution).

Strict Liability
By Force or Threats, Advances Prostitution by Compelling a Person to Engage in Prostitution



B

Strict Liability
Advances Prostitution by Compelling a Person with Mental Incapacity/Developmental Disability Rendering the Person Incapable of Consent to Engage in Prostitution



B

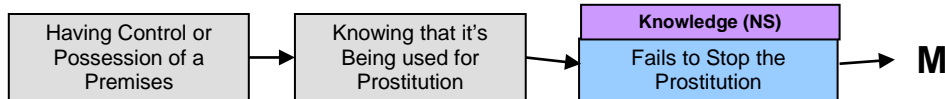
Advancing or Profiting from a prostitute under age 18 was removed from this crime. A new set of crimes in RCW 9.68A was created in 2007 to handle "Commercial Sexual Abuse of a Minor."

16 - Indecent Exposure & Prostitution

Permitting Prostitution

– RCW 9A.88.090 (Misdemeanor)

1. A person is guilty of Permitting Prostitution if, *having possession or control of premises* which he knows are being used for prostitution purposes, he fails without lawful excuse to make reasonable effort to halt or abate such use.



Misdemeanor Presence Exception?

This RCW is for the person allowing it to occur at their place.

16 - Indecent Exposure & Prostitution

Patronizing a Prostitute

– RCW 9A.88.110 (Misdemeanor)

1. Pursuant to a prior understanding, a person pays a fee to another or a third person having engaged in sexual conduct with him or her;
-OR-
2. A person pays or agrees to pay a fee in return for sexual conduct;
-OR-
3. A person solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

Strict Liability
Requests, Solicits, Pays, or Agrees to Pay for Sexual Conduct



M

**Misdemeanor Presence
Exception?**

*This RCW is for the
"John" (the person
paying).*

17 – Harassment & Court Orders

Harassment

– RCW 9A.46.020 (Gross Misd. / Class C Felony)

1. Without lawful authority, the person *knowingly* threatens:
 - a. To cause bodily injury immediately or in the future to the person threatened or any other person;
-OR-
 - b. To cause physical damage to another's property;
-OR-
 - c. To subject the person threatened or any other person to physical confinement or restraint;
-OR-
 - d. To maliciously do any other act which is intended to substantially harm the person threatened or another with respect to his/her physical or mental health or safety;

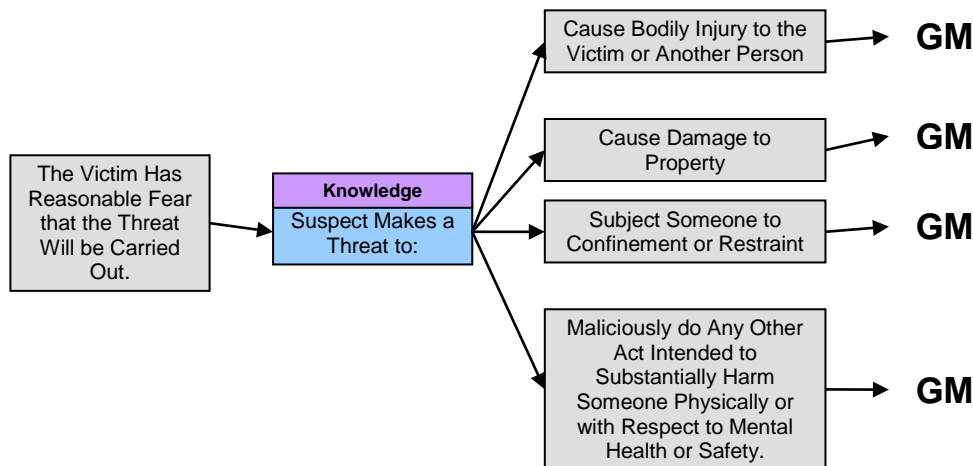
Misdemeanor Presence Exception?

Threatens to:

- Assault
- Mal. Misc.
- Unlawful Imprisonment
- Anything Else Bad

-AND-

2. By words or conduct places the person threatened in *reasonable fear* the threat will be carried out, including threats communicated through electronic communication.



Class C Felony if:

- The suspect has previously been convicted in this or any other state of any crime of harassment (as defined in RCW 9A.46.060) AND
 - The victim is the same person, or
 - Member of the victims family or household (as defined in DV laws), or
 - Any person specifically named in a No-Contact or No-Harassment Order;
 -OR-
- Suspect harasses another person by threatening to kill the person threatened or any other person (or an act that is equivalent to killing).
-OR-
- Suspect harasses a criminal justice employee in the course of, or in retaliation for, doing official duties. Threatening words are not enough if it is apparent that the suspect does not have the present and future ability to carry out the threat.

17 – Harassment & Court Orders

Place Where Committed

– RCW 9A.46.030

1. Any Harassment offense may be deemed to have been committed where the conduct occurred or at the place from which the threat or threats were made or at the place where the threats were received.

“Previous Convictions of Harassment”

– RCW 9A.46.060

1. As used in this chapter, "previous convictions of harassment" may include but is not limited to any of the following crimes:

- Harassment (RCW 9A.46.020)
- Malicious Harassment (RCW 9A.36.080)
- Telephone Harassment (RCW 9.61.230)
- Assault in the First Degree (RCW 9A.36.011)
- Assault of a Child in the First Degree (RCW 9A.36.120)
- Assault in the Second Degree (RCW 9A.36.021)
- Assault of a Child in the Second Degree (RCW 9A.36.130)
- Assault in the Fourth Degree (RCW 9A.36.041)
- Reckless Endangerment (RCW 9A.36.050)
- Extortion in the First Degree (RCW 9A.56.120)
- Extortion in the Second Degree (RCW 9A.56.130)
- Coercion (RCW 9A.36.070)
- Burglary in the First Degree (RCW 9A.52.020)
- Burglary in the Second Degree (RCW 9A.52.030)
- Criminal Trespass in the First Degree (RCW 9A.52.070)
- Criminal Trespass in the Second Degree (RCW 9A.52.080)
- Malicious Mischief in the First Degree (RCW 9A.48.070)
- Malicious Mischief in the Second Degree (RCW 9A.48.080)
- Malicious Mischief in the Third Degree (RCW 9A.48.090)
- Kidnapping in the First Degree (RCW 9A.40.020)
- Kidnapping in the Second Degree (RCW 9A.40.030)
- Unlawful Imprisonment (RCW 9A.40.040)
- Rape in the First Degree (RCW 9A.44.040)
- Rape in the Second Degree (RCW 9A.44.050)
- Rape in the Third Degree (RCW 9A.44.060)
- Indecent Liberties (RCW 9A.44.100)
- Rape of a Child in the First Degree (RCW 9A.44.073)
- Rape of a Child in the Second Degree (RCW 9A.44.076)
- Rape of a Child in the Third Degree (RCW 9A.44.079)
- Child Molestation in the First Degree (RCW 9A.44.083)
- Child Molestation in the Second Degree (RCW 9A.44.086)
- Child Molestation in the Third Degree (RCW 9A.44.089)
- Stalking (RCW 9A.46.110)
- Residential Burglary (RCW 9A.52.025)
- Violation of a temporary, permanent, or final protective order issued pursuant to chapter 7.90, 9A.46, 10.14, 10.99, 26.09, or 26.50
- Unlawful Discharge of a Laser in the First Degree (RCW 9A.49.020)
- Unlawful Discharge of a Laser in the Second Degree (RCW 9A.49.030)

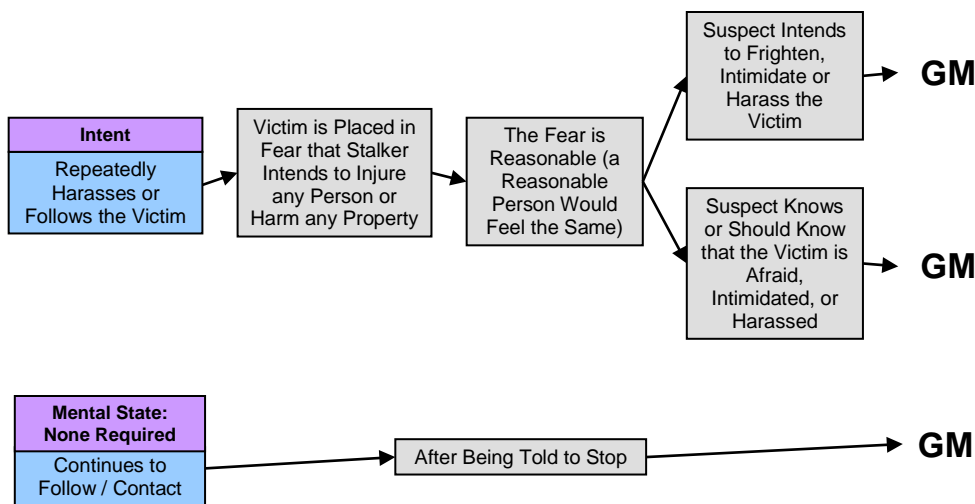
17 – Harassment & Court Orders

Stalking

– RCW 9A.46.110 (Gross Misd. / Class C Felony)

1. Without lawful authority and under circumstances not amounting to a felony attempt of another crime:
 - a. A person intentionally and repeatedly harasses or repeatedly follows another person; AND
 - b. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or another person; AND
 - c. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; AND
 - d. The stalker either:
 - Intends to frighten, intimidate, or harass the person; -OR-
 - Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

2. Attempts to contact or follow the person, after being given actual notice the person does not want to be contacted or followed, constitutes prima facie evidence of stalking.



Misdemeanor Presence Exception?

Class C Felony if:

- Stalker has previously been convicted in this state or any other state for any crime of harassment of the same victim or members of the victim's family or household or any person specifically named in a protective order; -OR-
- Stalking violates any protective order protecting the person being stalked; -OR-
- Stalker has previously been convicted of a Gross Misdemeanor or felony stalking offense for stalking another person; -OR-
- Stalker was armed with a deadly weapon while stalking the victim; -OR-
- Victim was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, community corrections officer, employee of a correctional agency, or employee of CPS or APS, and the stalker stalked the victim to:
 - Retaliate against the course of official duties, or
 - Influence the victim's performance of official duties; -OR-
- Victim is a current, former or prospective witness in an adjudicative proceeding, and the stalking is to retaliate as a result of the victim's testimony or potential testimony.

17 – Harassment & Court Orders

Stalking

– RCW 9A.46.110 (Gross Misdemeanor)

-continued from previous page-

- ⊗ 3. It is *not a defense* that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person.

- ⊗ 4. It is *not a defense* that the stalker did not intend to frighten, intimidate or harass the person.

- √ 5. It is a *defense* if the defendant is a licensed private detective acting within the capacity of their license.

- 6. **“Follow”**
 - a. Deliberately maintaining visual or physical proximity to a specific person over a period of time;

-OR-
 - b. Repeatedly and deliberately appears at the person’s:
 - Home, or
 - School, or
 - Place of employment, or
 - Business, or
 - Any other location to maintain visual or physical proximity to the person;

-OR-
 - c. Any of the above actions is sufficient to find that the alleged stalker followed the person. It is not necessary to establish that the stalker follows the person while in transit from one location to another.

- 7. **“Protective Order”** means any temporary or permanent court order prohibiting or limiting violence against harassment of, contact or communication with, or physical proximity to another person.

- 8. **“Repeatedly”** means on two or more separate occasions.

17 – Harassment & Court Orders

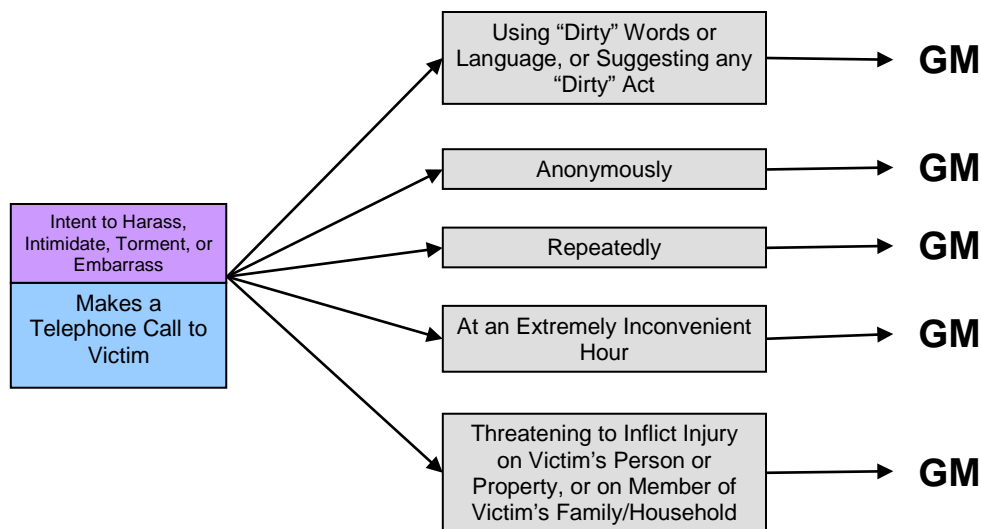
Telephone Harassment

– RCW 9.61.230 (Gross Misd. / Class C Felony)

1. Every person who, with *intent to harass, intimidate, torment or embarrass* any other person, shall make a telephone call to such other person:
 - a. Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act;

-OR-
 - b. Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues;

-OR-
 - c. Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.



Misdemeanor Presence Exception:

Class C Felony if:

- *That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state;*

-OR-
- *That person harasses another person by threatening to kill the person threatened or any other person.*

17 – Harassment & Court Orders

Cyberstalking

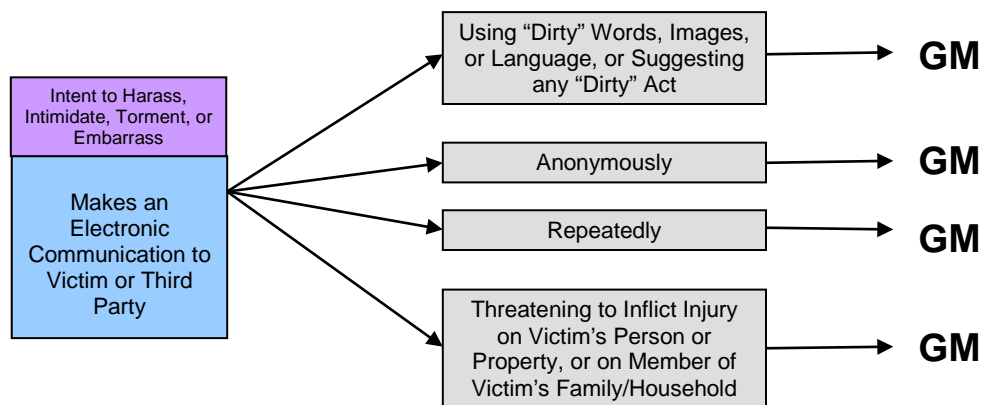
– RCW 9.61.260 (Gross Misd. / Class C Felony)

1. Every person who, with *intent to harass, intimidate, torment or embarrass* any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:
 - a. Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;

-OR-
 - b. Anonymously or repeatedly whether or not conversation occurs;

-OR-
 - c. Threatening to inflict injury on the person or property of the person or any member of his or her family or household.

2. **"Electronic communication"** means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. It includes electronic mail, internet-based communications, pager service, and electronic text messaging.



Misdemeanor Presence Exception:

Class C Felony if:

- *That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state;*

-OR-
- *That person harasses another person by threatening to kill the person threatened or any other person.*

17 – Harassment & Court Orders

State of Mind (Mens Rea) for Court Order Violations

“Knowledge” for all court order violations requires

- Knowledge that the order was issued or exists.

AND

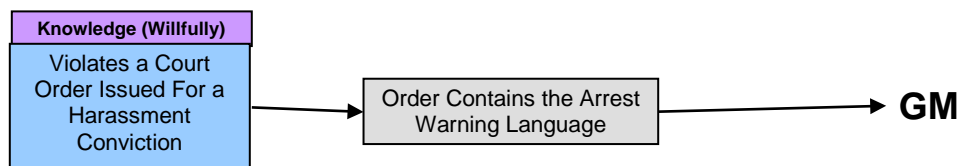
- Knowledge that the offender’s conduct violates a provision of the order.

17 – Harassment & Court Orders

[Upon Harassment Conviction, Violation of] Order Restricting Contact

– RCW 9A.46.080 (Gross Misdemeanor)

1. Willful violation of a court order issued under this section (for a suspect found guilty of Harassment) is a Gross Misdemeanor.
2. The written order shall contain the court's directives and shall bear the Criminal Legend: "Violation of this order is a criminal offense under chapter RCW 9A.46 and will subject a violator to arrest."



Misdemeanor Presence
Exception?

Non-Liability of Peace Officer

– RCW 9A.46.090

1. A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of harassment brought by any party to the incident.

17 – Harassment & Court Orders

Protection Order / Order for Protection

– RCW 26.50

1. Issued by any court at the petitioner's request because of danger from a family or household member.
2. Sometimes called "DV Protection Orders."
3. No Criminal Legend or arrest language is necessary in the wording of a Protection Order. All Protection Orders are enforceable by arrest. They are issued because the petitioner has convinced a judge that he/she is in danger.
4. Certain behaviors are prohibited by the order. Typical violations include:
 - a. Threats,
 - b. Coming onto the grounds of daycare, workplace, school, or residence,
 - c. Making contact (even through third parties),
 - d. Distance violations.

17 – Harassment & Court Orders

Violation of a Protection Order

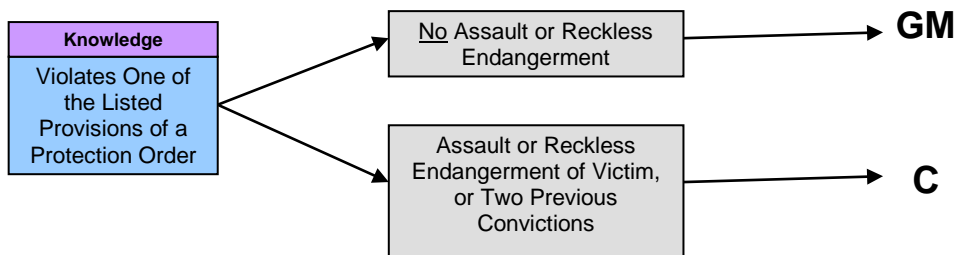
– RCW 26.50.110 (Gross Misd. / Class C Felony)

1. A person *knowingly* violates any of the following provisions of a Protection Order:
 - a. Prohibitions against acts or threats of violence against, or stalking of, a protected party;
-OR-
 - b. Prohibitions against contact with a protected party;
-OR-
 - c. Exclusions from a residence, workplace, or daycare;
-OR-
 - d. Prohibitions against knowingly coming or remaining within a specific distance of a location;
-OR-
 - e. Prohibitions against interference with efforts of a protected party to remove a pet;
-OR-
 - f. Anything in a foreign protection order indicating that a violation will be a crime.
2. Violation of this type of order will be a Class C Felony if the violator assaults or recklessly endangers the victim, or if there are two previous convictions for violation of court orders.

Misdemeanor Presence Exception?

Mandatory DV arrest if the violation was:

- Contact,
- Threats,
- Acts of violence, or
- Exclusion (stay away) & restraint provisions



17 – Harassment & Court Orders

No-Contact Order / Order Prohibiting Contact

– RCW 10.99

1. Issued by any criminal court during a D.V. prosecution or after the defendant has been found guilty.
2. Usually served to the respondent at court before release.
3. Sometimes called “DV No-Contact Orders.”
4. To enforce, the order must contain this Criminal Legend:
“Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.”

17 – Harassment & Court Orders

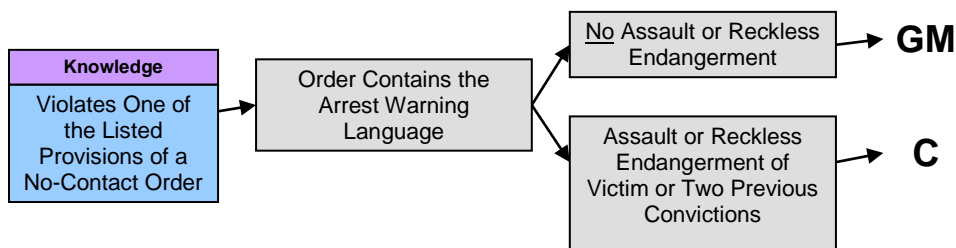
Violation of a No-Contact Order – RCW 26.50.110 (Gross Misd. / Class C Felony)

1. A person *knowingly* violates any of the following provisions of a No-Contact Order:
 - a. Prohibitions against acts or threats of violence against, or stalking of, a protected party;
-OR-
 - b. Prohibitions against contact with a protected party;
-OR-
 - c. Exclusions from a residence, workplace, or daycare;
-OR-
 - d. Prohibitions against knowingly coming or remaining within a specific distance of a location;
-OR-
 - e. Prohibitions against interference with efforts of a protected party to remove a pet;
-OR-
 - f. Anything in a foreign protection order indicating that a violation will be a crime.

2. Violation of this type of order will be a Class C Felony if the violator assaults or recklessly endangers the victim, or if there are two previous convictions for violation of court orders.

Misdemeanor Presence Exception?

Automatic mandatory DV arrest. No-Contact orders are issued because of an on-going DV situation.



17 – Harassment & Court Orders

Restraining Order

– RCW 26.09, 26.10, 26.26

1. Issued by Superior Court in divorce, child custody, or paternity disputes.
2. There may not have been DV in the past, but a violation of this order can be considered a DV crime.
3. To enforce, the order must contain this Criminal Legend:
“Violation of this order with actual notice of its terms is a criminal offense under chapter 26.50 and will subject violator to arrest.”

17 – Harassment & Court Orders

Violation of a Restraining Order

– RCW 26.50.110 (Gross Misd. / Class C Felony)

1. A person *knowingly* violates any of the following provisions of a Restraining Order:

a. Prohibitions against acts or threats of violence against, or stalking of, a protected party;

-OR-

b. Prohibitions against contact with a protected party;

-OR-

c. Exclusions from a residence, workplace, or daycare;

-OR-

d. Prohibitions against knowingly coming or remaining within a specific distance of a location;

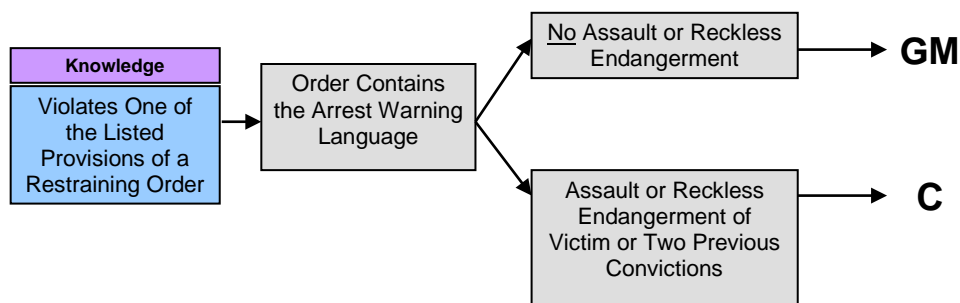
-OR-

e. Prohibitions against interference with efforts of a protected party to remove a pet;

-OR-

f. Anything in a foreign protection order indicating that a violation will be a crime.

2. Violation of this type of order will be a Class C Felony if the violator assaults or recklessly endangers the victim, or if there are two previous convictions for violation of court orders.



Misdemeanor Presence Exception?

Mandatory DV arrest if the violation was:

- Contact,
- Threats,
- Acts of violence, or
- Exclusion (stay away) & restraint provisions

17 – Harassment & Court Orders

Anti-Harassment Order / Harassment Order

– RCW 10.14

1. Anyone can petition any court for this type of order because they are annoyed, alarmed, or harassed by another person.
2. These are not D.V. orders.

Violation of an Anti-Harassment Order

– RCW 10.14.170 (Gross Misdemeanor)

1. A person *willfully* violates an Anti-Harassment Order.
 - a. Assault or reckless endangerment of the victim does NOT make a violation of this type of order a felony.

Knowledge (“Willfully”)

Violates a
Anti-Harassment
Order

→ GM

Misdemeanor Presence
Exception?

17 – Harassment & Court Orders

“Sole Responsibility”

– RCW 26.50.035[1][c] & RCW 10.99.040[4][b]

- ⊗ 1. It is not a defense that the petitioner allowed, invited, or encouraged the respondent to violate the order.
 - a. RCW 26.50.035[1][c] states that “. . . You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order’s prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order’s provisions. Only the court can change the order. . .”
 - b. RCW 10.99.040[4][b] states that “. . . You can be arrested even if any person protected by the order invites or allows you to violate the order’s prohibitions. You have the sole responsibility to avoid or refrain from violating the order’s provisions. Only the court can change the order.”
 - c. This wording is included in the text of the court order.

“Petitioner” is the person that petitioned (asked) for the order, or the person that the order protects.

17 – Harassment & Court Orders

Sexual Assault Protection Orders

– RCW 7.90

1. Issued by any criminal court during a sex offense prosecution or after the defendant has been found guilty. This protection order may also be issued by any court at the petitioner's request because of nonconsensual sexual contact or nonconsensual sexual penetration and a showing by the petitioner that he/she is in danger.
2. Sometimes called a "SAPO".
3. The orders issued by the criminal court are usually served to the respondent at court, before release. Orders issued by a court at the petitioner's request are served upon the offender at a later time.
4. Certain behaviors are prohibited by the order. Typical violations include:
 - a. Making contact (even through 3rd parties)
 - b. Coming onto the grounds of daycare, workplace, school or residence.
 - c. Distance violations.
5. To enforce, the order must contain this Criminal Legend:

"A knowing violation of this sexual assault protection order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if a person protected by the order invites or allows you to violate the order's prohibitions. You have the **sole responsibility** to avoid or refrain from violating the order's provisions. Only the court can change the order."

17 – Harassment & Court Orders

Violation of a Sexual Assault Protection Order – RCW 26.50.110 (Gross Misd. / Class C Felony)

1. A person **knowingly** violates any of the following provisions of a Restraining Order:

a. Prohibitions against acts or threats of violence against, or stalking of, a protected party;

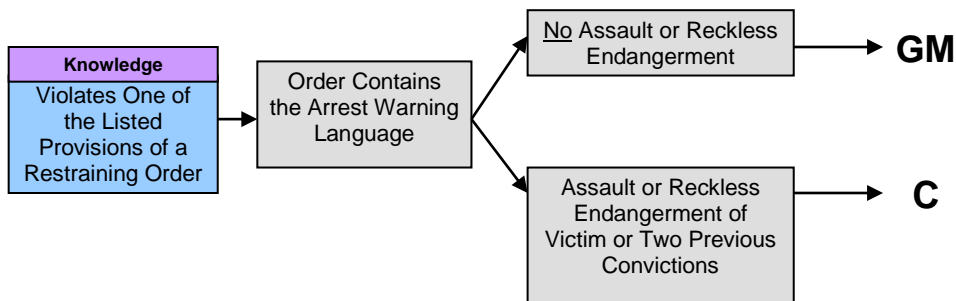
-OR-

b. Prohibitions against contact with a protected party;

-OR-

c. Exclusions from a residence, workplace, or daycare

2. Violation of this type of order will be a Class C Felony if the violator assaults or recklessly endangers the victim, or if there are two previous convictions for violation of court orders



Misdemeanor Presence Exception?

Mandatory arrest. No-Contact orders are issued because of prior sexual assault.

17 – Harassment & Court Orders

Vulnerable Adult Orders

– RCW 74.34

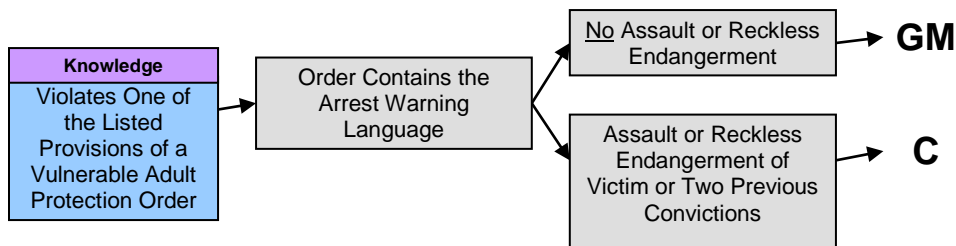
1. Issued by a court at the request of a vulnerable adult or an interested person acting on behalf of a vulnerable adult because of abandonment, abuse, financial exploitation, or neglect.
2. A “vulnerable adult” is a person who is over 18 who has a developmental disability, a person over the age of 60 who cannot care for himself, a person who a court had found incapacitated, or a person in a hospital, hospice, or similar facility, or a person who receives services from a personal aide.
3. Certain behaviors are prohibited by the order. Typical violations include:
 - a. Making contact (even through third parties),
 - b. Coming onto the grounds of daycare, workplace, school or residence,
 - c. Distance violations.
4. To enforce, the order must contain this Criminal Legend:
5. “VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST”

17 – Harassment & Court Orders

Violation of a Vulnerable Adult Protection Order – RCW 26.50.110 (Gross Misd. / Class C Felony)

1. A person *knowingly* violates any of the following provisions of a Vulnerable Adult Protection Order:
 - a. Prohibitions against contact with a protected party;
-OR-
 - b. Exclusions from a residence, workplace, or daycare;
-OR-
 - c. Prohibitions against knowingly coming or remaining within a specific distance of a location;

2. Violation of this type of order will be a Class C Felony if the violator assaults or recklessly endangers the victim, or if there are two previous convictions for violation of court orders.



Misdemeanor Presence Exception?

Mandatory arrest. No-contact orders are issued because of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult.

17 – Harassment & Court Orders

No Contact Order- Discharge upon completion of Sentence

– RCW 9.94A.637

1. Issued by a superior court after an offender has completed all other requirements of a felony sentence, including all legal financial obligations.
2. The offender must petition the court for the issuance of this order.
3. No Criminal Legend or arrest language is necessary in the wording of the no-contact order. The order is issued because the offender (respondent) was convicted of a felony and the protected party was a victim of the felony or a witness in the felony prosecution.
4. Certain behaviors are prohibited by the order. Typical violations include:
 - a. Making contact (even through third parties),
 - b. Coming onto the grounds of daycare, workplace, school or residence,
 - c. Distance violations.

17 – Harassment & Court Orders

Foreign Protection Orders-

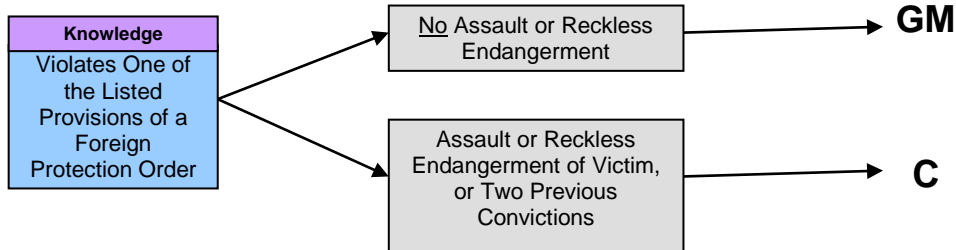
– RCW 26.52

1. Issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or a United States Courts Martial Tribunal, or a Tribal Court in a civil or criminal action for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to another person.
2. Absence of a Criminal Legend or arrest language will not invalidate the order. Sole responsibility is necessary in the wording of the no-contact order. The order is issued because the petitioner has convinced a judge that s/he is in danger.
3. Certain behaviors are prohibited by the order. Typical violations include:
 - a. Making contact (even through third parties),
 - b. Coming onto the grounds of daycare, workplace, school or residence,
 - c. Distance violations.
 - d. No firearms or other specified weapons.
4. Provisions regarding the custody of children, residential placement of children, or visitation of children will be resolved by the courts, not by the officers on the street.

17 – Harassment & Court Orders

Violation of a FOREIGN Protection Order – RCW 26.50.110 (Gross Misd. / Class C Felony)

1. A person *knowingly* violates any of the following provisions of a Foreign Protection Order:
 - a. Prohibitions against acts or threats of violence against, or stalking of, a protected party;
-OR-
 - b. Prohibitions against contact with a protected party;
-OR-
 - c. Exclusions from a residence, workplace, or daycare;
-OR-
 - d. Prohibitions against knowingly coming or remaining within a specific distance of a location;
-OR-
 - e. Prohibitions against interference with efforts of a protected party to remove a pet;
-OR-
 - f. Anything in a foreign protection order indicating that a violation will be a crime.
2. Violation of this type of order will be a Class C Felony if the violator assaults or recklessly endangers the victim, or if there are two previous convictions for violation of court orders.



Misdemeanor Presence Exception?

Mandatory DV arrest if the violation was:

- Contact,
- Threats,
- Acts of violence, or
- Exclusion (stay away) & restraint provisions or
- Conduct that the order indicates will be a crime.

18 - Kidnapping, Unlawful Imprisonment

Definitions

– RCW 9A.40.010

1. **“Restrain”** means to restrict a person’s movements without consent and without legal authority in a manner which interferes substantially with their liberty. Restraint is “without consent” if accomplished by:
 - a. Physical force;
-OR-
 - b. Intimidation;
-OR-
 - c. Deception;
-OR-
 - d. Acquiescence (agreement or consent) of the victim when:
 - The victim is a child less than 16 or an incompetent person, AND
 - The parent, guardian, or other person having lawful control or custody of him has not acquiesced.

2. **“Abduct”** means to restrain a person by either:
 - a. Secreting or holding them in a place where they are not likely to be found;
-OR-
 - b. Using or threatening to use deadly force.

3. **“Relative”** means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption or a spouse.

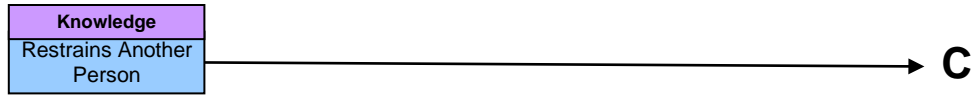
4. **“Government function”** includes any activity which a public servant is legally authorized or permitted to undertake on behalf of government (9A.04.110 (9)). “Government” includes any branch subdivision...etc. (RCW 9A.04.110 (8)). Public servant means (RCW 9A.04.110 (23)).

18 - Kidnapping, Unlawful Imprisonment

Unlawful Imprisonment

– RCW 9A.40.040 (Class C Felony)

1. Knowingly restrains another person.



Tab Marker:
KIDNAPPING

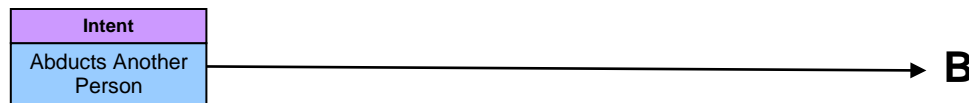
18 - Kidnapping, Unlawful Imprisonment

Kidnapping 2nd Degree

– RCW 9A.40.030 (Class B Felony)

1. *Intentionally* abducts another under circumstances not amounting to Kidnapping 1st Degree.

- √ 2. Defense to Kidnapping 2nd Degree:
 - a. Abduction does not include the use of or threat of deadly force, AND
 - b. Actor is a relative of the person abducted, AND
 - c. Actor's sole intent is to assume custody of that person.



Note - Kidnapping 2nd Degree with sexual motivation is a Class A Felony

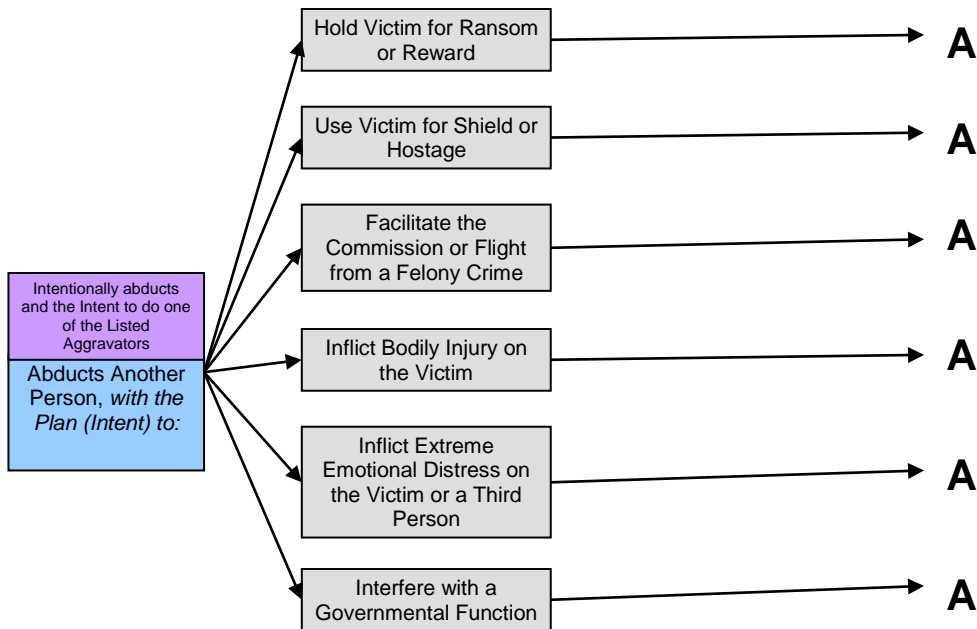
Custodial Interference may apply even if the statutory defense to kidnapping is present.

18 - Kidnapping, Unlawful Imprisonment

Kidnapping 1st Degree

– RCW 9A.40.020 (Class A Felony)

1. To intentionally abduct another with the **intent to**:
 - a. Hold them for ransom or reward;
-OR-
 - b. Use them as a shield or hostage;
-OR-
 - c. Facilitate the commission or flight from a felony crime;
-OR-
 - d. Inflict bodily injury;
-OR-
 - e. Inflict extreme emotional distress on the victim or a third person;
-OR-
 - f. To interfere with a governmental function.



18 - Kidnapping, Unlawful Imprisonment

Custodial Interference 2nd Degree

– RCW 9A.40.070 (Gross Misdemeanor /Class C Felony)

1. A relative of a person who intends to deny access to a parent, guardian, institution, agency or other person having a lawful right to physical custody of such person by:
 - a. Taking, detaining or concealing that person, AND
 - b. The taking does not involve noncompliance with a court-ordered parenting plan.

-OR- - - - -

2. A parent takes a child from another parent (who has lawful right to that child) with intent to deny access to the child:
 - a. Pursuant to a court-ordered parenting plan.

-OR- - - - -

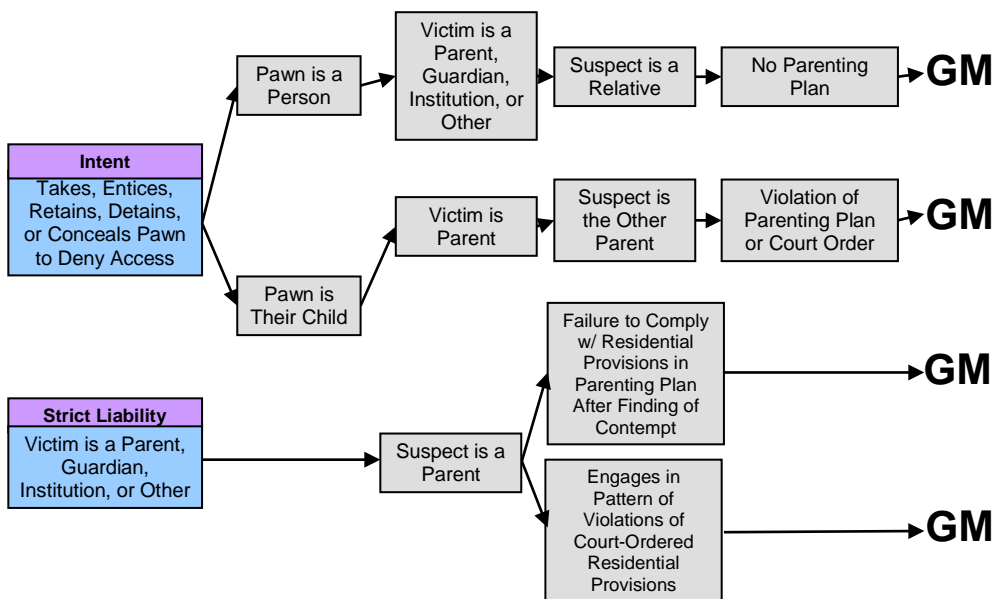
3. A parent:
 - a. Has not complied with residential provisions of a court-ordered parenting plan after a finding of contempt;

-OR-

 - b. Has engaged in a pattern of willful violations of court-ordered residential provisions.

Misdemeanor Presence Exception?

Note – The first conviction of Custodial Interference 2nd Degree is a Gross Misdemeanor and the second or subsequent conviction(s) is a Class C Felony.



The term "pawn" is used in the diagram for simplicity. It stands for the person that should be in the custody of the victim. It is not meant to be insulting or degrading.

18 - Kidnapping, Unlawful Imprisonment

Custodial Interference 1st Degree

– RCW 9A.40.060 (Class C Felony)

1. A relative of a child under the age of 18 or an incompetent person, with the intent to deny access to a child or incompetent person, interferes with the parent's or guardian's or institution's or other's lawful right to physical custody of that child by:
 - a. Intending to hold the child or incompetent person permanently or for a protracted period;
-OR-
 - b. Exposes the child to a substantial risk of illness or physical injury;
-OR-
 - c. Causes the child or incompetent person to be removed from the state of usual residence;
-OR-
 - d. Retains, detains or conceals the child or incompetent person in another state after expiration of an authorized visitation period with the intent to intimidate or harass the parent or guardian who has lawful right to the child.

-OR- - - - -
2. A parent of a child with the intent to deny access to another parent who has lawful right to time with the child pursuant to a *court-ordered parenting plan*:
 - a. Intending to hold the child or incompetent person permanently or for a protracted period;
-OR-
 - b. Exposes the child to a substantial risk of illness or physical injury;
-OR-
 - c. Causes the child or incompetent person to be removed from the state of usual residence.

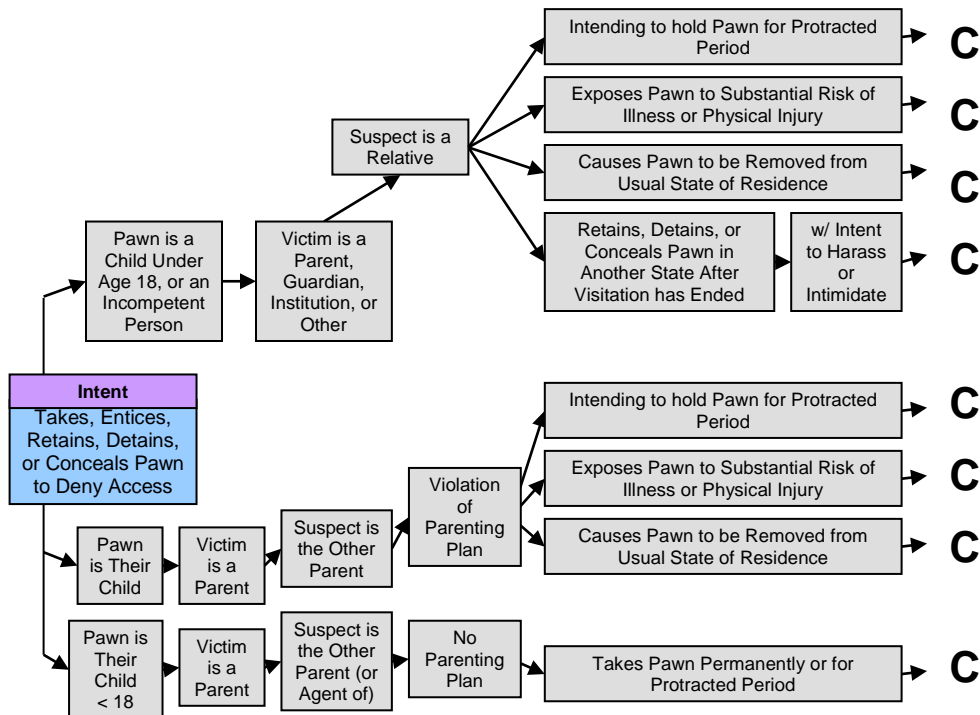
-OR- - - - -
3. A parent or other person acting under the directions of that parent is guilty of this statute if they intentionally take the child under 18 permanently, or for a protracted period, from another parent and there is *no court order* in place.

18 - Kidnapping, Unlawful Imprisonment

Custodial Interference 1st Degree

– RCW 9A.40.060 (Class C Felony)

-continued from previous page-



The term "pawn" is used in the diagram for simplicity. It stands for the person that should be in the custody of the victim. It is not meant to be insulting or degrading.

18 - Kidnapping, Unlawful Imprisonment

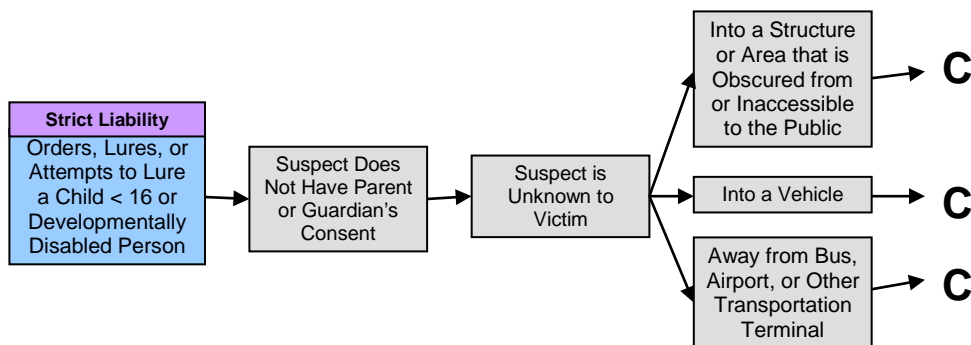
Luring

– RCW 9A.40.090 (Class C Felony)

1. A person orders, lures or attempts to lure a minor child under the age of 16 or a developmentally disabled person:
 - a. The person does not have the consent of the child's parent or guardian or of the guardian of the person with a developmental disability; AND
 - b. The person is unknown to the child or developmentally disabled person; AND
 - c. The victim is being lured:
 - Into a structure or area that is obscured from or inaccessible to the public;
-OR-
 - Into a motor vehicle;
-OR-
 - Away from any area or structure constituting a bus terminal, airport terminal, or other transportation terminal.

- √ 2. The defense to Luring, which the defendant must prove by a preponderance of the evidence, is that:
 - a. The suspect did not have any intent to harm the health, safety, or welfare of the minor or the person with the developmental disability; AND
 - b. Acted reasonably under the circumstances.

Note - If the victim is grabbed or force is used, it is an Attempted Kidnapping, not Luring.



19 - Arson, Reckless Burning & Malicious Mischief

Definitions

– RCW 9A.48.010

1. **“Building”** in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods.
 - a. NOTE – For purposes of this section, when a “building” consists of two or more units separately secured or occupied, each unit shall not be treated as a separate building.

1. **“Damages,”** in addition to its ordinary meaning, includes any charring, scorching, burning, or breaking, or agricultural or industrial sabotage, including any diminution of value of any property as a consequence of an act.

2. **“Property of another”** means property in which the actor possesses anything less than exclusive ownership.

3. To constitute arson, it is *not necessary* that a person other than the actor has ownership in the building or structure damaged or set on fire.

Note – These definitions are different than the ones used in the Burglary and Trespass RCW's.

19 - Arson, Reckless Burning & Malicious Mischief

Definitions

– RCW 76.04.005

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Additional fire hazard" means a condition existing on any land in the state:

(a) Covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property; or

(b) When, due to the effects of disturbance agents, broken, down, dead, or dying trees exist on forest land in sufficient quantity to be likely to further the spread of fire within areas covered by a forest health hazard warning or order issued by the commissioner of public lands under RCW 76.06.180. The term "additional fire hazard" does not include green trees or snags left standing in upland or riparian areas under the provisions of RCW 76.04.465 or chapter 76.09 RCW.

(2) "Closed season" means the period between April 15 and October 15, unless the department designates different dates because of prevailing fire weather conditions.

(3) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(4) "Department protected lands" means all lands subject to the forest protection assessment under RCW 76.04.610 or covered under contract or agreement pursuant to RCW 76.04.135 by the department.

(5) "Disturbance agent" means those forces that damage or kill significant numbers of forest trees, such as insects, diseases, wind storms, ice storms, and fires.

(6) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which the costs occur.

(7) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forest land.

(8) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

(9) "Forest land" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade

mountains may be considered forest lands when such areas are adjacent to or intermingled with areas supporting tree growth. Forest land, for protection purposes, does not include structures.

(10) "Forest landowner," "owner of forest land," "landowner," or "owner" means the owner or the person in possession of any public or private forest land.

(11) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

(12) "Landowner operation" means every activity, and supporting activities, of a forest landowner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forest land subject to the forest protection assessment under RCW 76.04.610 for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

(13) "Participating landowner" means an owner of forest land whose land is subject to the forest protection assessment under RCW 76.04.610.

(14) "Slash" means organic forest debris such as tree tops, limbs, brush, and other dead flammable material remaining on forest land as a result of a landowner operation.

(15) "Slash burning" means the planned and controlled burning of forest debris on forest lands by broadcast burning, under burning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

(16) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

(17) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property.

19 - Arson, Reckless Burning & Malicious Mischief

Penalty for violations

– RCW 76.04.085

Unless specified otherwise, violations of the provisions of this chapter shall be a misdemeanor and subject to the penalties for a misdemeanor under RCW [9A.20.021](#).

19 - Arson, Reckless Burning & Malicious Mischief

Failure to Extinguish Campfire

– RCW 76.04.700

It is unlawful for any person to start any fire upon any camping ground and upon leaving the camping ground fail to extinguish the fire.

19 - Arson, Reckless Burning & Malicious Mischief

Willful Setting of Fire

– RCW 76.04.710

It is unlawful for any person to willfully start a fire, whether on his or her land or the land of another, whereby forest lands or the property of another is endangered, under circumstances not amounting to arson in either the first or second degree or reckless burning in either the first or second degree.

19 - Arson, Reckless Burning & Malicious Mischief

Negligent Fire- Spread

– RCW 76.04.730

It is unlawful for any person to negligently allow fire originating on the person's own property to spread to the property of another.

19 - Arson, Reckless Burning & Malicious Mischief

Reckless Burning

– RCW 76.04.740

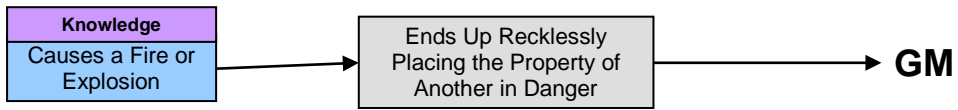
- 1) It is unlawful to knowingly cause a fire or explosion and thereby place forest lands in danger of destruction or damage.
- 2) This section does not apply to acts amounting to reckless burning in the first degree under RCW 9A.48.040.
- 3) Terms used in this section shall have the meanings given to them in Title 9A RCW.
- 4) A violation of this section shall be punished as a gross misdemeanor under RCW 9A.20.021.

19 - Arson, Reckless Burning & Malicious Mischief

Reckless Burning 2nd Degree **– RCW 9A.48.050 (Gross Misdemeanor)**

1. Knowingly causes a fire or explosion that recklessly places property of another in danger of destruction or damage.

**Misdemeanor Presence
Exception?**



Tab Marker:
**ARSON, RECKLESS
BURNING, & MAL. MISC.**

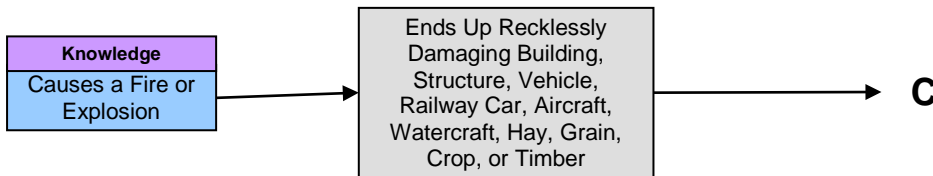
19 - Arson, Reckless Burning & Malicious Mischief

Reckless Burning 1st Degree

– RCW 9A.48.040 (Class C Felony)

1. Knowingly causes a fire or explosion that recklessly damages a building or other structure or any vehicle, railway car, aircraft, watercraft, hay, grain, crop, timber whether cut or standing.

*Causes Damage
To Listed Items*



19 - Arson, Reckless Burning & Malicious Mischief

Defense to Reckless Burning

– RCW 9A.48.060

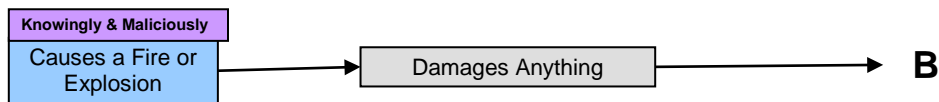
- √ 1. In any prosecution for Reckless Burning 1st or 2nd, it shall be a defense if the defendant establishes by a preponderance of the evidence that:
- a. No person other than the defendant had a possessory, or pecuniary interest in the damaged or endangered property, or if other persons had such an interest, all of them consented to the defendant's conduct; AND
 - b. The defendant's sole intent was to destroy or damage the property for a lawful purpose.

19 - Arson, Reckless Burning & Malicious Mischief

Arson 2nd Degree

– RCW 9A.48.030 (Class B Felony)

1. *Knowingly and maliciously* causes fire or explosion which damages a building, structure or erection appurtenant to or joining any building, or any wharf, dock, machine, engine, automobile, motor vehicle, water craft aircraft, bridge, trestle, hay grain, crop, timber, whether cut or standing or any range land, or pasture land, or any fence, or any lumber, shingle, or other timber products, or any property.



19 - Arson, Reckless Burning & Malicious Mischief

Arson 1st Degree

– RCW 9A.48.020 (Class A Felony)

1. *Knowingly and maliciously* causes fire or explosion:

a. Which is manifestly dangerous to any human life, including firefighters;

-OR-

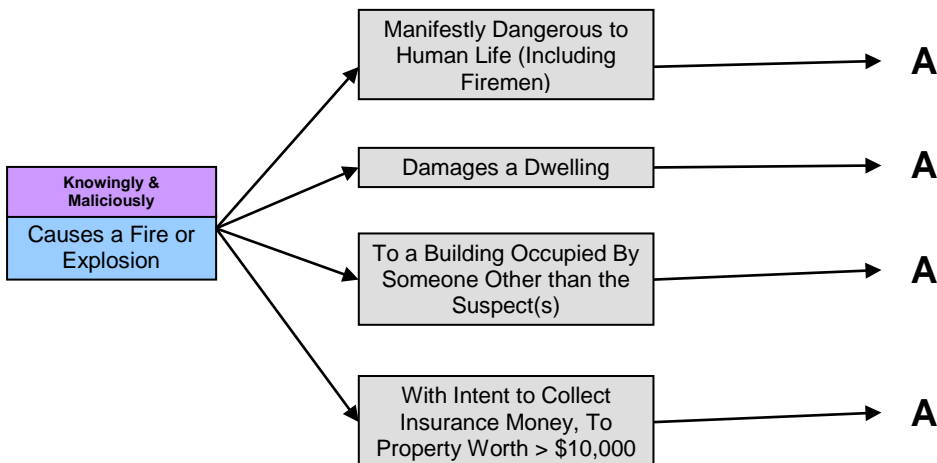
b. Which damages a dwelling;

-OR-

c. To a building occupied by a person other than a participant in the crime;

-OR-

d. To property valued at \$10,000 or more with intent to collect insurance.



19 - Arson, Reckless Burning & Malicious Mischief

Malicious Mischief Definitions

– RCW 9A.48.100

1. For the purposes of RCW 9A.48.070 through 9A.48.090 (the Malicious Mischief statutes):
 - a. **“Physical damage,”** in addition to its ordinary meaning, shall include the total or partial alteration, damage, obliteration, or erasure of records, information, data, computer programs, or their computer representations, which are recorded for use in computers or the impairment, interruption, or interference with the use of such records, information, data, or computer programs, or the impairment, interruption, or interference with the use of any computer or services provided by computers. “Physical damage” also includes any diminution in the value of any property as the consequence of an act.
 - b. If more than one item of property is physically damaged as a result of a common scheme or plan by a person and the physical damage to the property would, when considered separately, constitute mischief in the third degree because of value, then the value of the damages may be aggregated in one count. If the sum of the value of all the physical damages exceeds seven hundred fifty dollars, the defendant may be charged with and convicted of malicious mischief in the second degree.

← Theory of Aggregation

Time spent cleaning up a mess is also considered to be “damage.”

19 - Arson, Reckless Burning & Malicious Mischief

Malicious Mischief 3rd Degree

– RCW 9A.48.090 (Gross Misdemeanor)

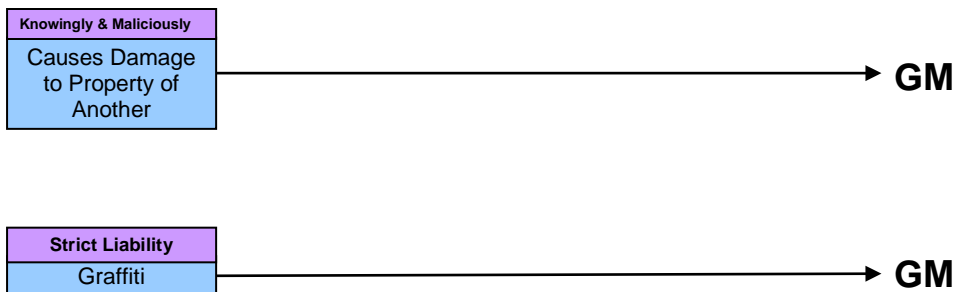
1. A person is guilty of Malicious Mischief in the Third Degree if he or she:

a. *Knowingly and maliciously* causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree;

-OR-

b. Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless the person has obtained the express permission of the owner or operator of the property, under circumstances not amounting to malicious mischief in the first or second degree.

Misdemeanor Presence
Exception?



19 - Arson, Reckless Burning & Malicious Mischief

Malicious Mischief 2nd Degree

– RCW 9A.48.080 (Class C Felony)

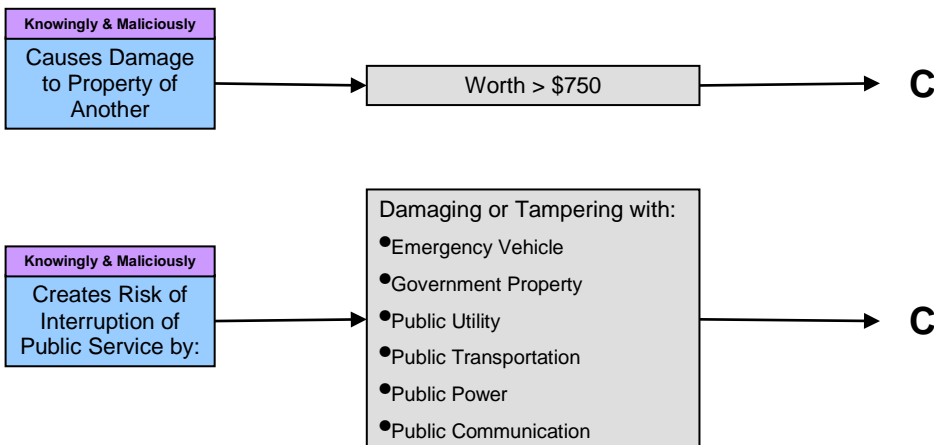
1. A person is guilty of Malicious Mischief in the Second Degree if he or she knowingly and maliciously:

a. Causes physical damage to the property of another in an amount *exceeding seven hundred fifty dollars*;

-OR-

b. *Creates a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication.*

Risks
Interruption or Impairment



19 - Arson, Reckless Burning & Malicious Mischief

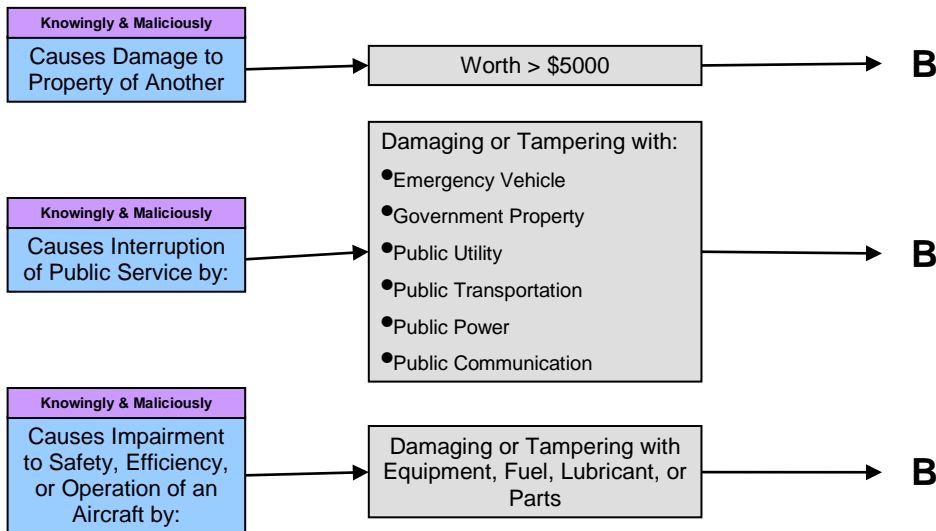
Malicious Mischief 1st Degree

– RCW 9A.48.070 (Class B Felony)

1. A person is guilty of malicious mischief in the first degree if he knowingly and maliciously:
 - a. Causes physical damage to the property of another in an amount *exceeding five thousand dollars*;
 - OR-
 - b. *Causes an interruption or impairment* of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication;
 - OR-
 - c. *Causes an impairment* of the safety, efficiency, or operation of an aircraft by physically damaging or tampering with the aircraft or aircraft equipment, fuel, lubricant, or parts.

Causes Interruption or Impairment

Causes Impairment



20 - Theft & Possession of Stolen Property

Definitions

– RCW 9A.56.010

-continued from previous page-

5. **"Mail"** in addition to its common meaning, means any letter, postal card, package, bag, or other item that is addressed to a specific address for delivery by the United States postal service or any commercial carrier performing similar services, provided that the mail:
 - a. Is addressed with a specific person's name, family name, or company, business, or corporation name on the outside or on the contents inside, AND
 - b. Is not addressed to a generic unnamed occupant or resident, AND
 - c. Has been left for collection or delivery in any letter box, mailbox, mail receptacle, or authorized depository for mail, or given to a mail carrier, or left with any private or commercial carrier that provides a similar service, or is in transit or has been delivered to the intended address but not yet received by the intended addressee.
 - d. Mail does not include magazines, catalogs, direct mail inserts, newsletters, advertising circulars, or any mail that is considered third class mail by the United States postal service.

6. **"Obtain control over"** in addition to its common meaning, means:
 - a. To obtain an unlawful transfer of property,

-OR-
 - b. To unlawfully secure labor or service benefits.

7. **"Stolen"** means obtained by theft, robbery, or extortion.

8. **"Receive"** includes but is not limited to:
 - a. Acquiring title, or
 - b. Possession, or
 - c. Control, or
 - d. Security interest, or
 - e. Any other interest in property.

Tab Marker:
THEFT & PSP

20 - Theft & Possession of Stolen Property

Definitions

– RCW 9A.56.010

-continued from previous page-

9. **"Theory of Aggregation"** involves a series of transactions which are part of a criminal episode or common scheme or plan may be aggregated in one count and the sum of the value of all transactions shall be the value considered in determining the degree of theft involved.

10. **"Merchandise pallet"** means a wood or plastic carrier designed and manufactured as an item on which products can be placed prior to or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "Property of So-and-so" or "Owned by So-and-so," or other markings or words identifying ownership.

11. **"Beverage Crate"** means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "Property of So-and-so" or "Owned by So-and-so," or other markings or words identifying ownership.

12. **"Value"** means the market value of the property or services at the time and in the approximate area of the criminal act. Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:
 - a. The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;
 - b. The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;
 - c. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

20 - Theft & Possession of Stolen Property

Theft – Definition

– RCW 9A.56.020

1. “Theft” means:

- a. To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with *intent to deprive* him or her of such property or services;
-OR-
- b. By color or aid of deception to obtain control over the property or services of another or the value thereof, with *intent to deprive* him or her of such property or services;
-OR-
- c. To appropriate lost or misdelivered property or services of another, or the value thereof, with *intent to deprive* him or her of such property or services.

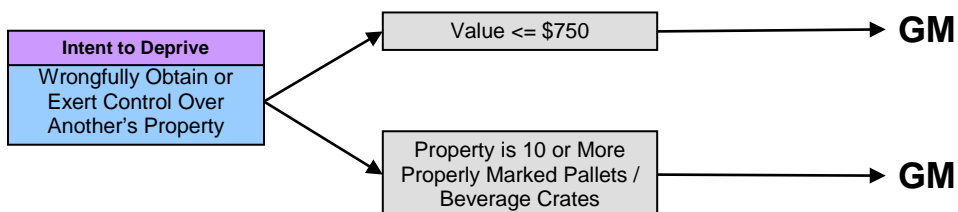
20 - Theft & Possession of Stolen Property

Theft 3rd Degree

– RCW 9A.56.050 (Gross Misdemeanor)

1. Theft of:

- a. Property or services valued at less than or equal to \$750;
-OR-
- b. Ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.



Misdemeanor Presence
Exception?

20 - Theft & Possession of Stolen Property

Theft 2nd Degree – Other than a Firearm or Motor Vehicle

– RCW 9A.56.040 (Class C Felony)

1. Theft of:

a. Property or services, other than a firearm or motor vehicle, which exceed(s) \$750 in value but does not exceed \$5000 in value;

-OR-

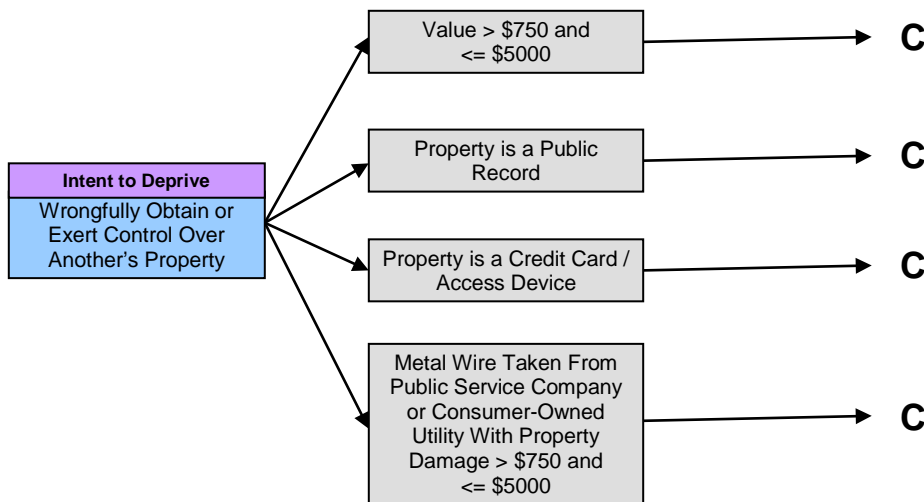
b. A public record (defined in RCW 42.56.010), writing or instrument filed under authority of law with a public office;

-OR-

c. A credit card or access device;

-OR-

d. Metal wire taken from a public service company or consumer-owned utility, when costs of the damage to the property exceed \$750 in value but does not exceed \$5000 in value.



Motor vehicles were removed from this crime in 2007. Now there is a crime that specifically handles theft of motor vehicles. (House Bill 1001, July 2007)

20 - Theft & Possession of Stolen Property

Theft 1st Degree – Other than a Firearm or Motor Vehicle

– RCW 9A.56.030 (Class B Felony)

1. Theft of:

a. Property or services, other than a firearm or motor vehicle, which exceed(s) \$5000 in value;

-OR-

b. Property taken from the person (body / immediate possession) of another regardless of value;

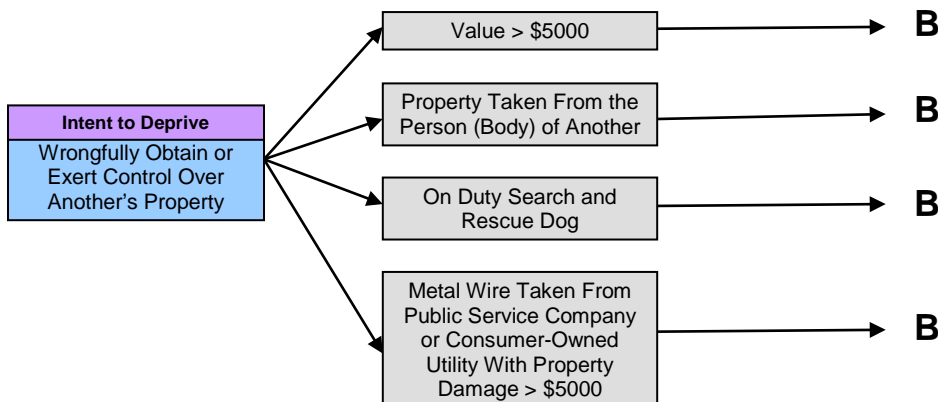
-OR-

c. A search and rescue dog (defined in RCW 9.91.175), while the dog is on duty;

-OR-

d. Metal wire taken from a public service company or consumer-owned utility, when costs of the damage to the property exceed \$5000 in value.

Note – No force or victim fear is present.



Motor vehicles were removed from this crime in 2007. Now there is a crime that specifically handles theft of motor vehicles. (House Bill 1001, July 2007)

20 - Theft & Possession of Stolen Property

Possessing Stolen Property – Definition

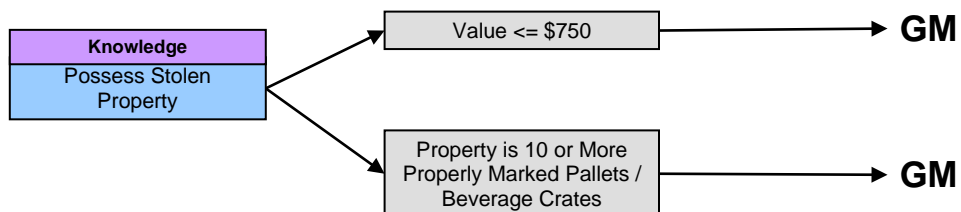
– RCW 9A.56.140

1. *Knowingly* to receive, retain, possess, conceal or dispose of stolen property *knowing* that it has been stolen, and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.
2. A person in possession or in control of stolen access devices issued in the names of two or more persons, or ten or more stolen merchandise pallets, or ten or more stolen beverage crates, shall be presumed to know that they are stolen.
- ⊗ 3. The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property.

20 - Theft & Possession of Stolen Property

Possession of Stolen Property 3rd Degree – RCW 9A.56.170 (Gross Misdemeanor)

1. Possesses stolen property which does not exceed \$750 in value;
-OR-
2. Possess ten or more stolen merchandise pallets, or ten or more beverage crates, or combination of ten or more stolen merchandise pallets and beverage crates.



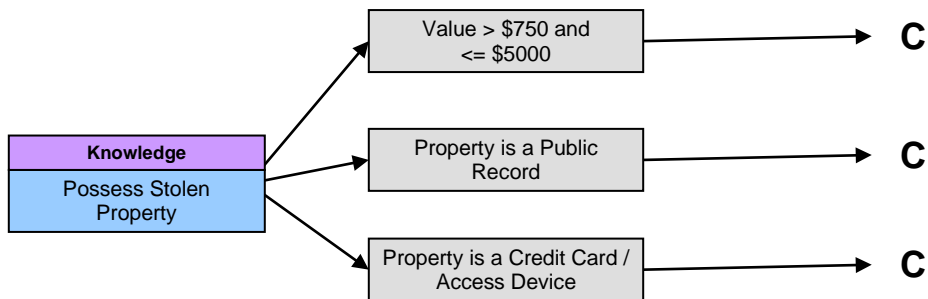
Misdemeanor Presence
Exception?

20 - Theft & Possession of Stolen Property

Possession of Stolen Property 2nd Degree – Other than a Firearm or Motor Vehicle

– RCW 9A.56.160 (Class C Felony)

1. Possesses stolen property, other than a firearm or motor vehicle, which exceeds \$750 in value but does not exceed \$5000 in value;
-OR-
2. Possesses a stolen public record, writing or instrument filed or deposited according to law;
-OR-
3. Possesses a stolen access device.



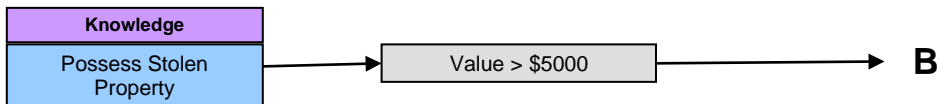
Motor vehicles were removed from this crime in 2007. Now there is a crime that specifically handles possession of stolen motor vehicles. (House Bill 1001, July 2007)

20 - Theft & Possession of Stolen Property

Possession of Stolen Property 1st Degree – Other than a Firearm or Motor Vehicle

– RCW 9A.56.150 (Class B Felony)

1. Possesses stolen property, other than a firearm or motor vehicle, which exceeds \$5000 in value.



Motor vehicles were removed from this crime in 2007. Now there is a crime that specifically handles possession of stolen motor vehicles. (House Bill 1001, July 2007)

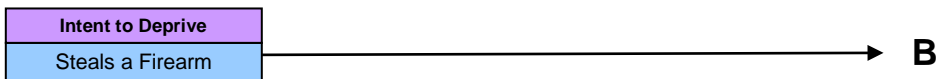
20 - Theft & Possession of Stolen Property

Theft of a Firearm

– RCW 9A.56.300 (Class B Felony)

1. Commits theft of a firearm.

"Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. (9.41.010)



Each firearm taken is a separate offense.

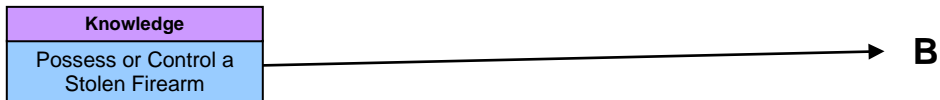
This statute applies regardless of the value of the firearm.

20 - Theft & Possession of Stolen Property

Possessing a Stolen Firearm

– RCW 9A.56.310 (Class B Felony)

1. A person possesses, carries, delivers, sells, or is in control of a stolen firearm.



Each stolen firearm that is possessed is a separate charge.

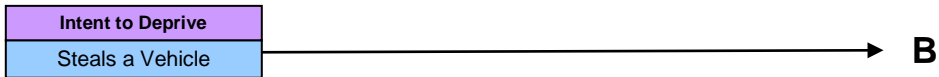
This statute applies regardless of the value of the firearm.

20 - Theft & Possession of Stolen Property

Theft of Motor Vehicle

– RCW 9A.56.065 (Class B Felony)

1. Commits theft of a motor vehicle.



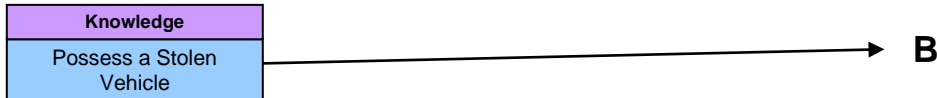
This statute applies regardless of the value of the vehicle.

20 - Theft & Possession of Stolen Property

Possession of Stolen Vehicle

– RCW 9A.56.068 (Class B Felony)

1. A person is guilty of possession of a stolen vehicle if he or she possesses a stolen motor vehicle.



This statute applies regardless of the value of the vehicle.

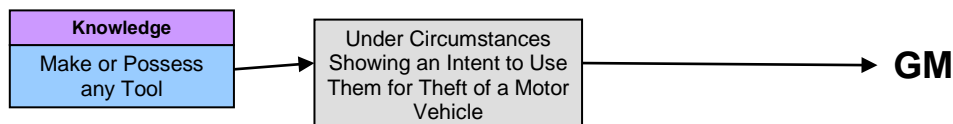
Also "The vehicle must be designed for self-propulsion but need not be capable of self-propulsion while in the person's possession. (State v Acevedo, 159 Wn. App 221 (2010))"

20 - Theft & Possession of Stolen Property

Making or Possessing Motor Vehicle Theft Tools – RCW 9A.56.063 (Gross Misdemeanor)

1. Any person who makes or mends, or causes to be made or mended, uses, or has in his or her possession any motor vehicle theft tool, that is adapted, designed, or commonly used for the commission of motor vehicle related theft, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of motor vehicle theft, or knowing that the same is intended to be so used, is guilty of making or having motor vehicle theft tools.
2. For the purpose of this section, motor vehicle theft tool includes, but is not limited to, the following: Slim jim, false master key, master purpose key, altered or shaved key, trial or jigglers key, slide hammer, lock puller, picklock, bit, nipper, any other implement shown by facts and circumstances that is intended to be used in the commission of a motor vehicle related theft, or knowing that the same is intended to be so used.
3. For the purposes of this section, the following definitions apply:
 - a. **“False master”** or **“master key”** is any key or other device made or altered to fit locks or ignitions of multiple vehicles, or vehicles other than that for which the key was originally manufactured.
 - b. **“Altered or shaved key”** is any key so altered, by cutting, filing, or other means, to fit multiple vehicles or vehicles other than the vehicles for which the key was originally manufactured.
 - c. **“Trial keys”** or **“jiggler keys”** are keys or sets designed or altered to manipulate a vehicle locking mechanism other than the lock for which the key was originally manufactured.

Misdemeanor Presence
Exception?



20 - Theft & Possession of Stolen Property

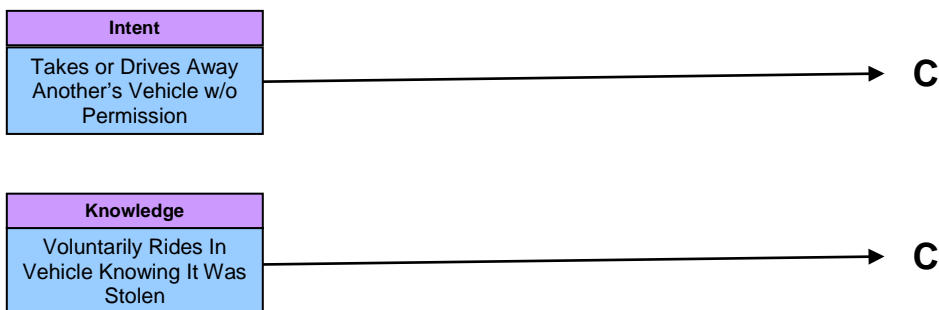
Taking a Motor Vehicle Without Permission 2nd Degree

– RCW 9A.56.075 (Class C Felony)

1. Without permission, a person intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another;

-OR-

2. He or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.



*For personal use
(joy-riding)*

It's not necessary to show that the suspect intended to permanently deprive the owner of the vehicle.

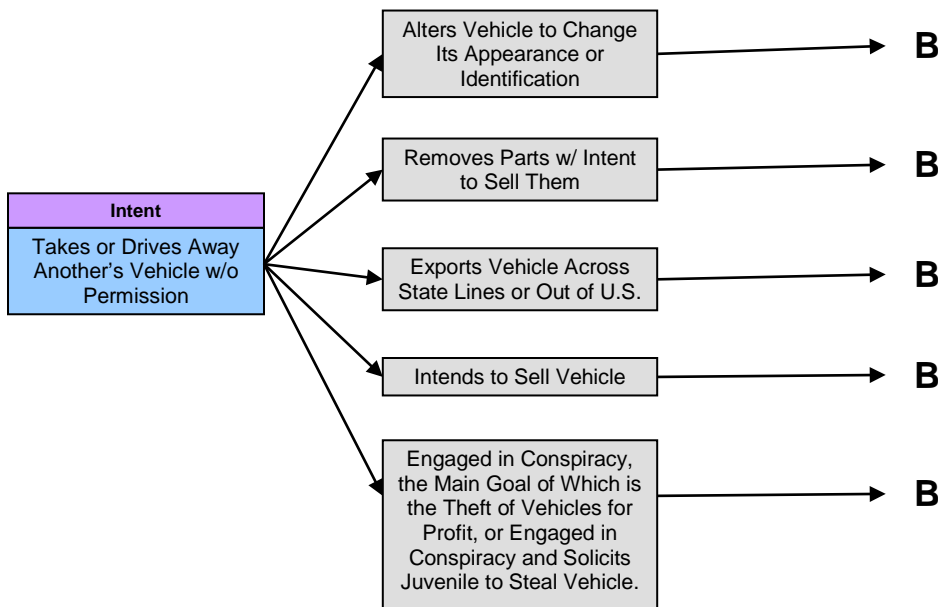
20 - Theft & Possession of Stolen Property

Taking a Motor Vehicle Without Permission 1st Degree

– RCW 9A.56.070 (Class B Felony)

For profit

1. Without permission, a person intentionally takes or drives away any motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, and he or she:
 - a. Alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification plates;
-OR-
 - b. Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;
-OR-
 - c. Exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;
-OR-
 - d. Intends to sell the motor vehicle;
-OR-
 - e. Is engaged in a conspiracy and the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit, or is engaged in a conspiracy and has solicited a juvenile to participate in the theft of a motor vehicle.



20 - Theft & Possession of Stolen Property

Mail Theft

– RCW 9A.56.370 (Class C Felony)

1. Theft of at least ten separate pieces of mail, addressed to three or more different addresses.



Each set of ten separate pieces of mail addressed to three or more different mailboxes constitutes a separate offense.

20 - Theft & Possession of Stolen Property

Possession of Stolen Mail

– RCW 9A.56.380 (Class C Felony)

1. Possesses at least ten separate pieces of stolen mail, addressed to three or more different mailboxes.



Each set of ten separate pieces of mail addressed to three or more different mailboxes constitutes a separate offense.

20 - Theft & Possession of Stolen Property

Unlawful Issuance of Checks or Drafts

– RCW 9A.56.060 (Gross Misdemeanor / Class C Felony)

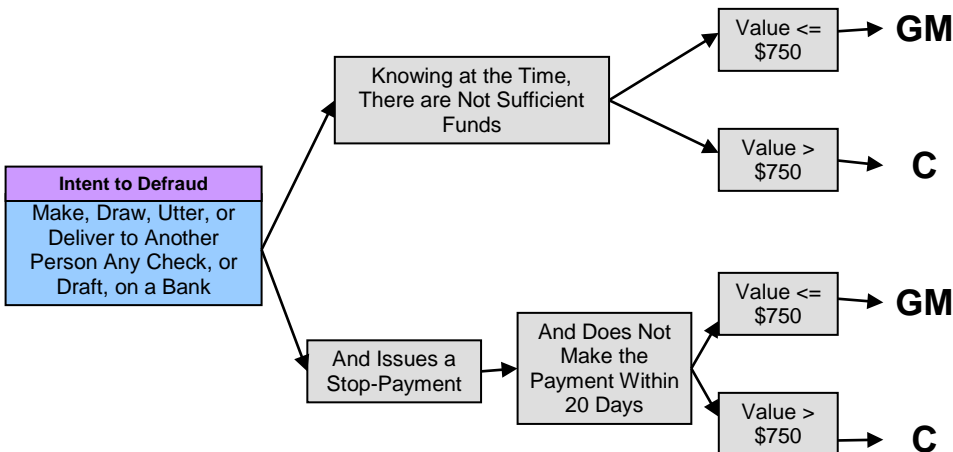
1. Any person who shall with *intent to defraud*, make, draw, utter, or deliver to another person any check, or draft, on a bank *knowing* at the time there is not sufficient funds to cover the item at the time of issuance;

-OR-

2. Any person who shall with *intent to defraud*, make, or draw, or utter, or deliver to another person any check, or draft for the payment of money and who issues a stop-payment order and who fails to make payment of money in the amount of the check or draft or otherwise arrange a settlement agreed upon by the holder of the check within 20 days of issuance.

3. Gross Misdemeanor if the value is \$750 or less (including aggregation).

4. Class C Felony if the value is more than \$750 (including aggregation).



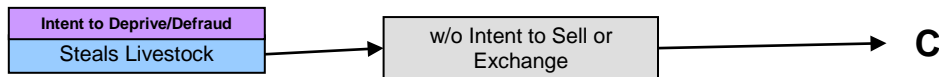
Misdemeanor Presence Exception?

20 - Theft & Possession of Stolen Property

Theft of Livestock 2nd Degree

– RCW 9A.56.083 (Class C Felony)

1. A person who commits what would otherwise be theft of livestock in the first degree but *without intent to sell or exchange*, and for the person's own use only.



RCW 16.57.010
Definitions.

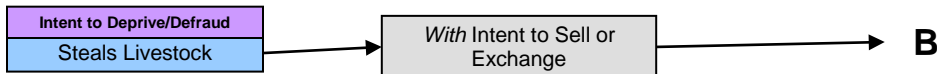
(9) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, and goats.

20 - Theft & Possession of Stolen Property

Theft of Livestock 1st Degree

– RCW 9A.56.080 (Class B Felony)

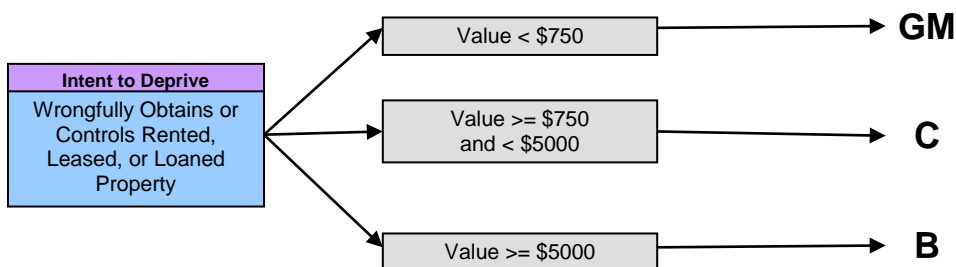
1. Every person who *with intent to sell or exchange* and to deprive or defraud the lawful owner willfully takes, leads, or transports away, conceals, withholds, slaughters or otherwise appropriates any horse, mule, cow, heifer, bull, steer, swine, goat, or sheep.



20 - Theft & Possession of Stolen Property

Theft of Rental, Leased, or Lease-purchase Property – RCW 9A.56.096 (Gross Misd. / Class C / Class B)

1. A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented, leased, or loaned by written agreement to the person.
2. Intent is presumed if either:
 - a. The person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property to return the property within 72 hours after receiving proper notice;
 - OR-
 - b. The renter or lessee presented identification to the owner or owner's agent that was materially false, fictitious, or not current with respect to name address, place of employment or other appropriate items.
3. Replacement value of the property obtained must be utilized in determining the amount involved in the theft.
 - a. Gross Misdemeanor – if property is valued at less than \$750.
 - b. Class C Felony – if the property is valued at \$750 or more but less than \$5000.
 - c. Class B Felony – if the property is valued at \$5000 or more.



Misdemeanor Presence Exception:

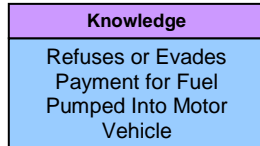
This crime may be deemed to have been committed at either the physical location where the agreement was signed or at the address where proper notice may be mailed.

20 - Theft & Possession of Stolen Property

Theft of Motor Vehicle Fuel

– RCW 46.61.740 (Gross Misdemeanor)

1. Any person who refuses to pay or evades payment for motor vehicle fuel that is pumped into a motor vehicle.



Misdemeanor Presence Exception?

Notice that this law is from Title 46 RCW (Traffic Law)

This RCW allows for the suspension of the person's license, permit or nonresident privilege to drive for a period specified by the court of up to six months if convicted.

20 - Theft & Possession of Stolen Property

Shopping Cart Theft

– RCW 9A.56.270 (Misdemeanor)

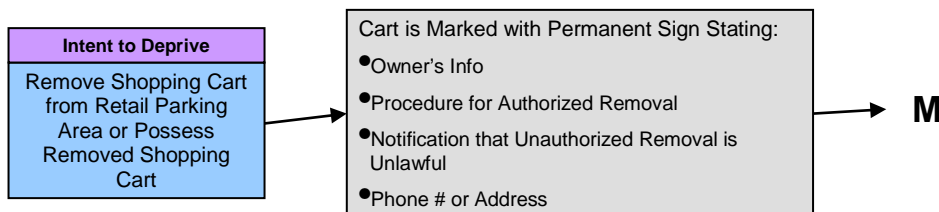
1. It is unlawful to do any of the following acts if a shopping cart has a permanently affixed sign to it that identifies the owner of the cart or the retailer; AND the sign
 - a. Notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; AND
 - b. Notifies the public the unauthorized removal of the cart from the premises or parking area of the retail establishment or the unauthorized possession the cart is unlawful; AND
 - c. Lists a telephone number or address for returning carts removed from the premises or parking area to the owner or retailer.

2. To remove a shopping cart from the parking area of a retail establishment *with the intent to deprive* the owner of the shopping cart the use of the cart;

-OR-

3. To be in possession of any shopping cart that has been removed from the parking area of a retail establishment *with the intent to deprive* the owner of the shopping cart the use of the cart.

Misdemeanor Presence Exception?



20 - Theft & Possession of Stolen Property

Identity Theft

– RCW 9.35.020 (Class C Felony / Class B Felony)

1. No person may *knowingly* obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.
2. Violation of this section when the accused or an accomplice uses the victim's means of identification or financial information and obtains an aggregate total of credit, money, goods, services or anything else of value:
 - a. That does not exceed \$1500 in value, or when no credit, money, goods, services or anything of value is actually obtained shall constitute identity theft in the second degree, a Class C Felony.
 - b. In excess of \$1500 in value shall constitute identity theft in the first degree, a Class B Felony.
3. This section does not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.
4. Theory of aggregation can be used with respect to each victim.
5. Every person who, in the commission of identity theft, shall commit any other crime may be punished for that crime as well, and may be prosecuted for each crime separately.
6. **"Means of identification"** means any information or item that is not describing finances or credit but is personal to or identifiable with any individual or other person, including:
 - a. Any current or former name of the person, telephone number, an electronic address or identifier of the individual or any member of his or her family, including the ancestor of such person;
-OR-
 - b. Any information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family;
-OR-
 - c. Any social security, driver's license, or tax identification number of the individual or any member of his or her family;
-OR-
 - d. Any other information which could be used to identify the person, including unique biometric data.

This RCW makes the theft of information illegal. Once that information is used, other crimes have been committed as well.

*Nothing to \$1500
= Class C Felony*

*More than \$1500
= Class B Felony*

**Charge under RCW
46.20.0921**

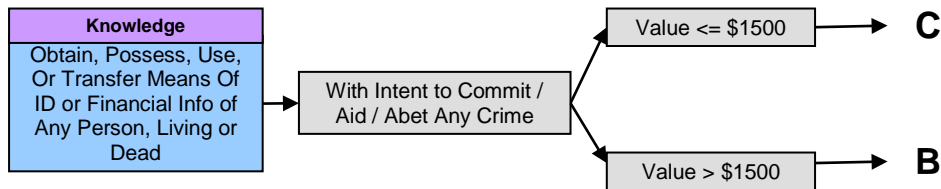
Each crime prosecuted under this section shall be punished separately.

20 - Theft & Possession of Stolen Property

Identity Theft

– RCW 9.35.020 (Class C Felony / Class B Felony)

-continued from previous page-



20 - Theft & Possession of Stolen Property

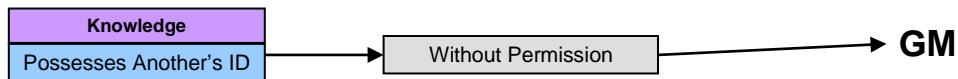
Possession of Another's Identification

– RCW 9A.56.330 (Gross Misdemeanor)

1. The suspect knowingly possesses personal identification bearing another person's identity, without permission, and when the possession does not amount to a violation of Identity Theft (RCW 9.35.020).
2. This section does not apply to:
 - a. A person who obtains, by means other than theft, another person's personal identification for the sole purpose of misrepresenting his or her age;
 - b. A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of business;
 - c. A person who finds another person's lost personal identification, does not intend to deprive the other person of the personal identification or to use it to commit a crime, and takes reasonably prompt steps to return it to its owner; or
 - d. Law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification for investigative or educational purposes.

Misdemeanor Presence Exception?

Charge under RCW 46.20.0921



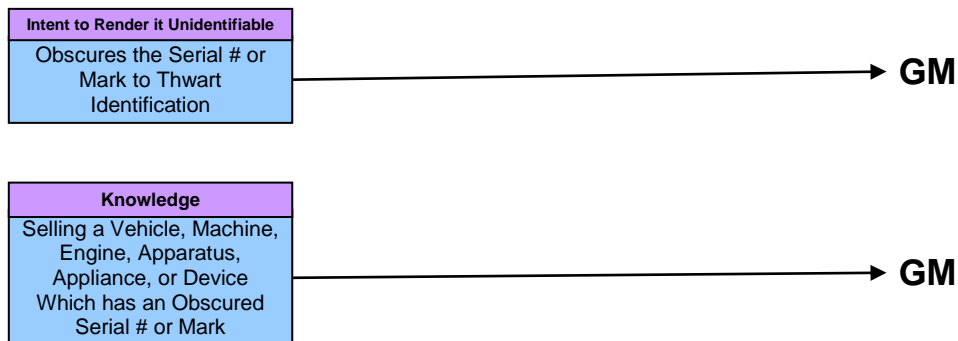
20 - Theft & Possession of Stolen Property

Obscuring the Identity of a Machine

– RCW 9A.56.180 (Gross Misdemeanor)

1. A person *knowingly* obscures the identity of a machine if he:
 - a. Obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any a vehicle, machine, engine, apparatus, appliance, or other device *with intent to render it unidentifiable*;
-OR-
 - b. Possesses a vehicle, machine, engine, apparatus, appliance, or other device *held for sale* knowing that the serial number or other identification number or mark has been obscured.

2. "**Obscure**" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.



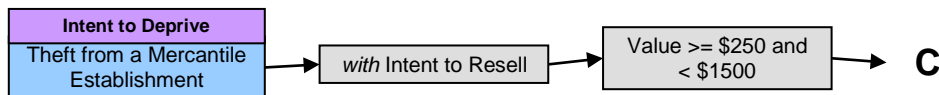
Misdemeanor Presence Exception?

20 - Theft & Possession of Stolen Property

Theft with the Intent to Resell 2nd Degree

– RCW 9A.56.340 (Class C Felony)

1. Theft from a mercantile establishment with the intent to resell the property for monetary or other gain, AND
2. The property stolen or possessed has a value of at least two hundred fifty dollars, but less than one thousand five hundred dollars.
3. The Theory of Aggregation can be used with this RCW.

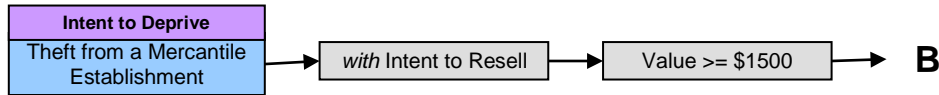


20 - Theft & Possession of Stolen Property

Theft with the Intent to Resell 1st Degree

– RCW 9A.56.340 (Class B Felony)

1. Theft from a mercantile establishment with the intent to resell the property for monetary or other gain, AND
2. The property has a value of one thousand five hundred dollars or more.
3. The Theory of Aggregation can be used with this RCW.

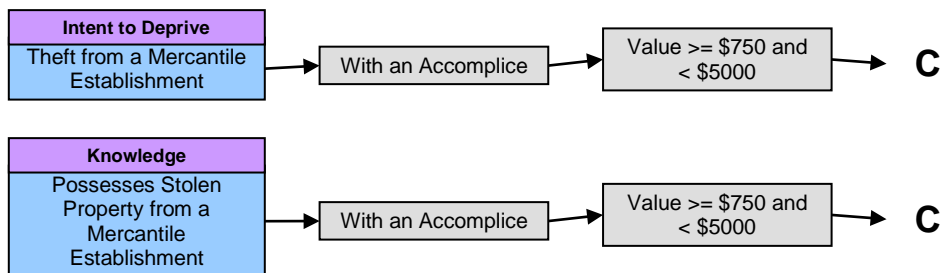


20 - Theft & Possession of Stolen Property

Organized Retail Theft 2nd Degree

– RCW 9A.56.350 (Class C Felony)

1. Commits theft of property, or possesses stolen property as defined in RCW 9A.56.140, from a mercantile establishment with an accomplice, AND
2. The property stolen or possessed has a value of at least seven hundred fifty dollars, but less than five thousand dollars.
3. The Theory of Aggregation can be used with this RCW.

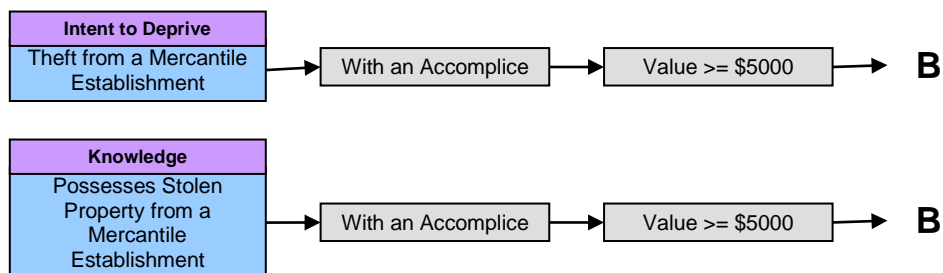


20 - Theft & Possession of Stolen Property

Organized Retail Theft 1st Degree

– RCW 9A.56.350 (Class B Felony)

1. Commits theft of property, or possesses stolen property as defined in RCW 9A.56.140, from a mercantile establishment with an accomplice, AND
2. The property stolen or possessed has a value of five thousand dollars or more.
3. The Theory of Aggregation can be used with this RCW.



20 - Theft & Possession of Stolen Property

Retail Theft with Special Circumstances

– RCW 9A.56.360 (Class B/C Felony)

(1) A person commits retail theft with *special* circumstances if he or she commits theft of property from a mercantile establishment with one of the following *special* circumstances:

(a) To facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;

(b) The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers; or

(c) The person committed theft at three or more separate and distinct mercantile establishments within a one hundred eighty-day period.

(2) A person is guilty of retail theft with *special* circumstances in the first degree if the theft involved constitutes theft in the first degree. Retail theft with *special* circumstances in the first degree is a class B felony.

(3) A person is guilty of retail theft with *special* circumstances in the second degree if the theft involved constitutes theft in the second degree. Retail theft with *special* circumstances in the second degree is a class C felony.

(4) A person is guilty of retail theft with *special* circumstances in the third degree if the theft involved constitutes theft in the third degree. Retail theft with special circumstances in the third degree is a class C felony.

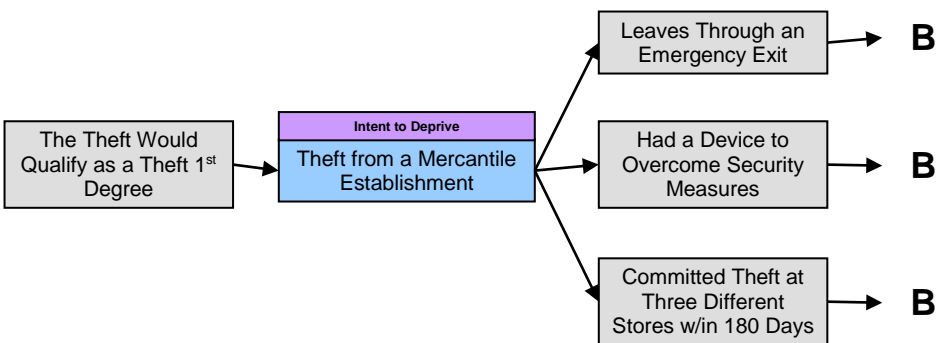
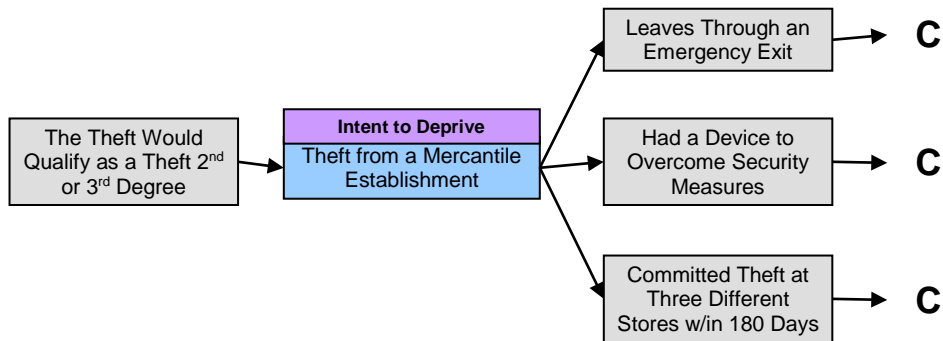
(5) ***For the purposes of this section, "special circumstances" means the particular aggravating circumstances described in subsection (1)(a) through (c) of this section.***

[2013 c 153 § 1; 2006 c 277 § 3.]

Notes:

Effective date -- 2013 c 153: "This act takes effect January 1, 2014." [2013 c 153 § 3.]

20 - Theft & Possession of Stolen Property

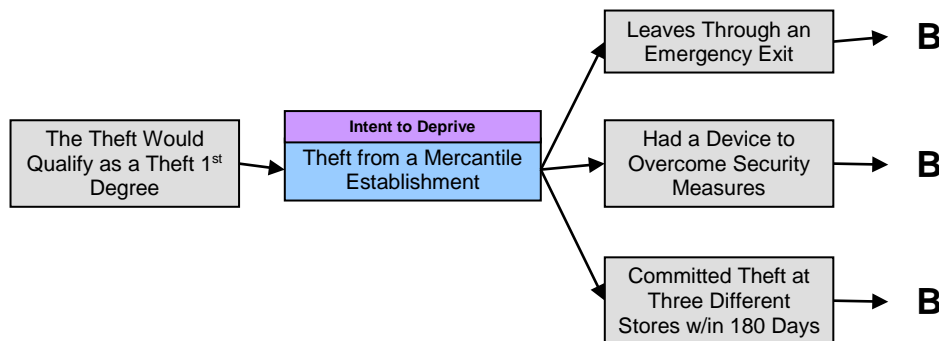


20 - Theft & Possession of Stolen Property

Retail Theft with Extenuating Circumstances 1st Degree

– RCW 9A.56.360 (Class B Felony)

1. The theft involved constitutes Theft in the First Degree, AND
2. Theft of property from a mercantile establishment with one of the following extenuating circumstances:
 - a. To facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;
-OR-
 - b. The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers;
-OR-
 - c. The person committed theft at three or more separate and distinct mercantile establishments within a one hundred eighty-day period.



21 - Robbery & Extortion

Robbery Defined

– RCW 9A.56.190

1. The taking of personal property from another or in his presence against his will by the use or threatened use of immediate force, violence or fear of injury to that person or his property or the person or property of another.
2. Such force or fear must be used to obtain or retain possession of property or prevent or overcome resistance to the taking.
3. The degree/amount of force is immaterial.
4. Such taking constitutes robbery whenever it appears the taking was fully completed without the knowledge of the person from whom taken, *because such knowledge was prevented by the use of force or fear.*

Extortion Defined

– RCW 9A.56.110

1. *Knowingly* to obtain or attempt to obtain property or services of another by threat(s).

Example – “Give me \$1000 or I will smash your car windshield.”

Example – “If you don’t design me a Web site, I’ll tell everyone about how you kissed Steve.”

Example – “Pay my business associates these monthly ‘dues,’ or your store may accidentally get burned down.”

2. Includes using threats to obtain sexual favors.

Example – “Have sex with me or else I will. . .”

Robbery:

Force **Now** & Loss **Now**

(BOTH ARE IMMEDIATE!)

Tab Marker:
ROBBERY &
EXTORTION

Extortion:

Force **Later** & Loss **Now**

-OR-

Force **Later** & Loss **Later**

-OR-

Force **Now** & Loss **Later**

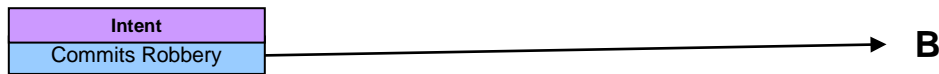
(BOTH ARE **NOT**
IMMEDIATE)

21 - Robbery & Extortion

Robbery 2nd Degree

– RCW 9A.56.210 (Class B Felony)

1. A person commits Robbery lacking the aggravating circumstances in Robbery 1st Degree.



Also called "Strong-Arm Robbery"

21 - Robbery & Extortion

Robbery 1st Degree

– RCW 9A.56.200 (Class A Felony)

1. During the commission of a robbery or flight therefrom, a suspect:

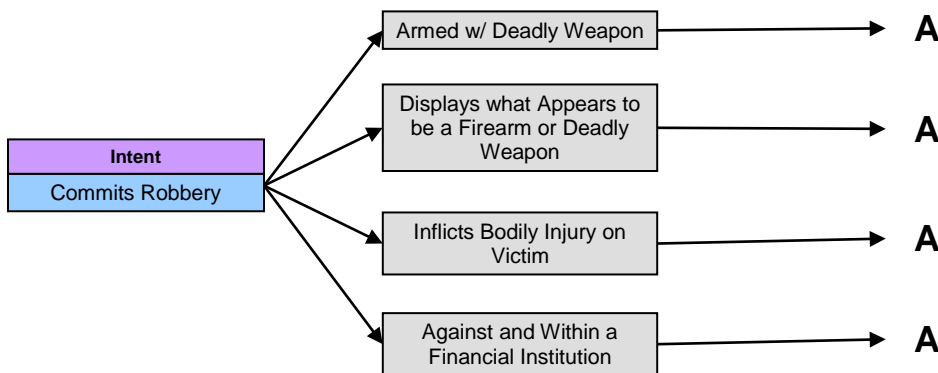
- a. Is armed with a deadly weapon,
-OR-
- b. Displays what appears to be a firearm or deadly weapon,
-OR-
- c. Inflicts bodily injury on the victim;

-OR-

2. A suspect commits a robbery within and against a financial institution.

RCW 39.58.010
Definitions. (8)

"Financial institution" means any national or state chartered commercial bank or trust company, savings bank, or savings association, or branch or branches thereof, located in this state and lawfully engaged in business;



21 - Robbery & Extortion

Extortion 2nd Degree

– RCW 9A.56.130 (Class C Felony)

1. A person commits extortion by means of a threat:
 - a. To accuse another person of a crime or to initiate criminal charges against another;
-OR-
 - b. To expose a secret (whether true or not) which would subject another person to ridicule, hatred, or contempt;
-OR-
 - c. To reveal information about another person that was concealed;
-OR-
 - d. To testify or withhold testimony regarding another person's legal claim or defense;
-OR-
 - e. To wrongfully take official action or wrongfully withhold action or cause the same to occur;
-OR-
 - f. To cause or continue a strike or boycott to obtain property which is not sought by the represented group;
-OR-
 - g. To commit an act that would substantially harm another's health, safety, business, financial condition, or personal relationships.

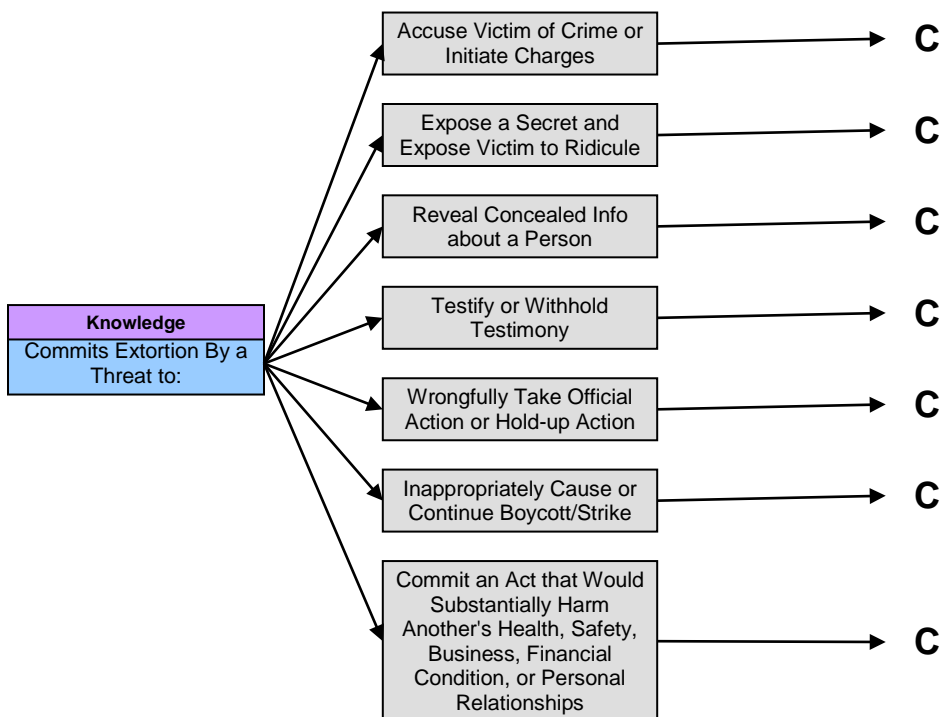
- √ 2. Defense - In any prosecution under this section based on a threat to accuse any person of a crime or cause criminal charges to be instituted against any person, it is a defense that the actor reasonably believed the threatened criminal charge to be true and that his or her sole purpose was to compel or induce the person threatened to take reasonable action to make good the wrong which was the subject of such threatened criminal charge.

21 - Robbery & Extortion

Extortion 2nd Degree

– RCW 9A.56.130 (Class C Felony)

-continued from previous page-

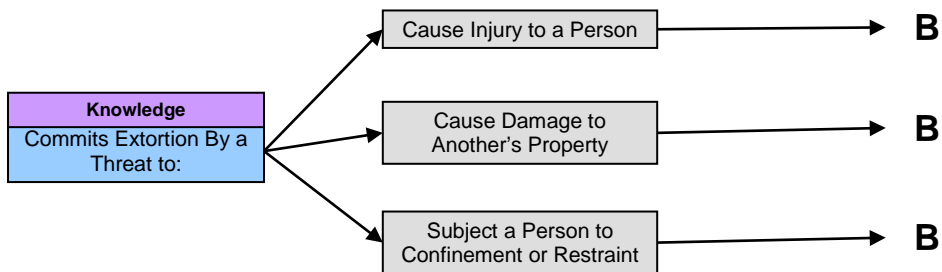


21 - Robbery & Extortion

Extortion 1st Degree

– RCW 9A.56.120 (Class B Felony)

1. A person commits extortion by means of a threat:
 - a. To cause bodily injury in the future to another;
-OR-
 - b. To cause physical damage to the property of another;
-OR-
 - c. To subject another person to confinement or restraint.



22 - Animal Cruelty

Animal Cruelty 2nd Degree

– RCW 16.52.207 (Gross Misdemeanor)

1. A person, under the circumstances not amounting to 1st degree, *knowingly, recklessly or with criminal negligence* inflicts unnecessary suffering or pain upon an animal.

-OR-

2. If an owner *knowingly, recklessly or with criminal negligence*:

a. Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable pain as a result of the failure;

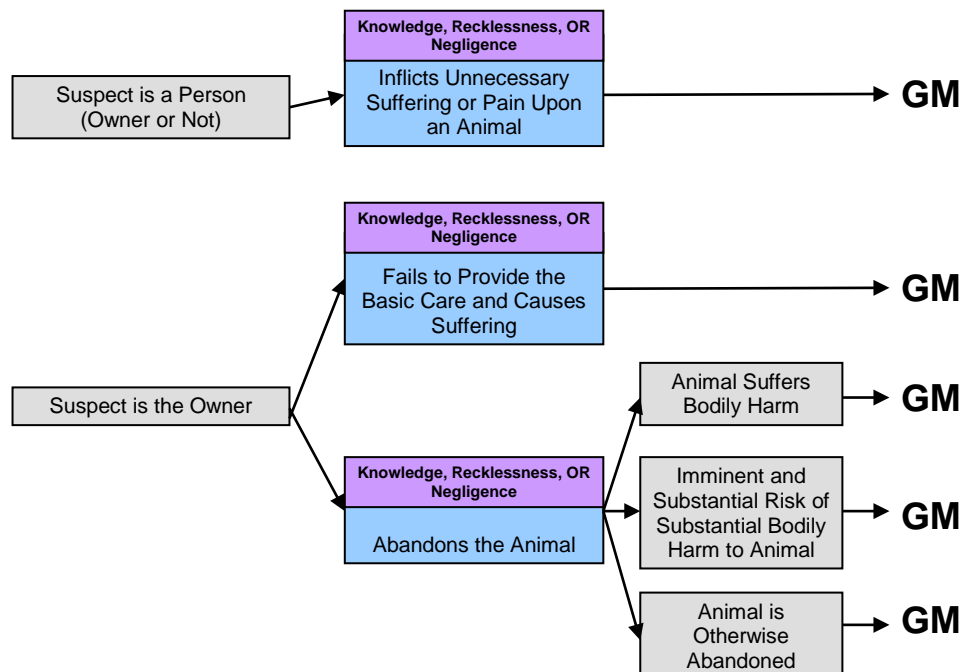
-OR-

b. Abandons the animal, resulting in bodily harm or the imminent and substantial risk of substantial bodily harm;

-OR-

c. Otherwise abandons the animal.

√ 3. Defense - It shall be an affirmative defense to 1 and 2(a) if established that the defendant's failure was due to economic distress beyond the defendant's control.



Misdemeanor Presence
Exception?

Tab Marker:
ANIMAL CRUELTY

22 - Animal Cruelty

Animal Cruelty 1st Degree – RCW 16.52.205 (Class C Felony)

1. A person *intentionally*:
 - a. Inflicts substantial pain on or causes physical injury to or kills any animal by a means causing undue suffering,
-OR-
 - b. Forces a minor to inflict unnecessary pain, injury or death on an animal.

-OR-
2. A person, with *criminal negligence*, starves, dehydrates, or suffocates an animal and as a result causes:
 - a. Substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering;
-OR-
 - b. Death.

-OR-
3. A person *knowingly*:
 - a. Engages in sexual conduct or sexual contact with an animal;
-OR-
 - b. Causes/aids another to engage in sexual conduct or sexual contact with an animal;
-OR-
 - c. Permits any sexual conduct or sexual contact with an animal to be conducted on premises under his control;
-OR-
 - d. Engages in, organizes, promotes, conducts, advertises, aids, abets, participates in as an observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose;
-OR-
 - e. Photographs or films, for purposes of sexual gratification, a person engaged in a sexual act or sexual contact with an animal.

A sexual motivation enhancement may be added to this charge.

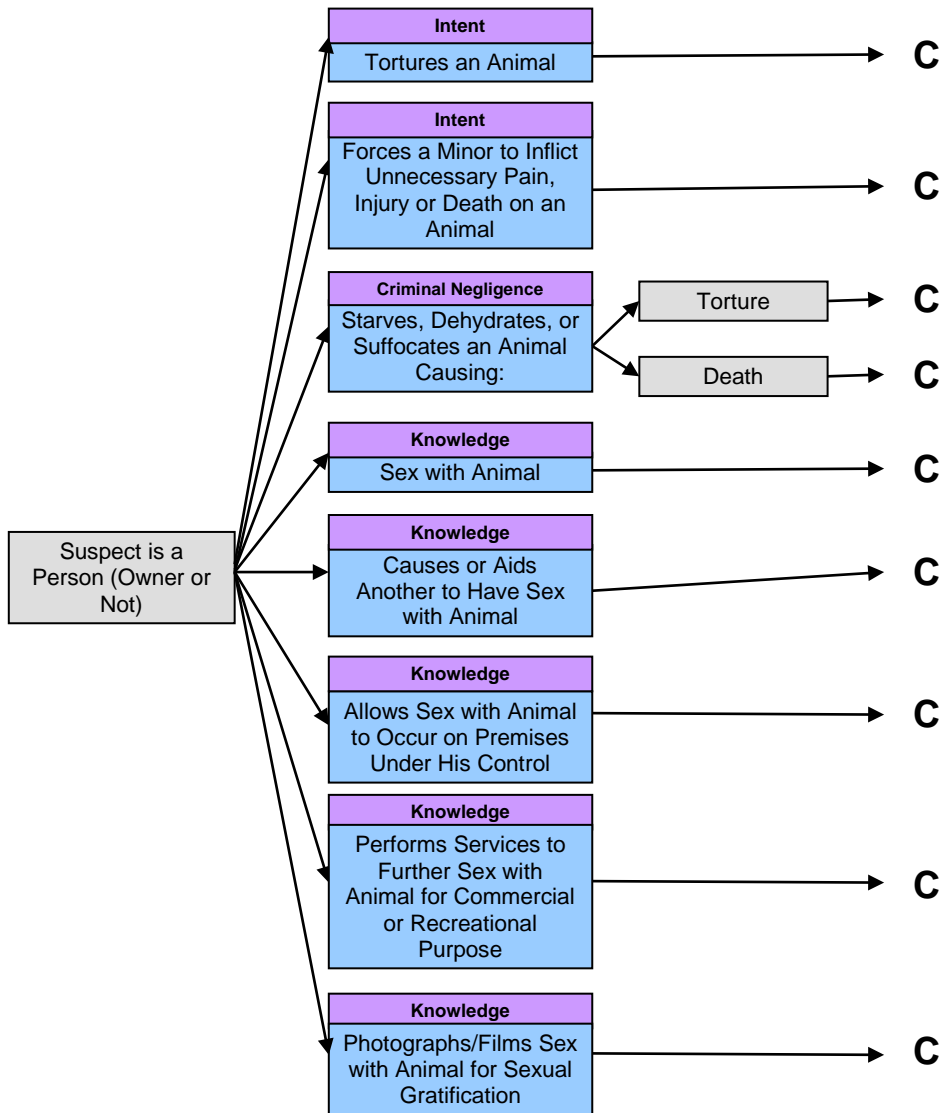
This RCW defines "**Animal**" as every creature, either alive or dead, other than a human being.

22 - Animal Cruelty

Animal Cruelty 1st Degree

– RCW 16.52.205 (Class C Felony)

-continued from previous page-

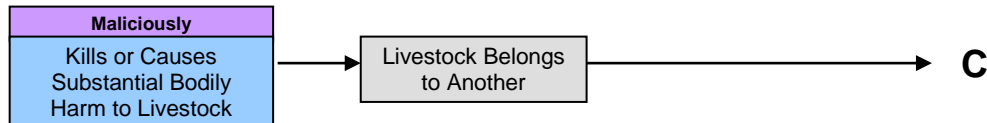


22 - Animal Cruelty

Maliciously Killing or Causing Substantial Bodily Harm to Livestock Belonging to Another

– RCW 16.52.320 (Class C Felony)

1. A person, with malice, kills or causes substantial bodily harm to livestock belonging to another person.



Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

23 - Fraud

Definitions

– RCW 9A.60.010

1. **“Written Instrument”**

- a. Any paper, document, or other instrument containing written or printed matter or its equivalent;

-OR-

- b. Any access device, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification.

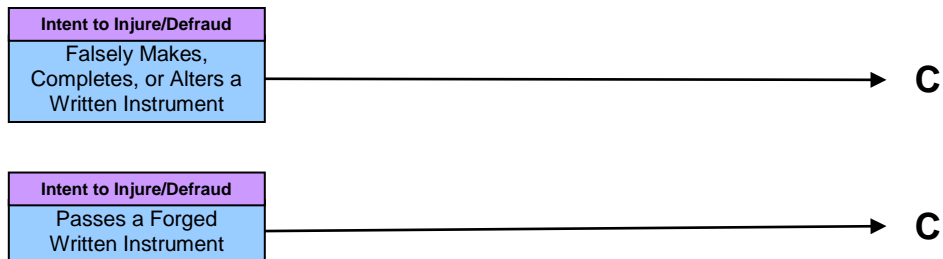
2. **“Forged Instrument”** means a written instrument which has been falsely made, completed or altered.

23 - Fraud

Forgery

– RCW 9A.60.020 (Class C Felony)

1. A person, with *intent to injure or defraud*:
 - a. Falsely makes, completes, or alters a written instrument;
-OR-
 - b. Possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged.



23 - Fraud

Prescription Forgery

– RCW 69.50.403 (Class C Felony)

Notice that this law is from the VUCSA (Drug) RCW's.

1. It is unlawful for any person knowingly or intentionally:
 - a. To use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person;

-OR-
 - b. To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance:
 - By fraud, deceit, misrepresentation, or subterfuge; or
 - By forgery or alteration of a prescription or any written order; or
 - By the concealment of material fact; or
 - By the use of a false name or the giving of a false address;

-OR-
 - c. To falsely assume the title of, or represent herself or himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance;

-OR-
 - d. To make or utter any false or forged prescription or false or forged written order;

-OR-
 - e. To affix any false or forged label to a package or receptacle containing controlled substances;

-OR-
 - f. To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

-OR-
 - g. To possess a false or fraudulent prescription with intent to obtain a controlled substance;

-OR-
 - h. To attempt to illegally obtain controlled substances by providing more than one name to a practitioner when obtaining a prescription for a controlled substance.
 - √ If a person's name is legally changed during the time period that he or she is receiving health care from a practitioner, the person shall inform all providers of care so that the medical and pharmacy records for the person may be filed under a single name identifier.

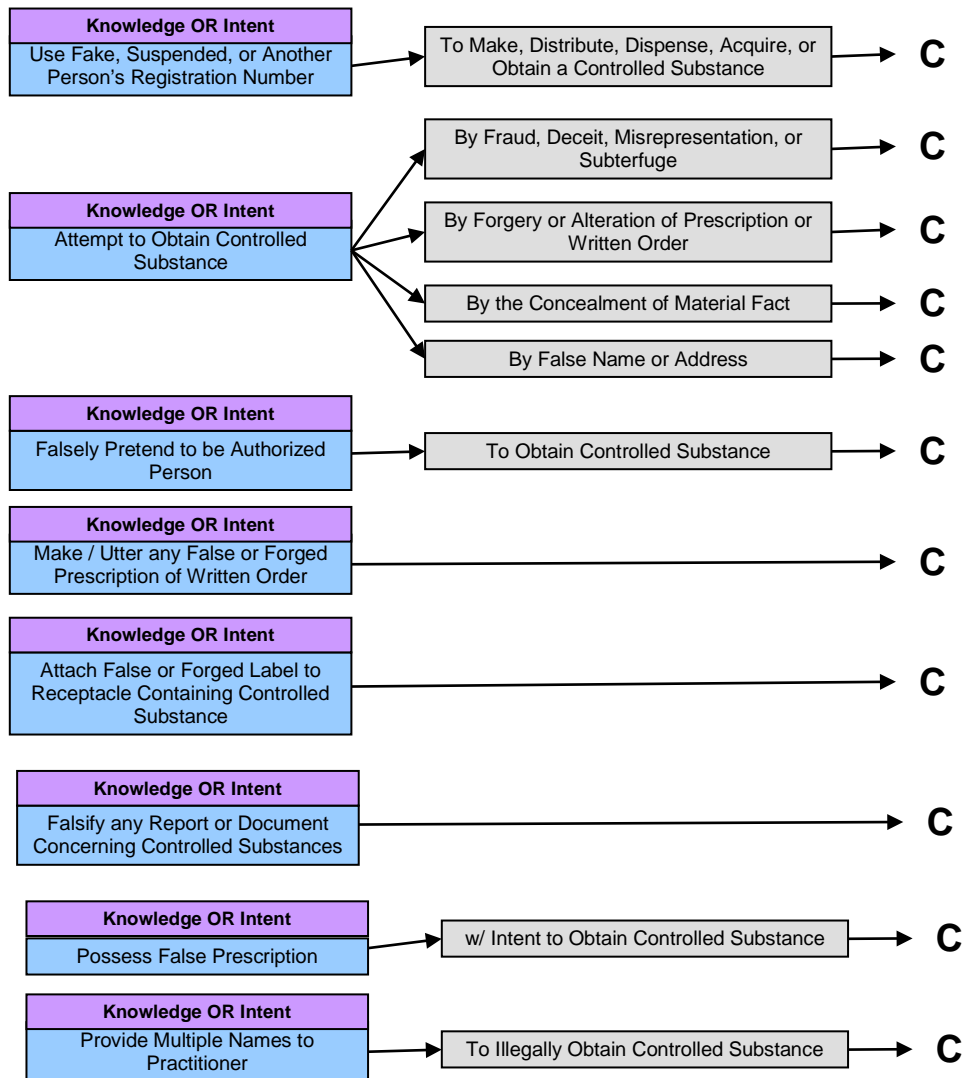
Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

23 - Fraud

Prescription Forgery

– RCW 69.50.403 (Class C Felony)

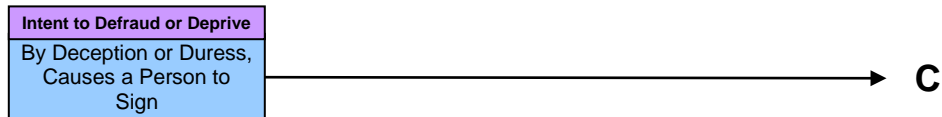
-continued from previous page-



23 - Fraud

Obtaining a Signature by Deception or Duress – RCW 9A.60.030 (Class C Felony)

1. By deception or duress, and with intent to defraud or deprive, a person causes another person to sign or execute a written instrument.



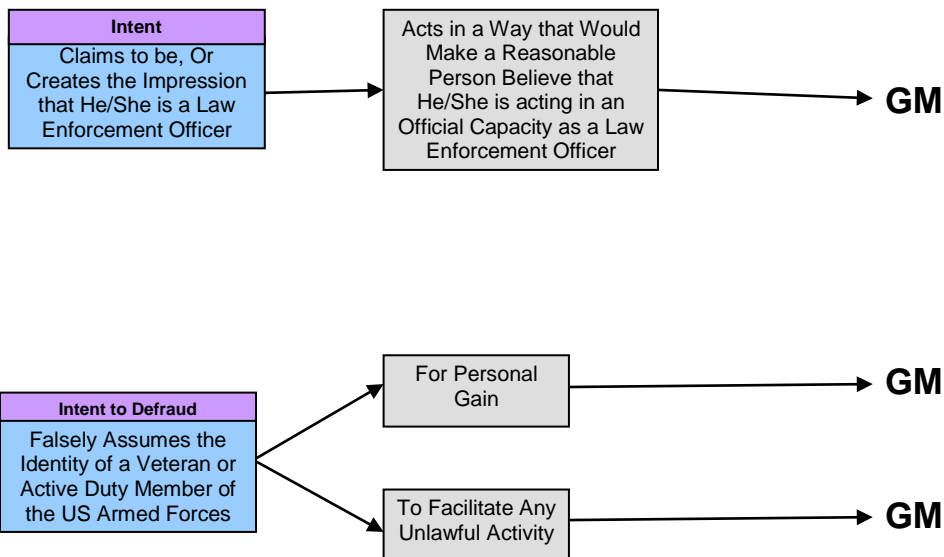
23 - Fraud

Criminal Impersonation 2nd Degree – RCW 9A.60.045 (Gross Misdemeanor)

1. A person claims to be or creates the impression that they are a law enforcement officer; AND
2. Does an act, not amounting to circumstances in 1st degree, with intent to give the impression that he/she is acting in an official capacity and a reasonable person would believe that he/she is a law enforcement officer.

-OR-

3. A person falsely assumes the identity of a veteran or active duty member of the armed forces of the United States with intent to defraud for the purpose of personal gain or to facilitate any unlawful activity.

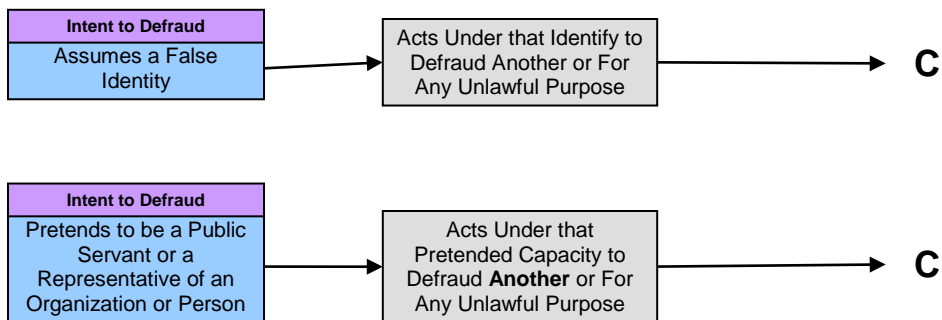


Misdemeanor Presence
Exception?

23 - Fraud

Criminal Impersonation 1st Degree – RCW 9A.60.040 (Class C Felony)

1. A person assumes a false identity and acts in his or her assumed character with intent to defraud another or for any other unlawful purpose;
- OR-
2. Pretends to be a public servant or a representative of some person or organization and acts in his or her pretended capacity with intent, to defraud another or for any other unlawful purpose.



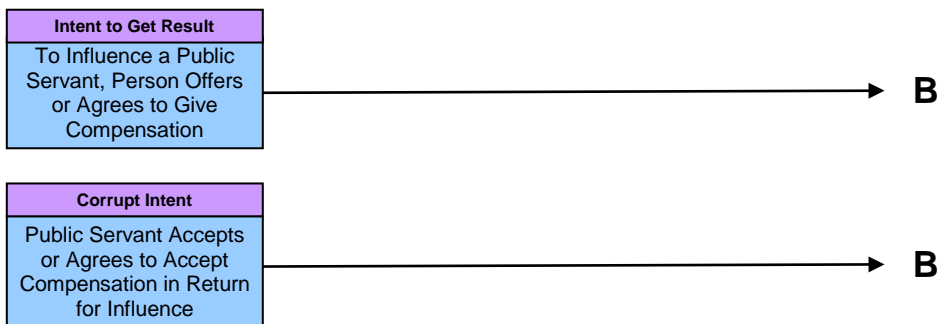
24 - Bribery & Official Proceedings

Bribery

– RCW 9A.68.010 (Class B Felony)

1. With *intent to secure a result* in a matter involving a public servant's role, a person offers or agrees to give compensation to the public servant;
- OR-
2. Pursuant to an agreement, a public servant accepts or agrees to accept compensation in return for his influence in securing a result in a particular matter.

- ⊗ 3. It is not a defense that the public servant was not qualified or able to act in the desired way.

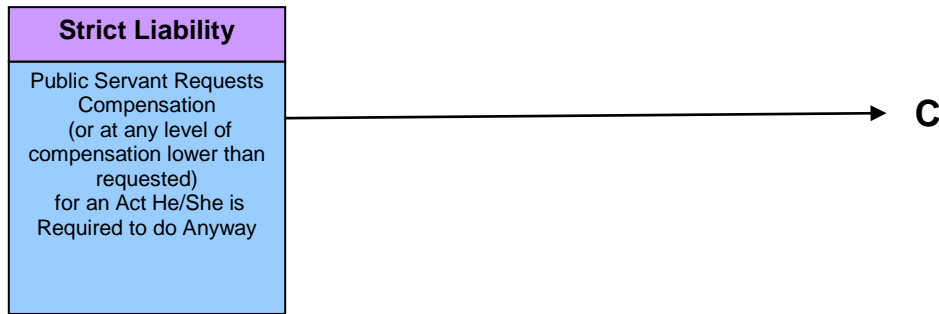


24 - Bribery & Official Proceedings

Requesting Unlawful Compensation

– RCW 9A.68.020 (Class C Felony)

1. A public servant requests compensation for an act that they are required to do anyway.



Tab Marker:
BRIBERY

24 - Bribery & Official Proceedings

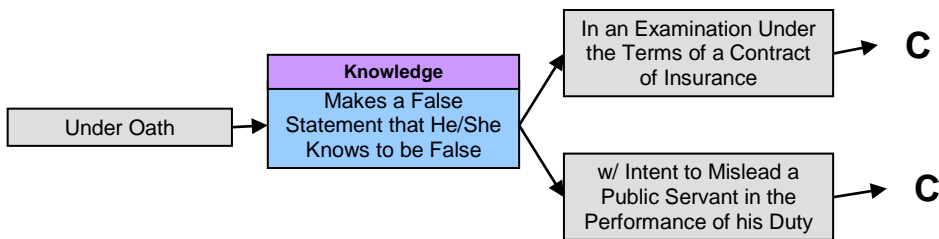
Perjury 2nd Degree

– RCW 9A.72.030 (Class C Felony)

1. He or she, under an oath required or authorized by law, makes a materially false statement which he or she *knows* to be false:
 - a. In an examination, under oath, under the terms of a contract of insurance;

-OR-

- b. With intent to mislead a public servant in the performance of his or her duty.



***Note-Perjury requires either positive testimony of at least 2 credible witnesses that directly contradict the suspect's statements or at least one direct witness and independent evidence.**

Filing a false or fraudulent insurance claim is 48.30.020

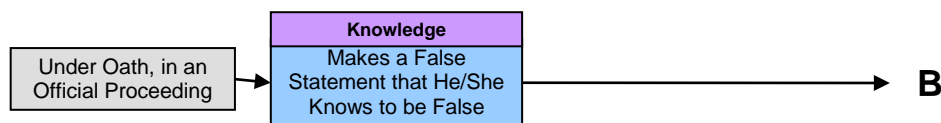
This is an easier charge to prove than perjury.

24 - Bribery & Official Proceedings

Perjury 1st Degree

– RCW 9A.72.020 (Class B Felony)

1. Under oath, in any official proceeding, a person makes a false statement which he *knows* to be false.
- ⊗ 2. Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to prosecution under this section.

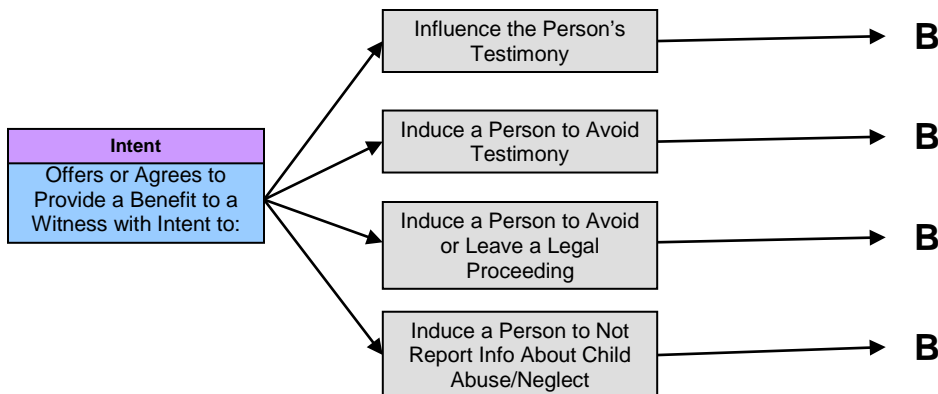


24 - Bribery & Official Proceedings

Bribing a Witness

– RCW 9A.72.090 (Class B Felony)

1. A person offers or agrees to *provide a benefit* to a witness in any official proceeding or to someone who has information relevant to a criminal investigation or the abuse or neglect of a minor child, with intent to:
 - a. Influence the testimony of that person;
-OR-
 - b. Induce that person to avoid legal process summoning them to testimony;
-OR-
 - c. Induce that person to absent himself from an official proceeding to which he or she has been legally summoned;
-OR-
 - d. Induce that person to refrain from reporting information relevant to a criminal investigation or the abuse or neglect of a minor child.



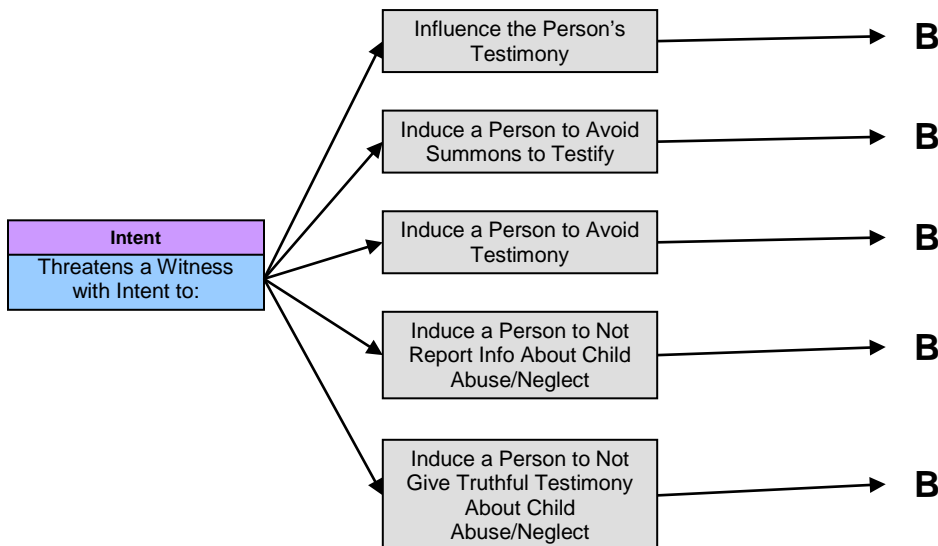
24 - Bribery & Official Proceedings

Intimidating a Witness

– RCW 9A.72.110 (Class B Felony)

1. A person directs a *threat* to a past, present, or future witness in an official proceeding or to a person who has information relevant to a criminal investigation to:
 - a. Influence the testimony of that person;
-OR-
 - b. Induce that person to elude legal process summoning him or her to testify;
-OR-
 - c. Induce that person to avoid testimony;
-OR-
 - d. Induce that person not to report information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted;
-OR-
 - e. Induce that person to not give truthful testimony relevant to a criminal investigation or the abuse or neglect of a minor child.
-OR-

Each instance of an attempt to intimidate a witness constitutes a separate offense.



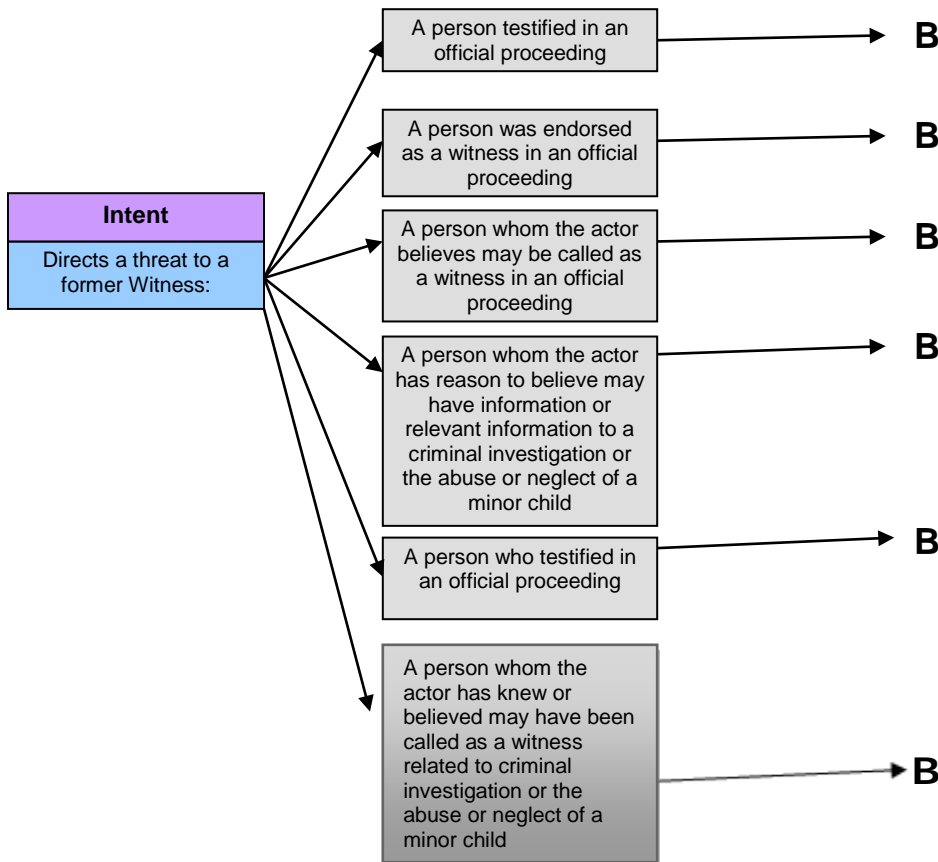
24 - Bribery & Official Proceedings

Intimidating a Witness

– RCW 9A.72.110 (Class B Felony)

Continued-

- f. Threatens a former witness because of the witness's role in an official proceeding.



***Note-** for the purposes of this section, each instance of an attempt to intimidate a witness constitutes a separate offense.

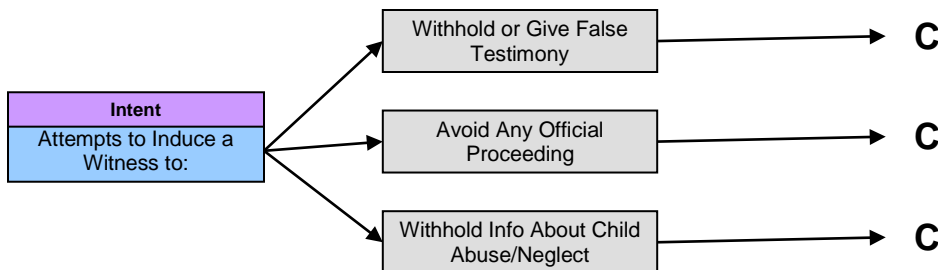
24 - Bribery & Official Proceedings

Tampering with a Witness

– RCW 9A.72.120 (Class C Felony)

1. A person *attempts to induce* a prospective witness in any official proceeding or a person who may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:
 - a. Withhold or give false testimony;
-OR-
 - b. Avoid any official proceeding;
-OR-
 - c. Withhold from a law enforcement agency information relevant to a criminal investigation or the abuse or neglect of a minor child.

Each instance of an attempt to tamper with a witness constitutes a separate offense.



25 - Obstructing Governmental Operation

Definitions

– RCW 9A.76.010

1. **“Custody”** means restraint pursuant to a lawful arrest or court order.

2. **“Detention Facility”** means any place used for confinement of a person:
 - a. Arrested for, charged with, or convicted of an offense;
-OR-
 - b. Charged with being or adjudicated to be a juvenile offender;
-OR-
 - c. Held for extradition or as a material witness;
-OR-
 - d. Otherwise confined by court order;
-OR-
 - e. In any work release, furlough, or other such facility or program.

Note – This RCW definition of “custody” is not always the same as the Court’s understanding or interpretation of “custody.”

Tab Marker:
**OBSTRUCTING
GOVERNMENT**

25 - Obstructing Governmental Operation

Obstructing a Law Enforcement Officer – RCW 9A.76.020 (Gross Misdemeanor)

1. A person *willfully* hinders, delays, or obstructs a law enforcement officer in the discharge of his/her official powers or duties.

Knowledge ("Willfully")
Hinders, Delays, or
Obstructs a Law
Enforcement Officer in
the Discharge of Official
Duties.

→ **GM**

Misdemeanor Presence
Exception:

**False statements
should be charged as
Making a False or
Misleading
Statements to a
Public Servant (page
285)**

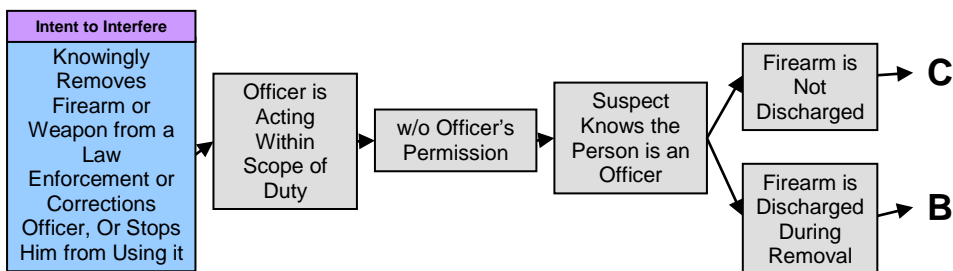
**If in a vehicle and
contact relates to the
operation of the
vehicle use; 46.61.020**

25 - Obstructing Governmental Operation

Disarming a Law Enforcement or Corrections Officer – RCW 9A.76.023 (Class C Felony / Class B Felony)

1. With *intent to interfere* with the performance of the officer's duties, the person *knowingly* removes a firearm or weapon from the person of a law enforcement officer or corrections officer or deprives a law enforcement officer or corrections officer of the use of a firearm or weapon when:
 - a. The officer is acting within the scope of the officer's duties, AND
 - b. Does not consent to the removal, AND
 - c. The person has reasonable cause to know or knows that the individual is a law enforcement or corrections officer.
2. If the firearm is discharged during its removal, the crime becomes a Class B Felony.

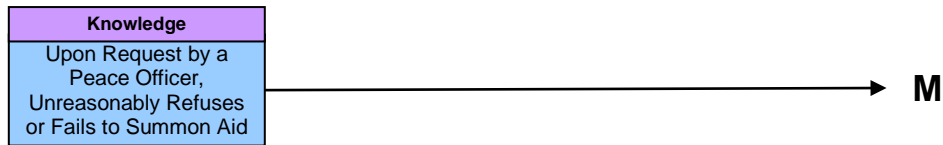
Note that it doesn't have to be a firearm. Any weapon will qualify.



25 - Obstructing Governmental Operation

Refusing to Summon Aid for a Peace Officer – RCW 9A.76.030 (Misdemeanor)

1. If, upon request by a person he knows to be a peace officer, a person unreasonably refuses or fails to summon aid for a peace officer.



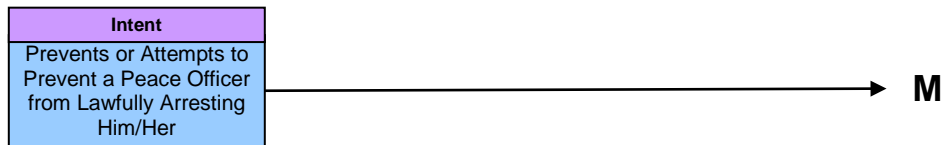
Misdemeanor Presence
Exception?

25 - Obstructing Governmental Operation

Resisting Arrest

– RCW 9A.76.040 (Misdemeanor)

1. A person intentionally prevents or attempts to prevent a peace officer from lawfully arresting him.



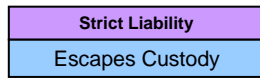
Misdemeanor Presence
Exception:

25 - Obstructing Governmental Operation

Escape 3rd Degree

– RCW 9A.76.130 (Gross Misdemeanor)

1. A person escapes custody.



GM

Misdemeanor Presence
Exception?

The offense of escape occurs at the moment of flight. A warrantless arrest may not be made when the person is later observed out of custody in the community.

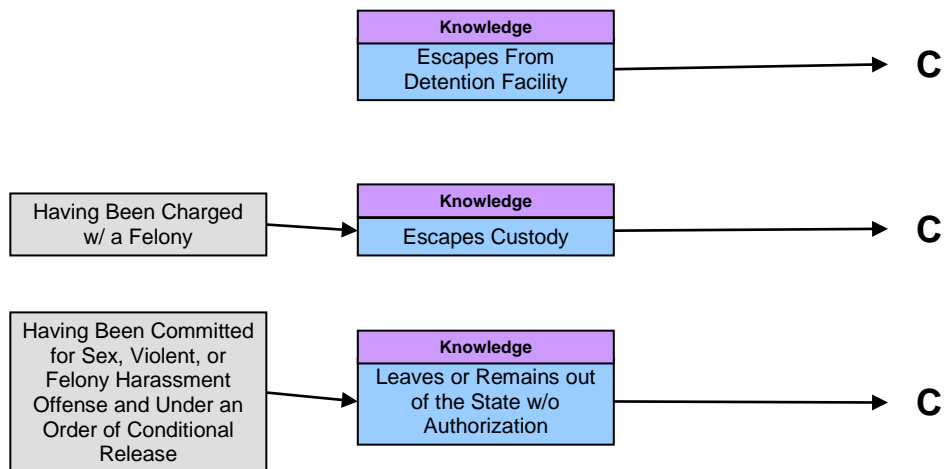
-State v Klunp, 61 Wn App 911, (1991) (bail jumping)

25 - Obstructing Governmental Operation

Escape 2nd Degree

– RCW 9A.76.120 (Class C Felony)

1. A person knowingly escapes from a detention facility;
-OR-
2. Having been *charged* with a felony or an equivalent juvenile offense, he or she knowingly escapes from custody;
-OR-
3. Having been committed under chapter 10.77 RCW for sex, violent, or felony Harassment offense and being under an order of conditional release, he or she knowingly leaves or remains absent from the state of Washington without prior court authorization.



This includes failure to return from an authorized furlough or absence.

-State v. Kent 62 Wn App 458 (1991)

Failure to return to work release.

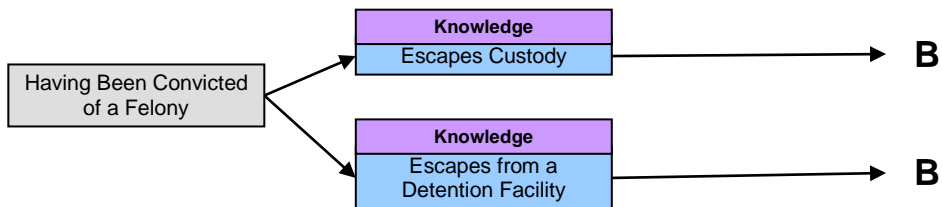
-State v. Peters, 35-Wn App 427 (1983)

25 - Obstructing Governmental Operation

Escape 1st Degree

– RCW 9A.76.110 (Class B Felony)

1. A person knowingly escapes from custody or a detention facility while being detained following a *conviction* of a felony or an equivalent juvenile offense.



Custody Includes;

Work crew- State v. Ammons 136 Wn 21453 (1998)

Home detention-State v. Parker 76 Wn App 747 (1995)

Work Release Facility- In restraint of Evans 31 Wn App 330 (1982)

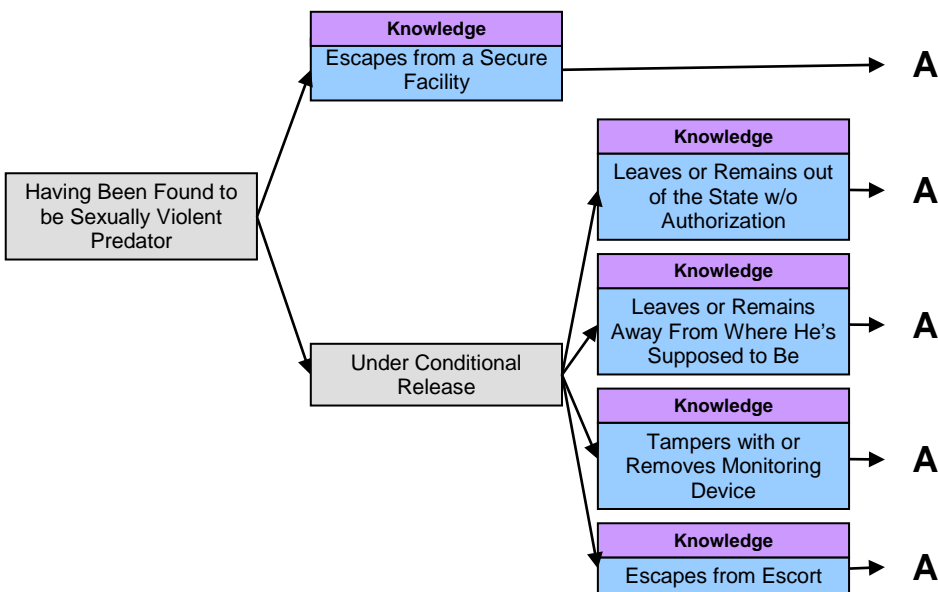
Day reporting programs- State v. Breshon, 155Wn H/P 874 (2003)

25 - Obstructing Governmental Operation

Sexually Violent Predator Escape

– RCW 9A.76.115 (Class A Felony)

1. A person, having been found to be a sexually violent predator and either:
 - a. While confined to the special commitment center or another secure facility under court order, the person escapes from the secure facility;
-OR-
 - b. Being under an order of conditional release, the person:
 - Leaves or remains absent from the state of Washington without prior court authorization;
-OR-
 - Without authorization, leaves or remains absent from his or her residence, place of employment, educational institution or authorized outing;
-OR-
 - Tampers with his or her electronic monitoring device or removes it without authorization;
-OR-
 - Escapes from his or her escort.



25 - Obstructing Governmental Operation

Rendering Criminal Assistance Defined

– RCW 9A.76.050

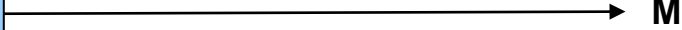
1. A person who with *intent to prevent, hinder, or delay* the apprehension or prosecution of another person who he knows has committed a crime or juvenile offense or is being sought by law enforcement officials or has escaped from a detention facility:
 - a. Harbors or conceals such person;
-OR-
 - b. Warns such person of impending discovery or apprehension;
-OR-
 - c. Provides such person with money, transportation, disguise or other means of avoiding discovery or apprehension;
-OR-
 - d. Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person;
-OR-
 - e. Conceals, alters or destroys any physical evidence that would aid in the discovery or apprehension of a wanted person;
-OR-
 - f. Provides such person with a weapon.

25 - Obstructing Governmental Operation

Rendering Criminal Assistance 3rd Degree – RCW 9A.76.090 (Misdemeanor)

1. A person renders criminal assistance to a person who has committed a Gross Misdemeanor or a Misdemeanor.

Intent to Prevent, Hinder, Delay
Renders Criminal Assistance to a Person that Committed a GM or M



Misdemeanor Presence Exception?

25 - Obstructing Governmental Operation

Rendering Criminal Assistance 2nd Degree

– RCW 9A.76.080 (Misdemeanor / Gross Misdemeanor)

Misdemeanor Presence
Exception?

1. A person renders criminal assistance to:
 - a. A person who has committed or is being sought for a class B or Class C Felony or an equivalent juvenile offense;
 - OR-
 - b. Someone being sought for violation of parole, probation, or community supervision.

2. If the actor is a relative of the wanted person then it is a Misdemeanor.

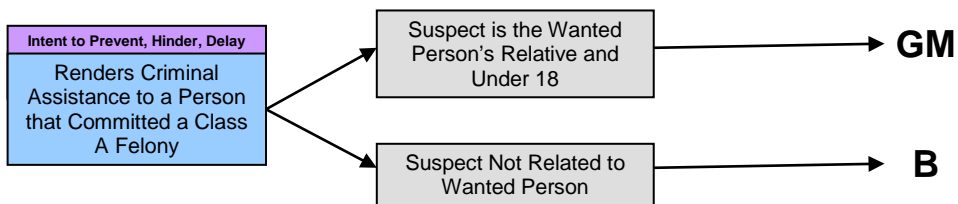


25 - Obstructing Governmental Operation

Rendering Criminal Assistance 1st Degree

– RCW 9A.76.070 (Gross Misd. / Class B Felony)

1. A person renders criminal assistance to a person who has committed or is being sought for Murder in the First Degree or any Class A Felony or equivalent juvenile offense.
2. If the actor is a relative of the wanted person and under 18 at the time of the offense then it is a Gross Misdemeanor.



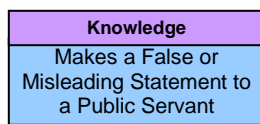
Misdemeanor Presence Exception?

25 - Obstructing Governmental Operation

Making a False or Misleading Statement to a Public Servant

– RCW 9A.76.175 (Gross Misdemeanor)

1. A person who *knowingly* makes a false or misleading material statement to a public servant.
2. **“Material statement”** means a written or oral statement *relied upon* by a public servant in the discharge of his or her official powers or duties.



GM

Misdemeanor Presence Exception?

“Material” in legal terms means *important, substantial, or vital.*

If a person is operating a motor vehicle and false statements are given (name, etc...), consider charging RCW 46.61.020

26 - Public Disturbance

Criminal Mischief. (Effective January 1, 2014.)

RCW 9A.84.010 (Gross Misd. / Class C Felony)

(1) A person is guilty of the crime of criminal mischief if, acting with three or more other persons, he or she knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property.

(2)(a) Except as provided in (b) of this subsection, the crime of criminal mischief is a gross misdemeanor.

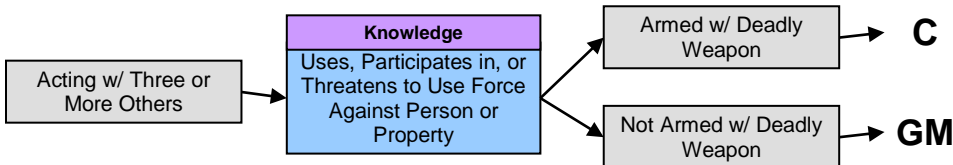
(b) The crime of criminal mischief is a class C felony if the actor is armed with a deadly weapon.

[2013 c 20 § 1; 2003 c 53 § 91; 1975 1st ex.s. c 260 § [9A.84.010](#).]

Notes:

Effective date -- 2013 c 20: "This act takes effect January 1, 2014."
[2013 c 20 § 3.]

Intent -- Effective date -- 2003 c 53: See notes following RCW [2.48.180](#).



Misdemeanor Presence
Exception?

The suspect	1
plus	+
At least three others	3
Total	=4

There must be a minimum of four participants to call it Criminal Mischief (formerly a Riot).

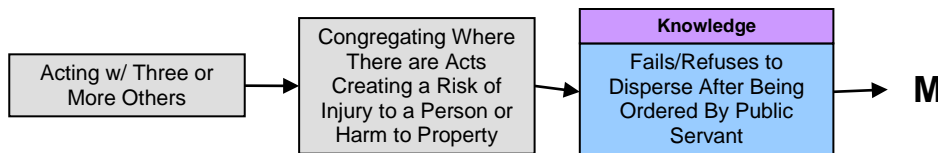
Tab Marker:
**PUBLIC
DISTURBANCE**

26 - Public Disturbance

Failure to Disperse

– RCW 9A.84.020 (Misdemeanor)

1. A person congregates with three or more other people; and there are acts of conduct creating a risk of causing injury to any person or substantial harm to property; AND
2. He refuses or fails to disperse when told to do so by a peace officer or other public servant engaged in enforcing or executing the law.



Misdemeanor Presence Exception?

<i>The suspect</i>	1
<i>plus</i>	+
<i>At least three others</i>	3
<i>Total</i>	=4

The wording of this RCW requires that a warning from the police must precede any arrest.

26 - Public Disturbance

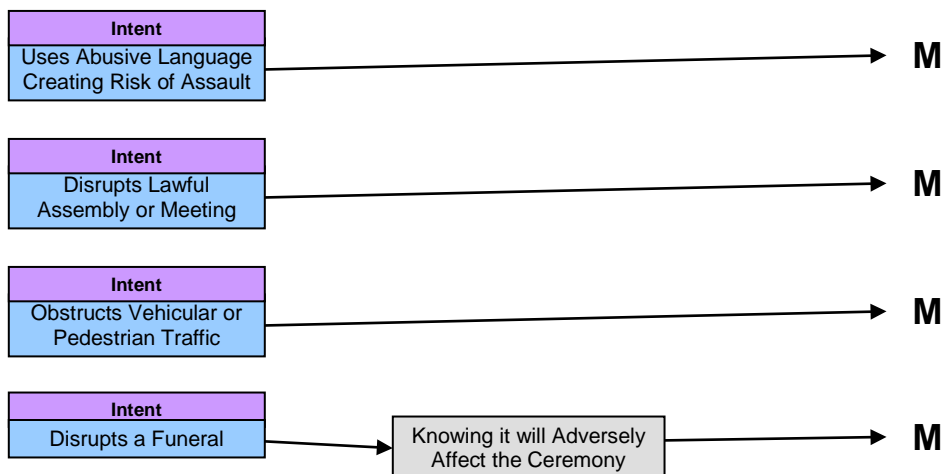
Disorderly Conduct

– RCW 9A.84.030 (Misdemeanor)

1. A person uses abusive language and thereby intentionally creates a risk of assault;
-OR-
2. Intentionally disrupts any lawful assembly or meeting without legal authority;
-OR-
3. Intentionally obstructs vehicular or pedestrian traffic without lawful authority.
-OR-
4. Knowing that the activity adversely affects the funeral, burial, viewing, funeral procession, or memorial service, the actor intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of:
 - a. The location where a funeral or burial is being performed;
 - b. A funeral home during the viewing of a deceased person;
 - c. A funeral procession, if the actor knows that the funeral procession is taking place; or
 - d. A building in which a funeral or memorial service is being conducted.

Misdemeanor Presence
Exception?

"fighting words"

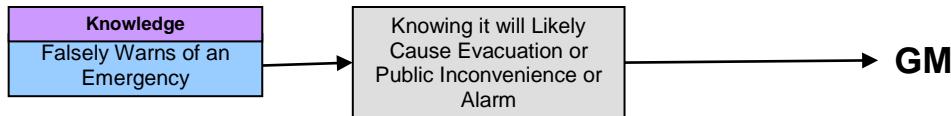


26 - Public Disturbance

False Reporting

– RCW 9A.84.040 (Gross Misdemeanor)

1. A person, with *knowledge* that the information reported, conveyed or circulated is false:
 - a. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency; AND
 - b. Knows that such report is likely to cause evacuation of a building, place of assembly or transportation facility, or to cause public inconvenience or alarm.



Misdemeanor Presence
Exception?

REMINDER: Lawful Uses of Force

DISCUSSION:

Now that we've learned all the times you can't be mean to people. . .

Let's remind ourselves when you can 'be mean' (when use of force is perfectly fine).

Is there a place in the law that tells citizens when they can use force lawfully?

- Yes. RCW 9A.16.020

Is there a place in the law that tells cops and civilians when they can use deadly force?

- Yes
- For cops, it's RCW 9A.16.040
- For civilians, it's RCW 9A.16.050

These RCW's make mention of the words "reasonable" and "necessary."
Are these terms defined for us anywhere?

- Yes. RCW 9A.16.010

If you're investigating a call, and one half tells you he's been assaulted, and the other half explains a situation that seems to be within the *lawful uses of force* described by RCW, then YOU HAVE TO DETERMINE WHETHER THAT USE OF FORCE WAS LAWFUL. You decide based on the totality of circumstances.

Just because a person says he was "assaulted" doesn't make it so. YOU (the officer with the training, experience, and knowledge of the laws) are the one to decide whether that act constitutes an assault – or whether the force was perfectly legal given the situation.

27 - Gambling Laws - Overview

Duties and Powers of Washington State Gambling Commission

1. Authorizes and issues licenses for gambling (as defined in RCW Chapter 9.46) to persons or organizations.
2. Establishes fees, taxes, and penalties regarding gambling licenses and violations of Chapter 9.46.
3. To regulate income and salaries in licensed gambling activities.

Definition of Terms

1. **“Professional Gambling”** (RCW 9.46.0269)
 - a. A person knowingly engages in conduct which aids a form of gambling; or
 - b. While acting other than a player accepts something of value from another for participating in the proceeds of gambling activity; or
 - c. The person engages in bookmaking; or
 - d. The person conducts a lottery; or
 - e. The person pays a fee to participate in gambling activity; or
 - f. The person engages in greyhound races for gambling purposes.
2. **“Bookmaking”** (RCW 9.46.0213) – Accepting bets, upon the outcome of future contingent events, as a business or when the bettor is charged a fee to place a bet.
3. **“Gambling Premises”** (RCW 9.46.0249) – Any building, room, enclosure, vehicle or vessel used for professional gambling.
4. **“Gambling Record”** (RCW 9.46.0253) – Any record, receipt, ticket, token, slip, or notation made to be used in connection with professional gambling.

Gambling Violations if Unlicensed or Unauthorized

1. Card games (RCW 9.46.0282, 0325, 0351)
2. Punch boards and pull tabs (RCW 9.46.0325)
3. Dice games (RCW 9.46.0305 & 0351)

27 - Gambling Laws - Overview

Cheating Defined

– RCW 9.46.196

1. **“Cheating”** as used in this chapter, means to:
 - a. Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;
-OR-
 - b. Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;
-OR-
 - c. Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator;
-OR-
 - d. Cause, aid, abet, or conspire with another person to cause any other person to violate any of the above.

Cheating 2nd Degree

– RCW 9.46.1962 (Gross Misdemeanor)

1. A person is guilty of Cheating in the Second Degree if he or she engages in cheating and his or her conduct does not constitute Cheating in the First Degree.

Cheating 1st Degree

– RCW 9.46.1961 (Class C Felony)

1. A person is guilty of Cheating in the First Degree if he or she engages in cheating; AND
 - a. Knowingly causes, aids, abets, or conspires with another to engage in cheating;
-OR-
 - b. Holds a license or similar permit issued by the state of Washington to conduct, manage, or act as an employee in an authorized gambling activity.

Misdemeanor Presence
Exception?

Tab Marker:
GAMBLING LAWS

27 - Gambling Laws - Overview

Professional Gambling 3rd Degree

– RCW 9.46.222 (Gross Misdemeanor)

1. A person engages in or conspires with another to engage in professional gambling, not constituting 1st or 2nd Degree Professional Gambling; AND
 - a. He operates any unlicensed gambling activity;
-OR-
 - b. He is directly employed, but not in charge of, any gambling operation.

Professional Gambling 2nd Degree

– RCW 9.46.221 (Class C Felony)

1. A person engages in or conspires with another to engage in Professional Gambling; AND
 - a. Acts in concert or conspires with less than five people;
-OR-
 - b. Accepts bets exceeding \$2,000 during any 30 day period on future contingent events;
-OR-
 - c. Maintains a gambling premises;
-OR-
 - d. Maintains gambling records.

Professional Gambling 1st Degree

– RCW 9.46.220 (Class B Felony)

1. A person engages in or conspires with another to engage in Professional Gambling; AND
 - a. Acts in concert or conspires with at least five other people;
-OR-
 - b. Accepts bets exceeding \$5,000 during any 30 day period on future contingent events;
-OR-
 - c. Operates or profits from the operation of premises where persons are charged a fee to participate in unauthorized gambling activities.

**Misdemeanor Presence
Exception?**

28 - Liquor & Tobacco Laws – Overview

Local Officers to Enforce Law. . .

– RCW 66.44.010

1. All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. . .

Liquor Control Board Authority

– RCW 66.44.010

1. This RCW gives the Liquor Control Board the authority to enforce all the tobacco laws.

Violations of Law

– RCW 66.44.175

1. Every person who violates any provision of this title or the regulations shall be guilty of a violation of this title, whether otherwise declared or not.
2. This RCW gives authority to peace officers to enforce by way of criminal citations, not only the liquor statutes, but also the board's regulations and Washington Administrative Codes (WAC's).

28 - Liquor & Tobacco Laws – Overview

Definitions

– RCW 66.04.010

1. **"Consume"** includes the putting of liquor to any use, whether by drinking or otherwise.
2. **"Liquor"** includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.
3. **"Package"** means any container or receptacle used for holding liquor.
4. **"Person"** means an individual, copartnership, association, or corporation.
5. **"Public place"** includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.
6. **"Sale"** and **"sell"** include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

"Minor" for the purposes of the liquor laws means a person under 21 years old.

28 - Liquor & Tobacco Laws – Overview

Exceptions to Rules Concerning Minors Possessing/Consuming Liquor

1. The following situations are allowed:
 - √ a. Liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any liquor establishment. (RCW 66.44.270)
 - √ b. Liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist. (RCW 66.44.270)
 - √ c. Liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service. (RCW 66.44.270)
 - √ d. Employees aged 18 and over may handle (possess) liquor if:
 - I. They are supervised by an adult at least 21 years old in a retail or non-retail store (RCW 66.44.318 & 66.44.340), or
 - II. They are employees in a restaurant/establishment and are performing normal duties (RCW 66.44.350).

28 - Liquor & Tobacco Laws – Overview

Exceptions to Rules Concerning Minors in Off-Limits Areas

1. The following people are allowed to be in areas that are normally restricted to those over 21 years old:
 - √ a. Professional musicians, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys, eighteen years of age and older, but only during and in the course of their employment as musicians, disc jockeys, or sound or lighting technicians.
 - √ b. Persons eighteen years of age and older performing janitorial services to enter and remain on premises licensed under the provisions of Title 66 RCW when the premises are closed but only during and in the course of their performance of janitorial services.
 - √ c. Employees of amusement device companies, which employees are eighteen years of age or older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this section amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices.
 - √ d. Security and law enforcement officers, and fire fighters eighteen years of age or older to enter and to remain in any premises licensed under Title 66 RCW, but only during and in the course of their official duties and only if they are not the direct employees of the licensee. However, the application of the [this] subsection to security officers is limited to casual, isolated incidents arising in the course of their duties and does not extend to continuous or frequent entering or remaining in any licensed premises.

RCW 66.44.100;

Infraction only.

No arrest ever possible.
Must be in an officer's presence. See RCW 7.80.050 (1)(a).

Court prosecutors can issue an infraction if the officer had PC for the offense, but not in his presence

Opening or Consuming Liquor in Public Place – RCW 66.44.100 (Infraction)

1. Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a class 3 civil infraction under chapter 7.80 RCW.

28 - Liquor & Tobacco Laws – Overview

[Refusal to Provide ID]

– WAC 314-11-020 (Misdemeanor)

1. Per RCW 66.20.180, at the request of any law enforcement officer, a holder of a card of identification must present his/her card of identification if the person is on a portion of a premises that is restricted to persons over twenty-one years of age, or if the person is purchasing liquor, attempting to purchase liquor, consuming liquor, or in the possession of liquor. If the person fails or refuses to present a card of identification it may be considered a violation of Title 66 RCW.
2. This WAC gives law enforcement the legal authority to demand ID from “Youthful Looking” persons on restricted premises.

[“Over-serving”] – Sales to Persons Apparently Under the Influence of Liquor – Purchases or Consumption by Persons Apparently Under the Influence of Liquor on Licensed Premises

– RCW 66.44.200 (Infraction/Misdemeanor)

1. Seller: No person shall sell any liquor to any person apparently under the influence of liquor.
2. Intoxicated Purchaser: No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board.
 - I. A violation of this subsection is an infraction punishable by a fine of not more than five hundred dollars.
 - ⊗ II. A defendant's intoxication may not be used as a defense in an action under this subsection.
3. An administrative action for violation of subsection (1) of this section and an infraction issued for violation of subsection (2) of this section arising out of the same incident are separate actions and the outcome of one shall not determine the outcome of the other.

Misdemeanor Presence
Exception?

Misdemeanor Presence
Exception?

28 - Liquor & Tobacco Laws – Overview

No Sale of Liquor to Minors, Intoxicated Persons, etc.

– WAC 314-16-150 (Misdemeanor)

1. No retail licensee shall give or otherwise supply liquor to any person under the age of twenty-one years, either for his/her own use or for the use of his/her parent or of any other person; or to any person apparently under the influence of liquor; nor shall any licensee or employee thereof permit any person under the said age or in said condition to consume liquor on his/her premises, or on any premises adjacent thereto and under his/her control.
2. No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises.

Misdemeanor Presence
Exception?

[MIP &] Furnishing Liquor to Minors – Possession, Use

– RCW 66.44.270 (Gross Misdemeanor)

1. Furnishing to Minors: It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft.
2. Minor in Possession (MIP):
 - a. It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor.
 - b. It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either:
 - I. Is in possession of or close proximity to a container that has or recently had liquor in it;

-OR-

 - II. By speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor.

Misdemeanor Presence
Exception?

28 - Liquor & Tobacco Laws – Overview

Minor Purchasing or Attempting to Purchase Liquor – RCW 66.44.290 (Misdemeanor)

1. Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title.
2. This section does not apply to persons between the ages of eighteen and twenty-one years who are participating in a controlled purchase program authorized by the liquor control board under rules adopted by the board.

["Treating Minors"] Treats, Gifts, Purchases of Liquor for or from Minor, or Holding Out Minor as at Least Twenty-one, in Public Place Where Liquor Sold – RCW 66.44.300 (Misdemeanor)

1. Any person who invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor to treat, give or purchase liquor for the adult; or holds out such minor to be twenty-one years of age or older to the owner or employee of the liquor establishment, a law enforcement officer, or a liquor enforcement officer shall be guilty of a misdemeanor.

Minors Frequenting Off-Limits Area – Misrepresentation of Age – RCW 66.44.310 (Misdemeanor)

1. Except as otherwise provided by RCW 66.44.316 and 66.44.350 (employee and server exceptions), it shall be a misdemeanor:
 - a. To serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years;
 - b. For any person under the age of twenty-one years to enter or remain in any area classified as off-limits to such a person, but persons under twenty-one years of age may pass through a restricted area in a facility holding a spirits, beer, and wine private club license;
 - c. For any person under the age of twenty-one years to represent his or her age as being twenty-one or more years for the purpose of purchasing liquor or securing admission to, or remaining in any area classified by the board as off-limits to such a person.

Misdemeanor Presence Exception?

Misdemeanor Presence Exception?

Misdemeanor Presence Exception?

Since this RCW appears in the Title 66 with the other liquor laws, This RCW is only talking about misuses of ID's related to liquor.

When the ID being misused is a DL or State ID Card use 46.20.0921 for enforcement.

28 - Liquor & Tobacco Laws – Overview

Unlawful Acts Relating to Identification or Certification Card

– RCW 66.20.200 (Misdemeanor)

1. Relating to the purchase of liquor, the possession of liquor, or being in off-limits areas:
 - a. It's unlawful for the owner of an ID card to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages.
 - b. It's unlawful for any person to permit his ID card to be used by another or to transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages or to gain admission to a premises or portion of a premises classified as off-limits to persons under twenty-one years of age.
 - c. It's unlawful for a person to unlawfully procure or have issued or transferred to him an ID card.
 - d. It's unlawful for any person to possess an ID card not issued to him or her.
 - e. It's unlawful for any person to make any false statement on any certification card required by RCW 66.20.190, to be signed by him or her. (A liquor establishment employee who is still in doubt about the true age of the ID card holder shall require the person whose age may be in question to sign a certification card with an accurate description and serial number of the ID card.)

[Making & Providing Fake ID's]

– RCW 66.44.328 (Gross Misdemeanor)

1. No person may forge, alter, counterfeit, otherwise prepare or acquire and supply to a person under the age of twenty-one years a facsimile of any of the officially issued cards of identification that are required for presentation under RCW 66.16.040 (law relating to proper forms of ID for obtaining alcohol).

Misdemeanor Presence
Exception?

*When the ID being
misused is a DL or
State ID Card use
46.20.0921 for
enforcement.*

Misdemeanor Presence
Exception?

*When the ID being
misused is a DL or
State ID Card use
46.20.0921 for
enforcement.*

28 - Liquor & Tobacco Laws – Overview

[Selling Liquor During Certain Hours]

– WAC 314-11-070

1. Between the hours of 2 a.m. and 6 a.m., licensees or employees may not:
 - a. Sell liquor,
-OR-
 - b. Offer liquor for sale,
-OR-
 - c. Deliver liquor (except that beer and/or wine distributors may deliver beer and/or wine to retail licensees between the hours of 2 a.m. and 6 a.m.),
-OR-
 - d. Permit the removal of liquor from the premises;
-OR-
 - e. Allow liquor to be consumed on the premises;
-OR-
 - f. Possess liquor, except that persons working on the premises may possess liquor between the hours of 2 a.m. and 6 a.m. while in the performance of their official duties.

Tobacco Laws

1. RCW 82.24.500 – Selling cigarettes without a license. (Class C Felony)
2. RCW 26.28.080 – Selling cigarettes to person under 18 years old. (Gross Misdemeanor)
3. RCW 70.155.080 – Obtain, attempted obtain, purchase, attempted purchase, or possession of cigarettes or tobacco product by person under 18 years old. (Infraction)
4. RCW 70.160.030 – Smoking prohibited in public places or places of employment. – (Infraction)
5. RCW 70.160.075 – Smoking prohibited within 25 feet of public places or places of employment. – (Infraction)

Misdemeanor Presence Exception?

Infractions must be observed by the officer. Otherwise only the court or prosecutor may issue a NOI. See RCW 7.80.050 (2)

Officer may issue a citation if the crime did not occur in his presence, but NO custodial arrests. See State v. Crouch 12 Wn App 472 (1975)..

29 - Landlord–Tenant Act - Overview

Definition of Terms

– RCW 59.18.030

1. **“Tenancy”** - A condition that exists when an owner (or his agent) grants the right of exclusive control or possession of certain premises to another person for a period of time.
2. **“Landlord”** - The owner, or lessor (or agent thereof) of a dwelling unit, or the property of which it is a part.
3. **“Dwelling Unit”** - A structure (or that part of a structure) which is used as a home, residence, or sleeping places by a person.
4. **“Rental Agreement”** - All agreements which establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a dwelling unit.

Landlord Duties

– RCW 59.18.060

1. RCW 59.18, the Residential Landlord-Tenant Act, spells out rights and duties for both landlords and tenants. RCW 59.18.060 specifically lists the responsibilities of landlords.

Lawful Actions of a Landlord – Right of Entry

– RCW 59.18

1. With consent and at reasonable times, a landlord may enter a tenant's premises:
 - a. To make repairs, alterations and inspections, the tenant must receive two day's notice;
 - OR-
 - b. To exhibit the premises to prospective purchasers or tenants the tenant must receive one day's notice.
1. The tenant cannot unreasonably refuse consent.
2. The landlord shall not abuse the above rights.
3. A landlord may enter *without* consent of the tenant in cases of emergency, abandonment, or by court order.

A landlord may NOT consent to a warrantless search by the police of the tenant's premise.

29 - Landlord–Tenant Act - Overview

Landlord Civil Violations

– RCW 59.18

1. Seizing property for unpaid rent (RCW 59.18.230 [4]).
2. Disposing (in any manner) of a tenant's abandoned property prior to 45 days.
3. Removing or excluding a tenant from the tenant's premises without a court order.
4. Shutting off utilities except in cases or repairs when done for a reasonable amount of time.
5. Reprisals against a tenant who makes good faith complaints to authorities or who enforces their tenant's rights.
6. Any agreements that purport to waive any tenant's rights.

Landlord Criminal Violations Associated

With Certain Actions

1. Lockouts - can involve Criminal Trespass, Harassment, Forcible Entry & Detainer (RCW 59.12.230).
2. Forcible evictions - can involve Criminal Trespass, Burglary, Harassment, Unlawful Imprisonment, Forcible Entry & Detainer.
3. Removal or seizure of a tenant's property - can involve Criminal Trespass, Burglary, Theft, Malicious Mischief, Harassment, Forcible Entry & Detainer.
4. Utility shutoffs - can involve Criminal Trespass, Malicious Mischief, Forcible Entry & Detainer.

29 - Landlord–Tenant Act - Overview

Duties of Tenant

– RCW 59.18.130

1. RCW 59.18, the Residential Landlord-Tenant Act, spells out rights and duties for both landlords and tenants. RCW 59.18.130 specifically lists the responsibilities of tenants.

Civil Violations by Tenant

1. Non-compliance with any of the statutory duties required in RCW 59.18.130.
2. Non-compliance with any reasonable obligations (rules, regulations, etc.) which are required by the landlord (RCW 59.18.140).

Common Criminal Violations by Tenant

1. Assault
2. Malicious Mischief
3. Harassment
4. Theft
5. Drug violations

Appropriate Actions When Encountering Civil or Criminal Violations

1. Stabilize the scene.
2. Determine the seriousness/type of the violation.
3. Advise of alternatives in civil violations for both parties.
4. Arrest on criminal violations where probable cause exists.
5. Complete a report on accusations of criminal violations.

29 - Landlord–Tenant Act - Overview

Circumstances Allowing Landlord Special Remedies Regarding Tenant Problems

1. Non-compliance with tenant duties - enumerated in RCW 59.18.180 & 190
2. Drug violations - also covered in RCW 59.18.180
3. Health/safety violations - also addressed in RCW 59.18.180 & 190
4. Emergency circumstances - addressed in RCW 59.18.180

Circumstances Allowing Tenant Special Remedies Regarding Landlord Problems

1. Terminate the agreement and move out after written notice is given (RCW 59.18.090 [1])
2. File suit against the landlord to require compliance (RCW 59.18.090 [2])
3. Make repairs or have repairs made and deduct the cost from rent after written notices and within prescribed limits (RCW 59.18.100 [1], [2] & [3])
4. Have an inspection for conditions that substantially endanger the tenant's health or safety and pay rent into escrow account after following statutory procedures

30 - Juvenile Law & Procedures - Overview

Fingerprinting and Photographing

– RCW 43.43.735

1. Juveniles must be fingerprinted and photographed when arrested for any criminal offense that constitutes a felony or Gross Misdemeanor. This process can be completed when:
 - a. The juvenile is brought into a juvenile detention facility;
 - OR-
 - b. When law enforcement arrests and the juvenile is not taken into custody.

Waiver of Rights

– RCW 13.40.140[9]&[10]

1. Waiver of rights by a juvenile must be made intelligently. Juveniles under the age of 12 shall have a parent, guardian or custodian give any waiver and offer any objection.

Juvenile Confinement

– RCW 13.04.116

1. A juvenile is an individual under chronological age of 18 years who has not been transferred previously to adult courts.
2. A juvenile shall not be confined in a jail or holding facility for adults, except:
 - a. Not exceeding 24 hours excluding weekends and holidays and only for the purpose of an initial court appearance and where no juvenile detention facility is available. The juvenile must be separate from the sight and sounds of adult inmates;
 - OR-
 - b. Not for more than six hours and pursuant to a lawful detention in the course of an investigation. The juvenile must be separate from the sight and sounds of adult inmates.

If parents waive rights and child refuses to waive, the right is not waived.

30 - Juvenile Law & Procedures - Overview

[Prosecuting Juveniles as Adults]

Declining Jurisdiction to Adult Status

– RCW 13.40.110

1. The prosecutor may file motions to decline jurisdiction and transfer the case to adult court when:
 - a. The juvenile is 16-17 years of age and the crime committed is a Class A Felony or an attempt, solicitation, or conspiracy to commit a Class A Felony;

-OR-
 - b. The juvenile is 17 years of age and commits:
 - Assault 2nd, or
 - Extortion 1st, or
 - Indecent Liberties, or
 - Child Molestation 2nd, or
 - Kidnapping 2nd, or
 - Robbery 2nd;

-OR-
 - c. The juvenile is charged with escape when serving a minimum juvenile sentence to age 21.

People capable of committing crimes — Capability of children. (Liability of Children)

- RCW 9A.04.050

Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he or she may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his or her examination by one or more physicians, whose opinion shall be competent evidence upon the question of his or her age.

[2011 c 336 § 347; 1975 1st ex.s. c 260 § 9A.04.050.]

1. ZERO THRU ELEVEN YEARS: Capacity issue- Juveniles between the ages of birth and 11 years of age are presumptively incapable of committing an offense. Capacity is not an element of the crime; rather a jurisdictional impediment. Therefore, a juvenile court lacks jurisdiction to adjudicate and enter disposition against “juvenile” offender under the age of 12 absent a finding of capacity.

30 - Juvenile Law & Procedures – Overview

-continued from previous page-

Age 0-7 PRESUMPTIVE INCAPABILITY: Incapable of knowing the act is wrong.

Age 8-11 PRESUMED INCAPABLE; Presume they can't know the act is wrong.

The State can remove this presumption in a capacity hearing. A court will consider the following factors in a capacity hearing;

- The nature of the crime
- The child's age and maturity
- Whether the child showed a desire for secrecy
- Whether the child admonished the victim not to tell
- Prior conduct similar to that charged
- Any consequences that attached to the conduct; and acknowledgment that at the time of the act, the child knew it was wrong, and that he or she could be detained. Note however it is not necessary to prove the child new conduct was illegal.

In any investigation involving this age group, the officer should ask questions to confirm capacity. These questions must focus on whether the child knew the act was wrong **when the child committed the crime, not after the fact**. Asking, "Do you know it's wrong to steal things like iPods?" does NOT help because the question does not reference the time of the act. Asking, "At the time you took the iPod, did you know it was wrong?" A suggested follow-up question might be, "Why was it wrong?"

30 - Juvenile Law & Procedures – Overview

Notification to Schools

– RCW 13.04.155

1. Whenever a minor enrolled in any common school is convicted in adult criminal court, or adjudicated or entered into a diversion agreement with the juvenile court on any of the following offenses:
 - a. Violent offenses as defined in 9.94A.030, or
 - b. Sex offenses as defined in 9.94A.030, or
 - c. Inhaling toxic fumes, or
 - d. Controlled substance, or
 - e. Liquor violations / M.I.P., or
 - f. Assault, firearm, kidnapping, harassment and arson statutes.

2. The court must notify the principal of the student's school of the disposition of the case, after first notifying the parent or legal guardian that such notification will be made. The principal must notify any teacher or other personnel of the student who qualifies.

30 - Juvenile Law & Procedures - Overview

Traffic and Civil Infractions

– RCW 13.40.250

1. A traffic or civil infraction case involving a juvenile under the age of 16 may be filed in juvenile court.
2. Monetary penalty imposed may not exceed \$100.00 if under age 16.
3. Can enter into a diversion agreement.
4. A traffic or civil infraction case involving a juvenile of 16-17 years of age may be filed in municipal or district court.

Youth At Risk Program

– RCW 13.32A.015

1. The intent of the legislature is to preserve, strengthen and reconcile families experiencing problems with at-youth-risk. This legal process can assist parents of at-risk-youths through the juvenile court by providing appropriate care, treatment and supervision to such youth. Parents must request by a petition to the court requesting assistance.
2. Parents must document problems with the youth by personal and official means.

Taking a Child Into Custody

– RCW 13.32A.050

1. A law enforcement officer shall take a child into custody:
 - a. If a law enforcement agency has been contacted by a parent of the child that the child is absent from parental custody without consent;
 - OR-
 - b. If a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety or that a child is violating a local curfew ordinance.

NOT an arrest

◀ *Runaway*

◀ *Safety Concerns*

30 - Juvenile Law & Procedures - Overview

Transporting

– RCW 13.32A.060

1. An officer taking a child into custody under RCW 13.32A.050 shall inform the child of the reason for such custody and shall transport the child to his or her home, or to a parent at his or her place of employment, if no parent is at home. The parent may request that the officer take the child to the home of an adult extended family member, responsible adult, crisis residential center, DSHS or a licensed youth shelter.
2. Most department policies require documentation of mileage when transporting juveniles just as transporting the opposite sex. Document start and finish locations as well.

Attempt to deliver kids to these people (IN ORDER):

- *Parent (Home or Work)*
- *Adult Family Member*
- *Responsible Adult*
- *Crisis Center*
- *DSHS*

Missing Children

– RCW 13.60.020

1. Local law enforcement agencies shall file an official missing person report and enter biographical information into the state missing person computerized network within 12 hours after notification of a missing child is received.

Providing Shelter to a Minor [- Notification Required]

– RCW 13.32A.082

1. Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home without the permission of the parent, or other lawfully prescribed residence, shall report within 8 hours, the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or to DSHS. The report may be made by telephone or any other reasonable means.

30 - Juvenile Law & Procedures - Overview

Unlawful Harboring of a Minor

– RCW 13.32A.080 (Gross Misdemeanor)

1. A person commits the crime of unlawful harboring of a minor if the person provides shelter to a minor without consent of a parent of the minor and after the person knows that the minor is away from home of the parent, without the parent's permission, and if the person intentionally:
 - a. Fails to release the minor to a law enforcement officer after being requested to do so by the officer;
-OR-
 - b. Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the officer, if the person knows the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location;
-OR-
 - c. Obstructs a law enforcement officer from taking the minor into custody;
-OR-
 - d. Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer.

- √ 2. It is a defense to a prosecution that the defendant had custody of the minor pursuant to a court order. Otherwise it is a Gross Misdemeanor crime.

Duty to Inform Parents

– RCW 13.32A.090

1. When law enforcement transports juveniles home or out-of-home, the parents must be immediately notified of the child's whereabouts, physical and emotional condition, and the circumstances surrounding his or her placement.

30 - Juvenile Law & Procedures - Overview

Duty to Report Child Abuse

– RCW 26.44.030

1. When any of the following has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to DSHS:
 - a. Any practitioner
 - b. County Coroner
 - c. Medical examiner
 - d. Law enforcement officer
 - e. Professional school personnel
 - f. Registered or licensed nurse
 - g. Social services counselor
 - h. Psychologist
 - i. Pharmacist
 - j. Licensed or certified child care providers or their employees
 - k. Employee of DSHS
 - l. Juvenile probation officer
 - m. Employee of the department of early learning
 - n. Placement and liaison specialist
 - o. Responsible living skills program staff
 - p. HOPE center staff
 - q. State family and children's ombudsman (including volunteers)
 - r. Guardians ad litem
 - s. DOC personnel
 - t. Administrative and academic or athletic department employees of institutions of higher education (including student employees).
2. The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child, who resides with them, has suffered severe abuse, and is capable of making a report.
 - a. **"Severe abuse"** is any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.
3. The report must be made at the first opportunity, but in no case longer than 48 hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.
4. The reporting requirement does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement does apply.

30 - Juvenile Law & Procedures - Overview

Duty to Report Child Abuse

– RCW 26.44.030

-continued from previous page-

5. Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to DSHS.
6. A law enforcement agency must forward a case of abuse to the prosecutor's office when the agency's investigation reveals that a crime may have been committed.
7. Upon receiving reports of alleged abuse or neglect, DSHS or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview DSHS or law enforcement shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes.

8. **RCW 26.44.200**
Methamphetamine manufacture — Presence of child.

A law enforcement agency in the course of investigating: (1) An allegation under RCW [69.50.401](#) (1) and (2) (a) through (e) relating to manufacture of methamphetamine; or (2) an allegation under RCW [69.50.440](#) relating to possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, that discovers a child present at the site, shall contact the department immediately.

9. **RCW 26.44.250 Arrest upon drug or alcohol-related driving offense — Child protective services notified if child is present and operator is a parent, guardian, or custodian.**

A law enforcement officer shall promptly notify child protective services whenever a child is present in a vehicle being driven by his or her parent, guardian, or legal custodian and that person is being arrested for a drug or alcohol-related driving offense. This section does not require law enforcement to take custody of the child unless there is no other responsible person, or an agency having the right to physical custody of the child that can be contacted, or the officer has reasonable grounds to believe the child should be taken into custody pursuant to RCW [13.34.050](#) or [26.44.050](#). For purposes of this section, "child" means any person under thirteen years of age.

30 - Juvenile Law & Procedures - Overview

[Failure to Report Child Abuse] – Violation – Penalty **– RCW 26.44.080 (Gross Misdemeanor)**

1. Every person who is required to make, or to cause to be made, a report pursuant to RCW 26.44.030 and 26.44.040, and who knowingly fails to make, or fails to cause to be made, such report, shall be guilty of a Gross Misdemeanor.

Taking Child Into Custody Without Court Order **– RCW 26.44.050**

1. Upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or DSHS must investigate and provide CPS with a report.
2. A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured. A photograph of such child may be taken for the purpose of providing evidence of the physical condition of the child.

Misdemeanor Presence
Exception?

31 – Vulnerable Adults Laws & Procedures - Overview

RCW 74.34.020

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter [71A.12](#) RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter [71A.12](#) RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

31 – Vulnerable Adults Laws & Procedures - Overview

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Facility" means a residence licensed or required to be licensed under chapter [18.20](#) RCW, assisted living facilities; chapter [18.51](#) RCW, nursing homes; chapter [70.128](#) RCW, adult family homes; chapter [72.36](#) RCW, soldiers' homes; or chapter [71A.20](#) RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(6) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(7) "Financial institution" has the same meaning as in RCW [30.22.040](#) and [30.22.041](#). For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW [21.20.005](#).

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW [11.88.010](#)(1) (a), (b), (c), or (d).

(9) "Individual provider" means a person under contract with the department to provide services in the home under chapter [74.09](#) or [74.39A](#) RCW.

31 – Vulnerable Adults Laws & Procedures – Overview

(10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter [18.130](#) RCW.

(12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW [9A.42.100](#).

(13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

31 – Vulnerable Adults Laws & Procedures – Overview

(16) "Social worker" means:

(a) A social worker as defined in RCW [18.320.010\(2\)](#); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(17) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter [11.88](#) RCW; or

(c) Who has a developmental disability as defined under RCW [71A.10.020](#); or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter [70.127](#) RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter [74.39](#) RCW.

[2013 c 263 § 1; 2012 c 10 § 62. Prior: 2011 c 170 § 1; 2011 c 89 § 18; 2010 c 133 § 2; 2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

31 – Vulnerable Adults Laws & Procedures - Overview

RCW 74.34.035 MANDATORY REPORTING

Reports — Mandated and permissive — Contents — Confidentiality.

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW [68.50.020](#), report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW [68.50.010](#).

31 – Vulnerable Adults Laws & Procedures - Overview

(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(7) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter [70.127](#) RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(8) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(9) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

(10) In conducting an investigation of abandonment, abuse, financial exploitation, self-neglect, or neglect, the department or law enforcement, upon request, must have access to all relevant records related to the vulnerable adult that are in the possession of mandated reporters and their employees, unless otherwise prohibited by law. Records maintained under RCW [4.24.250](#), [18.20.390](#), [43.70.510](#), [70.41.200](#), [70.230.080](#), and [74.42.640](#) shall not be subject to the requirements of this subsection. Providing access to records relevant to an investigation by the department or law enforcement under this provision may not be deemed a violation of any confidential communication privilege. Access to any records that would violate attorney-client privilege shall not be provided without a court order unless otherwise required by court rule or case law.

31 – Vulnerable Adults Laws & Procedures - Overview

RCW 74.34.040

Reports — Contents — Identity confidential.

The reports made under *RCW [74.34.030](#) shall contain the following information if known:

- (1) Identification of the vulnerable adult;
- (2) The nature and extent of the suspected abuse, neglect, exploitation, or abandonment;
- (3) Evidence of previous abuse, neglect, exploitation, or abandonment;
- (4) The name and address of the person making the report; and
- (5) Any other helpful information.

Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential.

[1986 c 187 § 2; 1984 c 97 § 10.]

Notes:

***Reviser's note:** RCW [74.34.030](#) was repealed by 1999 c 176 § 35.

Immunity from liability.

- RCW 74.34.050

(1) A person participating in good faith in making a report under this chapter or testifying about alleged abuse, neglect, abandonment, financial exploitation, or self-neglect of a vulnerable adult in a judicial or administrative proceeding under this chapter is immune from liability resulting from the report or testimony. The making of permissive reports as allowed in this chapter does not create any duty to report and no civil liability shall attach for any failure to make a permissive report as allowed under this chapter.

(2) Conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege. Nothing in this chapter shall be construed as superseding or abridging remedies provided in chapter [4.92](#) RCW.

31 – Vulnerable Adults Laws & Procedures - Overview

Failure to report — False reports — Penalties.

- RCW 74.34.053

(1) A person who is required to make a report under this chapter and who knowingly fails to make the report is guilty of a gross misdemeanor.

(2) A person who intentionally, maliciously, or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult is guilty of a misdemeanor.

Response to reports — Timing — Reports to law enforcement agencies — Notification to licensing authority.

- RCW 74.34.063

(1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults, consistent with RCW [74.04.060](#), chapter [42.56](#) RCW, and other applicable confidentiality laws.

(5) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title [18](#) RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult.

32 – Litter & Illegal Dumping - Overview

Definitions

– RCW 70.93.030, RCW 70.95.030, & RCW 46.55.110

1. **"Litter"** means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing. "Litter" includes the material described in this section as "potentially dangerous litter."

2. **"Potentially dangerous litter"** means litter that is likely to injure a person or cause damage to a vehicle or other property:
 - a. Cigarettes, cigars, or other tobacco products that are capable of starting a fire;
-OR-
 - b. Glass;
-OR-
 - c. A container or other product made predominantly or entirely of glass;
-OR-
 - d. A hypodermic needle or other medical instrument designed to cut or pierce;
-OR-
 - e. Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort;
-OR-
 - f. Nails or tacks.

3. **"Solid waste"** or **"wastes"** means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

4. **"Junk vehicle"** means a vehicle certified under RCW 46.55.230 as meeting at least three of the following requirements:
 - a. Is three years old or older;
 - b. Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield, or missing wheels, tires, motor, or transmission;
 - c. Is apparently inoperable;
 - d. Has an approximate fair market value equal only to the approximate value of the scrap in it.

32 – Litter & Illegal Dumping - Overview

Littering Prohibited

– RCW 70.93.060 (Infraction/Misd./Gross Misd.)

1. No person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or her or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley.
 - a. Class 3 Civil Infraction: Less than or equal to one cubic foot of litter.
 - b. Misdemeanor: More than one cubic foot of litter, but less than or equal to one cubic yard.
 - c. Gross Misdemeanor: More than one cubic yard of litter.
 - d. Class 1 Civil Infraction: Any amount of potentially dangerous litter.
2. Exceptions:
 - √ a. When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;
-OR-
 - √ b. Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of the private or public property or waters.

Misdemeanor Presence
Exception?

Tab Marker:
LITTER & ILLEGAL
DUMPING

*Infractions must occur
in the Officer's
presence in order for
the officer to issue an
NOI (RCW 7.80.050 (2))*

*For Criminal Littering-
Custodial arrests
require presence,
though citation can be
issued for
misdemeanors or gross
misdemeanors that did
not occur in the
Officer's presence.*

32 – Litter & Illegal Dumping - Overview

Unlawful to Dump or Deposit Solid Waste Without Permit

– RCW 70.95.240 (Infraction/Misd./Gross Misd.)

1. It shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit.
 - a. Class 3 Civil Infraction: Less than or equal to one cubic foot of litter.
 - b. Misdemeanor: More than one cubic foot of litter, but less than or equal to one cubic yard.
 - c. Gross Misdemeanor: More than one cubic yard of litter.

2. Exceptions:
 - √ a. Dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when such action does not violate statutes or ordinances, or create a nuisance;
-OR-
 - √ b. Using a waste-derived soil amendment that has been approved by the department under RCW 70.95.205;
-OR-
 - √ c. The application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

Misdemeanor Presence
Exception?

32 – Litter & Illegal Dumping - Overview

Abandoning Junk Vehicle

– RCW 46.55.230 (Gross Misdemeanor)

1. It is a Gross Misdemeanor for a person to abandon a junk vehicle on property.
2. If a junk vehicle is abandoned, the vehicle's registered owner shall also pay a cleanup restitution payment equal to twice the costs incurred in the removal of the junk vehicle. The court shall distribute one-half of the restitution payment to the landowner of the property upon which the junk vehicle is located, and one-half of the restitution payment to the law enforcement agency or jurisdictional health department investigating the incident.
3. This RCW gives instructions to landowners on how to properly deal with an unlawfully abandoned junk vehicle on their property.
 - a. For the purposes of this section, the term **“landowner”** includes a legal owner of private property, a person with possession or control of private property, or a public official having jurisdiction over public property.

Misdemeanor Presence
Exception?

33 – I.T.A. & Alcohol/Drug Treatment

Involuntary Treatment Act (I.T.A.)

– RCW 71.05.150, 71.05.153

1. This set of RCWs establishes rights for the mentally ill.
2. It also establishes powers for mental health professionals and guidelines for law enforcement.
3. It gives law enforcement officers the right/duty to take custody of a mentally ill person under certain circumstances.
 - a. This protective custody is not an arrest.
 - b. Reasonable force may be used to affect the custody.
 - c. The goal of the protective custody is to deliver the person to a facility that can provide treatment.
 - d. Law enforcement does not “commit” a mentally ill person – we safely deliver the person to qualified professionals with the recommendation for emergency evaluation.
4. There is a set of criteria to determine if law enforcement can take protective custody of a mentally ill person:
 - a. The behavior(s) must be the result of a mental illness, AND
 - b. The person must present an imminent likelihood of at least one of the following:
 - Danger to self, or
 - Danger to others, or
 - Danger to property, or
 - Gravely disabled.

Treatment for Alcoholism, Intoxication, And Drug Addiction

– RCW 70.96A

1. This set of RCWs establishes rights for people dealing with alcoholism and drug addiction.
2. It also establishes guidelines for law enforcement.
3. RCW 70.96A.120 gives law enforcement officers the right/duty to take protective custody of a person “who appears to be incapacitated or gravely disabled by alcohol or other drugs and who is in a public place or who has threatened, attempted, or inflicted physical harm on himself, herself, or another.”
 - a. This protective custody is not an arrest.
 - b. Reasonable force may be used to effect the custody.
 - c. The goal of the protective custody is to deliver the person to a facility that can provide treatment.

NOT an arrest

Tab Marker:
ITA

NOT an arrest

34 - Misdemeanor Presence Rule

Arrest Without a Warrant

- RCW 10.31.100

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (11) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW [66.44.270](#), or involving criminal trespass under RCW [9A.52.070](#) or [9A.52.080](#), shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW [26.44.063](#), or chapter [7.92](#), [7.90](#), [9A.46](#), [10.99](#), [26.09](#), [26.10](#), [26.26](#), [26.50](#), or [74.34](#) RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW [26.44.063](#), imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW [26.52.010](#), has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW [10.99.020](#) and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear

34 - Misdemeanor Presence Rule

- continued from previous page -

imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW [10.99.010](#); (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse; or

(d) The person has violated RCW [46.61.502](#) or [46.61.504](#) or an equivalent local ordinance and the police officer has knowledge that the person has a prior offense as defined in RCW [46.61.5055](#) within ten years.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW [46.52.010](#), relating to duty on striking an unattended car or other property;

(b) RCW [46.52.020](#), relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW [46.61.500](#) or [46.61.530](#), relating to reckless driving or racing of vehicles;

(d) RCW [46.61.502](#) or [46.61.504](#), relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW [46.61.503](#) or [46.25.110](#), relating to persons having alcohol or THC in their system;

(f) RCW [46.20.342](#), relating to driving a motor vehicle while operator's license is suspended or revoked;

(g) RCW [46.61.5249](#), relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

34 - Misdemeanor Presence Rule

(5)(a) A law enforcement officer investigating at the scene of a motor vessel accident may arrest the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a criminal violation of chapter 79A.60 RCW.

(b) A law enforcement officer investigating at the scene of a motor vessel accident may issue a citation for an infraction to the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a violation of any boating safety law of chapter [79A.60](#) RCW.

(6) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW [79A.60.040](#) shall have the authority to arrest the person.

(7) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(8) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW [9A.88.010](#), may arrest the person.

(9) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter [10.14](#) RCW and the person has violated the terms of that order.

(10) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW [9A.50.020](#) may arrest such person.

(11) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW [9.41.010](#) and the term "dangerous weapon" has the meaning defined in RCW [9.41.250](#) and [9.41.280](#)(1) (c) through (e).

(12) Except as specifically provided in subsections (2), (3), (4), and (7) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title [46](#) RCW.

34 - Misdemeanor Presence Rule

(13) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or (9) of this section if the police officer acts in good faith and without malice.