###### Washington State Criminal Justice Training Commission

**Basic Law Enforcement Academy**



**Criminal Law**

**Student Resource Guide INSTRUCTOR VERSION**

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**Mission Statement:**

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

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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 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.

## - Substantive Criminal Law

**Five Basic Premises of Criminal Law**

All five must be present

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.

1. The suspect must have a **mental state**.
   * Wrongful thoughts.
   * Bad intent.
2. 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.
3. **Causation** must be present.
   * This shows a direct result of conduct.
   * Causation links criminal results with a perpetrator.
4. 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.

Causation = Victimization

*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”)**

Latin Phrase

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

1. 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

GUIDED DISCUSSION:

“I walk up to you (a police officer), and I say, ‘There’s a dead body over there. I killed him. Take me to jail!’”

▫ What would you do?

▫ What would you ask?

▫ What do you want to know?

▫ What evidence would you look for?

* + 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:

**Mental State or Strict Liability**

Act or Omission

1. Attached to the act/omission, you will 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 that goes along with the act/ omission is represented by a small dark box just above the act/ omission:

**Mental State or Strict Liability**

Act or Omission

1. 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:

Condition

1. 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):

**GM**

**Mental State or Strict Liability**

Act or Omission

Condition

Condition

## - Substantive Criminal Law

**Explanation of Diagrams Used in this Outline**

1. 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.

**True**

True

False

False

True

**NO**

**YES**

True

True

**NO**

1. 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.

**NO**

True

True

**False**

True

True

**NO**

True

True

**NO**

***3 – Mental States***

## General Requirements of Culpability

**– RCW 9A.08.010**

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

*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.*

* + **“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.

1. **“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 constitute a criminal violation.
  + A requirement that an offense by 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.

1. **“Recklessness”**

GUIDED DISCUSSION:

When you leave here, you will no longer be considered a ‘reasonable person.’

▫ What is the difference between ‘reasonable person’ and ‘reasonable police officer?’

▫ For those of you with LE experience, what do you do differently now?

* + 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.

1. **“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.

*Knowledge is the “default” mental state that the police and prosecutor must prove. 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.*

1. ***– Mental States***
2. **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.

1. “**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:
   1. A person who commits in the state any crime, in whole or in part.
   2. 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.
   3. A person who being out of the state, counsels, causes, procures, aids, or abets another to commit a crime in this state.
   4. 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.
   5. 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.
   6. 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.
   7. 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.
   8. 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.
   9. ***Exceptions***; some exceptions apply for crimes committed on Indian Reservations, military bases, and national forests and parks.

“I’ll just leave the beer out back. . .”

## 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.

## - Jurisdiction & General Definitions

**Definitions**

**– RCW 9A.04.110**

*-continued from previous page-*

1. **“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.
2. **“Omission”** means a failure to act.
3. **“Peace officer”** means a duly appointed city, county, or state law enforcement officer.
4. **“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.
5. **“Property”** means anything of value, whether tangible or intangible, real or personal.
6. **“Signature”** includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.
7. **“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.
8. **“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.
9. **“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.
10. 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.

Pecuniary Benefit = Profit

Example of property that’s not

tangible: Intellectual Property

“Strangulation” added in 2007 for the crime of Assault 2nd Degree.

“Suffocation” added in 2011 for the crime of Assault 2nd Degree.

## 4 - Jurisdiction & General Definitions

**Definitions**

**– RCW 9A.04.110**

*-continued from previous page-*

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

*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.).*

Hurt a Person

Hurt Property

* 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;

Restrain a

Person

Initiate Prosecution

Expose a Dirty

Secret

Another way to Say: Expose a

Secret

*-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;

Assist or Not Assist in Legal Proceeding

*-OR-*

* To testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

Misuse Official

Position

Use Strike or Boycott for Inappropriate

Gain

Any Harm

*-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.

## 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

Jail time for a gross misdemeanor changed from one year to 364 days in 2011 due to the possibility that a one-year sentence could result in the automatic deportation of a lawful immigrant to the US under federal law.

|  |  |  |  |
| --- | --- | --- | --- |
| **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 |  |

Think of Dollar Bills:

$1, $5, $10, $20, $50

## - Classes of Crimes

**Limitation of Actions**

*Also called “Statute of Limitations”*

**– RCW 9A.04.080**

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
   * 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

Recent court decisions have held that this will apply to felonies committed by *off- duty* officers as well.

## 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

1. **Three years**
   * *Most* other felonies
   * Rape 1st degree and Rape 2nd degree, if NOT reported within one year of its commission
2. **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*.
3. **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.

## - 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;

*-OR-*

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

*-OR-*

1. 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).
2. 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).

1. ***- Defenses & Defense-type Mechanisms***

SYMBOLS USED:

= Lawful Defense (Excuse)

= **Not** a legal Defense

**Insanity – Definition of Terms**

**– RCW 9A.12.010**

 1. Insanity Defense

* 1. 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.
  1. 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.

**“Affirmative Defense”** means the defendant is admitting to it, but claiming they have a legal excuse for it.

*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.

* 1. 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).

#### 6 - Defenses & Defense-type Mechanisms

**Definitions**

**– RCW 9A.16.010**

|  |  |  |
| --- | --- | --- |
| Students must memorize |  | |
| definition of Necessary – give | |  |
| approx.one week to complete. | | |

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.

The Four Guiding Questions:

* Is it Necessary?
* Is it Reasonable?
* Is it Legal?
* Is it w/in Dept. Policy?

1. **“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**

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;

*By Anyone*

*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;

*-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 one’s possession;

*-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.

*Anyone arresting a felon*

*Self Defense*

*Defense against trespass or loss of property on a person*

*Detain a trespasser*

*Remove a passenger*

*“Help” mentally ill person*

#### 6 - Defenses & Defense-type Mechanisms

**Excusable Homicide**

**– RCW 9A.16.030**

 1. When committed by accident or misfortune.

1. Must be involved in lawful act by lawful means, AND
2. Without criminal negligence or unlawful intent

*By Anyone*

#### 6 - Defenses & Defense-type Mechanisms

*By Officer or Helper*

**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.

1. 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.

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

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

1. 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.

#### 6 - Defenses & Defense-type Mechanisms

**Homicide – By Other Person – When Justifiable**

**– RCW 9A.16.050**

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;

*-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.

*By Anyone*

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

*Imminent does NOT mean “immediate.”*

*To defend against the actual attack*

*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

1. Apprehension of the threat is reasonable, AND
2. 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:

1. The criminal design originated in the mind of law enforcement officials, or any person acting under their direction, AND
2. The actor was lured or induced into committing a crime that he did not intend to commit, AND
3. 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.

1. Must be a reasonable time limit; AND
2. For the purpose of being questioned by a police officer or authorized employee; AND
3. 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:

1. For a reasonable time; AND
2. 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
3. For the purpose of pursuing an investigation or questioning by a law enforcement officer regarding the consumption or possession of alcohol or illegal drugs.

This law protects store employees from “Unlawful Imprisonment” charges when they detain or apprehend a shoplifter.

This law also gives them the legal authority to detain shoplifters.

This serves the same purpose as the previous law, except for outdoor concerts and festivals

**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***

(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 beyour 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.

#### - Defenses & Defense-type Mechanisms

*Physical discipline is also called “corporal punishment.”*

**Use of Force on Children**

**– RCW 9A.16.100**

 1. Physical discipline of children is allowed:

GUIDED DISCUSSION:

▫ Who decides what is reasonable?

* We (the police) do when we’re there investigating it.
* The standard is the Reasonable Person standard.

▫ What if you don’t believe in

corporal punishment?

* We can’t let our personal feelings affect our enforcement decisions.

▫ What kind of injuries might look bad, but have completely legitimate explanations for how they happened?

* Child burns self
* Dislocated shoulders from falling and being caught by parent, or by playing rough.
* Banging head as they grow older.
* Sports injuries.

▫ This RCW specifically lists ‘kicking’ as illegal. Is there a difference between a parent kicking a toddler in the stomach for crying too much, and a parent kicking a teenagers feet off the coffee table?

* Common sense has to be the guide.
  1. Must be reasonable and moderate; AND
  2. Must be used by parent, teacher, or guardian; AND
  3. Must be for purposes of restraining or correcting the child.

1. 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.
2. 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

Children are those under age 18.

## - Preliminary & Complicity Articles

**People Capable of Committing Crimes – Capability of Children (Liability of Children)**

**– RCW 9A.04.050**

GUIDED DISCUSSION:

▫ Who in this class has kids?

▫ What are their ages?

▫ Do they understand right from wrong?

▫ Can you see a difference between the younger ones and older ones in understanding right and wrong

▫ What key ingredient (basic premise) of criminal law would be missing when a child commits an act that would normally be a crime?

o Mental State

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.
2. Age 0-7 PRESUMPTIVE INCAPABILITY: Incapable of knowing the act is wrong.
3. 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

***7 - Preliminary & Complicity Articles***

* 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.*

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 might be, “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

This is also called being an

“accomplice” in a crime.

actors have

**intentionally**

to commit the crime.

helped or encouraged the primary actor

1. There are two ways of helping someone else commit a crime:
   1. 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.

* 1. 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.

1. 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** | | | |  |
|  | **aids** | or | **agrees to aid** | |

**requests** such other person to commit it or such other person in planning or committing it.

, or

*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.

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

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

1. Two ways to terminate one’s complicity:
   1. Give timely warning to law enforcement officials;

*-OR-*

* 1. Make a good faith effort to stop the crime.

|  |  |  |
| --- | --- | --- |
| Court order petitioners cannot | |  |
| be charged as an “accomplice” | | |
| – even if they invite the |  | |
| respondent to violate the order. | | |

## 8 - Anticipatory Offenses

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

**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.
   1. Mental planning alone does not constitute a substantial step.
   2. 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.

|  |  |  |  |
| --- | --- | --- | --- |
| Without this law, we’d have to | | | |
| wait until the suspect fully | |  | |
| completed the crime before it | | |  |
| was illegal. |  | | |

* 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 1st Degree [A] | Class A Felony |
| Murder 2nd Degree [A] | Class A Felony |
| Arson 1st Degree [A] | Class A Felony |
| Rape 1st & 2nd Degree [A] | Class A Felony |
| Indecent Liberties w/ Forcible Compulsion [A] | Class A Felony |
| Rape of a Child 1st and 2nd Degree [A] | Class A Felony |
| Child Molestation 1st 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 |

You will never charge a person with the crime “Criminal Attempt.” You will charge them with the crime they were attempting.

The step ladder system is nice to know about, but you don’t need to memorize it. The only step you need to pay close attention to is where an attempted Class C Felony becomes a Gross Misdemeanor. Remember that different criminal procedures (rules) apply for felonies and non-felonies.

***8 - Anticipatory Offenses***

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

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

**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).

EXAMPLE:

Barbara Opel offered money and clothes to kill her boss.

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

## 8 - Anticipatory Offenses

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

**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.

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

A Criminal Plan + Substantial Step

The difference between solicitation and conspiracy is:

* + Solicitation is having someone else do it (“hands-off”) in exchange for something, like money.
  + Conspiracy is taking part in the crime (“hands-on”).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Once the crime is actually | | |  | |
| committed, these anticipatory | | | | |
| offenses are no longer | |  | | |
| appropriate to use. Just use | | | |  |
| the actual crime. |  | | | |

|  |  |
| --- | --- |
| **CRIME:** | **ATTEMPT**  **PUNISHED AS:** |
| Murder 1st 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)

## 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:
   1. A cartridge in the chamber of the firearm, or
   2. Cartridge in a clip that is locked in place in the firearm, or
   3. Cartridge in the cylinder of the firearm if it is a revolver, or
   4. Cartridge in the tube or magazine that is inserted in the action, or
   5. 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 own/possess/control a firearm if he/she:

|  |  |  |
| --- | --- | --- |
| Be able to recognize that | | |
| convicted felons cannot | |  |
| possess firearms | . | |

* 1. Has been convicted or found not guilty by reason of insanity of any felony not listed in Unlawful Possession 1st Degree;

*-OR-*

* 1. 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-*

Only Certain DV crimes are on this list.

This affects us (police). If we are convicted of one of these DV crimes, we can no longer carry our firearm – and no longer do our job.

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

*-OR-*

* 1. Is under the age of 18 (Exceptions under RCW 9.41.042);

*-OR-*

* 1. 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)}***

# C C C

Convicted of Any Felony Not Listed in 1st Degree

Convicted of One of the Specifically Listed DV Offenses

Involuntarily Committed for Mental Health Treatment

Under Age 18

On Bond or Pending Trial, Appeal, or Sentencing for Any

Offense Listed in 1st Degree

**Knowingly (case law)**

Possesses, Owns, or Controls a Firearm

**C C**

## 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 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,
* Leading Organized Crime,

*-OR-*

*-OR-*

* Promoting Prostitution 1st Degree,

*-OR-*

* Rape 3rd Degree,
* Drive-by Shooting,
* Sexual Exploitation,

*-OR-*

*-OR-*

*-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-*

After Being Convicted of Any Serious Offense:

* Crime of Violence:
  + Class A Felony (Including Attempted, Solicited, or Conspiracy to Commit)
  + Manslaughter 1 & 2
  + Indecent Liberties by Forcible Compulsion
  + Kidnapping 2
  + Arson 2
  + Assault 2
  + Assault of a Child 2
  + Extortion 1
  + Burglary 2
  + Residential Burglary
  + Robbery 2
* Class B Felony VUCSA’s
* Child Molestation 2
* Incest, when victim is < 14
* Indecent Liberties
* Leading Organized Crime
* Promoting Prostitution
* Rape 3
* Drive-by Shooting
* Sexual Exploitation
* Vehicular Assault, when caused recklessly
* Vehicular Homicide, when caused recklessly
* Any Class B Felony, with a finding of “Sexual Motivation”
* Any Felony with a “Deadly Weapon” verdict

**Knowingly (case law)**

Possesses, Owns, or Controls a Firearm

# B

## 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:
   1. Is a lawful permanent resident;

-*OR*-

* 1. Has obtained a valid alien firearm license pursuant to RCW 9.41.173;

*-OR-*

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

# C

Not Lawful Permanent Resident

No Alien Firearm License

Does Not Meet Requirements for Hunting/Participation in Trade/Sport Shooting Event

**C**

Non-Citizen

**Strict Liability**

Carry/Possess Firearm

**C**

## 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**

Misdemeanor Presence Exception?

NO

* **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.

Suspect Age:

18-21 Years **GM**

18-21 Years Old

In Place Other Than Abode, Fixed Place of Business, or Property

**Strict Liability**

Possesses Pistol

## 9 - Firearms & Dangerous Weapons

**Carrying Firearms [& C.P.L. Violations]**

**Misdemeanor Presence Exception?**

**NO**

* **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.
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
4. The pistol is on the licensee's person,

*-OR-*

1. The licensee is within the vehicle at all times the pistol is there,

*-OR-*

1. The licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.
2. 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.
3. 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.

United States Code Title 18, Chapter 44, Section 926A was amended in 2003 by Congress. They called it the “Law Enforcement Officers Safety Act of 2003.” It gives qualified current and former law enforcement officers an exemption to state laws prohibiting the concealment of firearms.

***SEE HANDOUT FOR DIAGRAM***

*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:
   1. Under 21 years of age;

*-OR-*

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

*-OR-*

* 1. Currently on bond or P.R. pending trial, appeal or sentencing for a felony offense;

*-OR-*

* 1. Currently has an outstanding warrant for any crime;

*-OR-*

* 1. 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:

*(See RCW for exceptions)*

* 1. Machine gun,

*-OR-*

* 1. Short-barreled shotgun,

*-OR-*

* 1. Short-barreled rifle,

*-OR-*

* 1. 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.

# C C

A Machine Gun

A Short-Barreled Shotgun

A Short-Barreled Rifle

Any Part Intended Solely and Exclusively for Use in (or Repair of) One of These Guns

**Strict Liability**

Manufacture, Own, Buy, Sell, Loan, Furnish, Transport, Possess, OR Control

**C C**

## 9 - Firearms & Dangerous Weapons

**Aiming or Discharging Firearms Or Dangerous Weapons**

**Misdemeanor Presence Exception?**

**YES**

**– RCW 9.41.230 (Gross Misdemeanor)**

1. For conduct not amounting to a violation of RCW 9A.36 (Assault), any person who:

*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).*

* 1. Aims any firearm, loaded or not, at or towards any human being;

*-OR-*

* 1. 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-*

* 1. 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.

Potato guns too

This law is more about carelessness.

**GM**

At Any Human Being

**Strict Liability**

Aims Any Firearm, Loaded or Not

**GM GM GM GM**

In a Public Place or Any Place a Person Might be Endangered

**Willfully**

Discharges

|  |
| --- |
| Any Firearm |
|  |
| Any Air Gun |
|  |
| Any Other Weapon |
|  |
| Throws Any Deadly Missile |

**GM GM GM**

**Strict Liability**

Unlawfully Sets

|  |
| --- |
| A Trap |
|  |
| A Spring Pistol |
|  |
| Other Dangerous Weapon |

## 9 - Firearms & Dangerous Weapons

**Misdemeanor Presence Exception?**

**NO**

**[Carrying] Dangerous Weapons**

**– RCW 9.41.250 (Gross Misdemeanor)**

*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. (Senate Bill*

*5202)*

1. It is unlawful for a person to manufacture, possess, sell, or dispose of:
   1. Slung shot, or
   2. Sand club, or
   3. Metal knuckles, or
   4. Spring blade knife *(police exception)*, or

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | (any knife the blade of which is automatically released | | |  |
| by a spring mechanism or other mechanical device, or any knife having a | | |  | |
| blade which opens, or falls, or is ejected into position by the force of gravity, | | | | |
| or by an outward, downward, or centrifugal thrust or movement) | |  | | |

* 1. Butterfly knife.

.

*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.*

1. If furtively carried, with intent to conceal, it is unlawful to have any:
   1. Dirk (a knife designed primarily for stabbing) , or
   2. Dagger (a double-bladed knife designed primarily for stabbing) , or
   3. Pistol (unless the person has a concealed pistol license) , or
   4. Other dangerous weapon.
2. It is illegal for a civilian to use a silencer, unless legally possessed and registered in accordance with federal law.

**GM GM GM**

Slung Shot

Sand Club (Sap, Black Jack)

Metal Knuckles

Spring Blade Knife

Butterfly Knife

**Strict Liability**

Manufacture, Possess, Sell, or Dispose of

**GM GM**

**GM GM GM**

Pistol – Without License

Other Dangerous Weapon

Intent to Conceal

Furtively Carry

Dirk

Dagger

**GM GM**

Silencer Not Registered/Possessed in Accordance with Federal Law

**Strict Liability**

Civilian to Use

Some cities may have size limitations on knife blades – but there’s not an RCW about it.

When someone conceals a pistol on their person furtively w/o a CPL, use this RCW instead of the ‘Carrying Firearms’ RCW. This one is more severe (GM as opposed to a Misdemeanor).

You can *have* a silencer – you

just can’t *use* it.

Notice that nun-chucks are not automatically illegal (unless you’re on school grounds – different RCW).

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

## 9 - Firearms & Dangerous Weapons

*Also referred to simply as*

*“Brandishing”*

**[Brandishing] Weapons Capable of Producing Bodily Harm**

**Misdemeanor Presence Exception?**

**YES**

**– 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:
   1. Firearm, or
   2. Dagger, or
   3. Sword, or
   4. Knife, or
   5. Club, or
   6. Any other weapon apparently capable of producing bodily harm.

**GM GM GM**

In a Manner that Manifests an Intent to Intimidate

OR

In a Manner that Warrants Alarm for the Safety of Others

Intent & Strict Liability

Carry, Exhibit, Draw, or Display

Firearm

Dagger

Sword

Knife Club

Any Other Weapon

**GM GM GM**

Suspect must actually possess the weapon – not just a finger in the pocket.

This RCW requires that the suspect does something to cause alarm in another person.

Is this a Misdemeanor Presence Rule exception?

▫ Yes, it involves threats to harm.

*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*

 *Police officers while in the performance of their duties*

 *Self Defense*

 *Any person assisting a police officer*

 *Legitimate Military Activities*

## 9 - Firearms & Dangerous Weapons

**Possessing Dangerous Weapons on School Facilities**

**Misdemeanor Presence Exception?**

**YES**

* **RCW 9.41.280 (Gross Misdemeanor)**

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:
   1. Any firearm, or
   2. Any dangerous weapon defined in RCW 9.41.250, or
   3. Nun-chu-ka sticks, or
   4. Throwing stars, or
   5. 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
   6. Stun gun, or
   7. 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-*

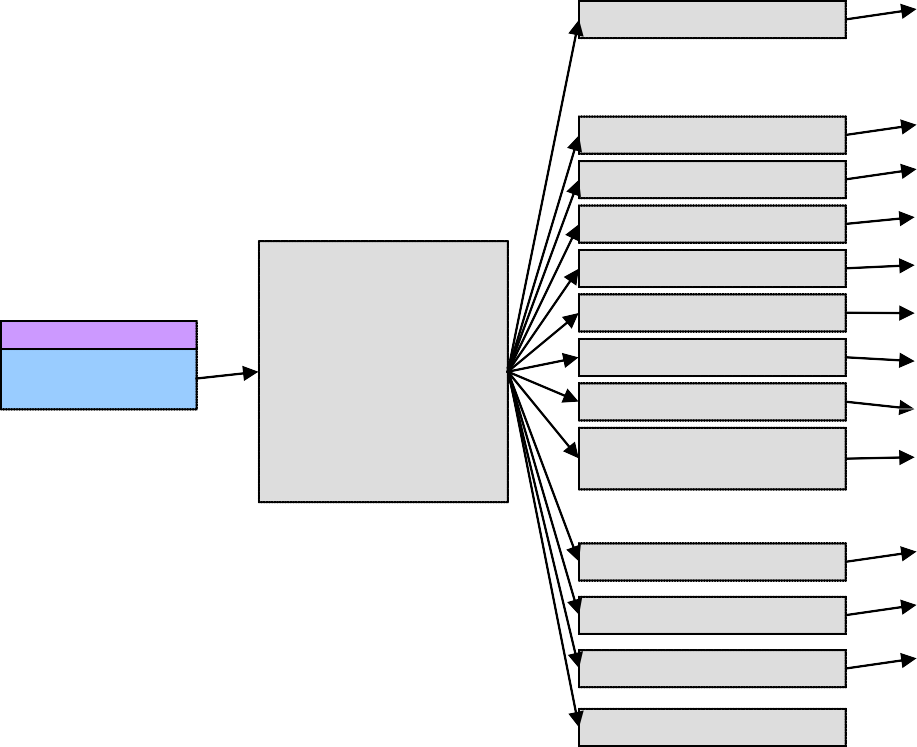
*-OR-*

 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.

Firearm **GM**



**Strict Liability**

Carry onto, or to Possess on:

Public or Private, Elementary or Secondary School Premises, School- Provided Transportation, or Areas Being Used Exclusively by a School

Slung Shot **GM** Sand Club (Sap, Black Jack) **GM** Metal Knuckles **GM**

Spring Blade Knife **GM**

Butterfly Knife **GM**

Dirk **GM**

Dagger **GM**

Other Dangerous Weapon

**GM**

Nun-chu-ka Sticks **GM**

Throwing Stars **GM**

Air Gun/Pistol/Rifle **GM**

Stun Gun **GM**

**GM**

Other Weapon Using Electrical Shock, Charge, or Impulse

## 9 - Firearms & Dangerous Weapons

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

**Misdemeanor Presence Exception?**

**NO**

* **RCW 9.41.300 (Gross Misdemeanor)**

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:
   1. Restricted access areas of a jail or law enforcement facility,

*-OR-*

* 1. Courtrooms and court offices,

*-OR-*

* 1. Restricted access areas of a public mental health facility certified by DSHS,

*-OR-*

* 1. 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-*

* 1. Restricted areas of airports.

1. 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.

# GM GM

Restricted Areas of Jail or Law Enforcement Facility

Courtrooms and Court Offices

Restricted Areas of Public Mental Health Facility

Portions of Liquor Establishments Off- Limits to Persons Under Age 21

Restricted Airport Areas

**Knowledge**

Possesses Weapon

**GM**

**GM**

**GM**

## - Firearms & Dangerous Weapons

**Deadly Weapon Special Verdict Definition**

**– RCW 9.94A.825**

*This RCW is not a crime*

*– it only provides a sentence enhancement..*

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.

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

1. 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

Just know this exists. It is not necessary to memorize it.

Here’s the only RCW reference

to blade size.

***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:
   1. Murder
   2. Homicide by Abuse
   3. Manslaughter
   4. Excusable Homicide
   5. Justifiable Homicide
2. **“Criminal Homicides”**
   1. Murder 1st and 2nd Degree
   2. Manslaughter 1st and 2nd Degree
   3. Homicide by Abuse
   4. Homicide by Controlled Substance
   5. Vehicular Homicide
   6. Homicide by Watercraft
3. **“Non-criminal Homicides”**
   1. Justifiable Homicide (9A.16.040, 9A16.050)
   2. Excusable Homicide (9A.16.030)

## 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:
   1. He or she or another participant causes the death of a non- participant, AND
   2. 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:
   1. He or she or another participant causes the death of a non- participant, AND
   2. The defendant’s conduct was the cause in fact of the result.

**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.

DISCUSSION: Imagine that a man comes home to find his wife in bed with another man. He demands they leave the house. He goes downstairs to wait. After 10 minutes, he hears the shower running, so he gets even more upset. He goes upstairs and finds them showering together. He grabs a gun, and kills them both.

▫ Are these murders premeditated? – Nope.

All 9 must be memorized.

*BARRK + Someone Dies*

*= Murder 1*

Applies to all felonies – and only to felonies

Even an accidental death

*Non-BARRK + Someone Dies*

*= Murder 2*

Does not specify how far in advance

DISCUSSION:

How do we determine premeditation?

▫ Complexity of crime

▫ Break in the action

▫ Evidence of planning

## 10 - Homicide

**Manslaughter 2nd Degree**

* **RCW 9A.32.070 (Class B Felony)**

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

# B

**Criminal Negligence**

Causes Death of a Person

## 10 - Homicide

**Manslaughter 1st Degree**

* **RCW 9A.32.060 (Class A Felony)**

1. A person *recklessly* causes the death of another person;

*-OR-*

1. Intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother.
2. **“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).

# A A

**Recklessness**

Causes Death of a Person

**Intent**

Unlawfully Kills an Unborn Child by Injuring the Mother

## 10 - Homicide

**Murder 2nd Degree**

* **RCW 9A.32.050 (Class A Felony)**

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

*-OR-*

* 1. 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.

# A

**Intent**

Causes Death of Person (or Third Person)

In Commission/Attempt of a non-BARRK Felony, or Flight Therefrom

**Mental State:**

**None Required**

Causes Death of Person (a Non- Participant)

**A**

## 10 - Homicide

**Murder 1st Degree**

* **RCW 9A.32.030 (Class A Felony)**

1. A person is guilty of Murder in the First Degree when:
   1. 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-*

* 1. 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-*

* 1. 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.

Notice that there are three ways (mental states) to accomplish a Murder 1.

**A**

**Premeditated Intent**

Causes Death of Person (or Third Person)

|  |
| --- |
| **Extreme Indifference to Human Life** |
| Causes Death of Person (or Third Person) |

**A**

By Engaging in Conduct that Creates a Grave Risk of Death

**.**

**A**

In Commission/Attempt of a BARRK Felony, or Flight Therefrom

**Mental State: None Required**

Causes Death of Person (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:
   1. 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-*

* 1. 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-*

* 1. The person was in custody in a county or county-city jail after having been found guilty of a felony crime;

*-OR-*

* 1. Murder was committed for money or anything of value;

*-OR-*

* 1. Solicited another person to commit the murder for money or any thing of value;

*-OR-*

* 1. To obtain or maintain membership or advance their position in the hierarchy of an organization, association or identifiable group;

*-OR-*

* 1. 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-*

* 1. 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-*

* 1. 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-*

* 1. 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-*

* 1. 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-*

* 1. Victim was a news reporter and the murder was committed to obstruct or hinder the investigation or reporting activities of the victim;

*-OR-*

* 1. 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-*

* 1. 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:
   1. A person causes the death of a child or person under the age of 16, a developmentally disabled person or a dependent adult; AND
   2. 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.

**A** Malnutrition and dehydration are automatic signs of a “pattern.” I takes more than withholding food or water just once or twice to cause the victim to become malnourished or dehydrated.

Suspect has Previously Engaged in a

Pattern/ Practice of Assault or Torture Against the Same Victim

**Extreme Indifference to Human Life**

Causes Death of Child < 16, Developmentally Disabled Person, or Dependant Adult

## 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.

# B

The Substance Gets Used by that Victim

**Strict Liability**

Unlawfully Delivering Controlled Substance to a Victim

And it Results in the Death of that Same Victim

## – Assault & Physical Harm

**Definitions**

1. **“Assault”**

**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.

**Act + intent to harm**, whether or not any harm actually happens.

**Act + intent +**

**the victim experiences reasonable and imminent fear.**

* 1. 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-*

* 1. 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-*

* 1. 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.
  2. \*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.

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

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.

***11 – Assault & Physical Harm***

1. **“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.

DISCUSSION:

Explain the difference between “**Reasonable Fear**” and “**Reasonable + Imminent Fear**”

(The difference between Harassment and Assault).

Refer to the Threats Handout.

1. **“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.
2. **“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**

**Misdemeanor Presence Exception?**

**YES**

**– 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**

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

## 11 – Assault & Physical Harm

**Assault 3rd Degree**

DISCUSSION:

What do these protected groups of victims have in common?

▫ They can’t just run away. They have to stay because of their job. Other people are relying on them to stick around.

* **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](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.79) RCW; "physician" means a person licensed under chapter [18.57](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.57) or [18.71](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.71) RCW; and "health care provider" means a person certified under chapter [18.71](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.71) or [18.73](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.73) RCW who performs emergency medical services or a person regulated under Title [18](http://apps.leg.wa.gov/rcw/default.aspx?cite=18) RCW and employed by, or contracting with, a hospital licensed under chapter [70.41](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.41) RCW; or

***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.

# C

Resists Lawful Apprehension of Self or Another

The Victim is an On-Duty Cop

The Victim is an On-Duty School Bus Driver

The Victim is an On-Duty Doctor, Nurse, or Healthcare Provider

**Intent**

Assaults a Person

The Victim is an On-Duty Firefighter

The Victim is an On-Duty Transit Operator

**C C C C C**

**C C**

w/ Weapon or Other Instrument Likely to Produce Bodily Harm

w/ Substantial Pain that Extends for a Period Sufficient to Cause Considerable Suffering

**Criminal Negligence**

Causes Bodily Harm

Notice that teachers are not listed.

Notice that corrections officers are not listed – they have their own RCW: Custodial Assault.

Notice how a few situations are snuck into 3rd degree:

1. Criminal Negligence + weapon
2. Criminal Negligence + substantial pain / considerable suffering

o These would be a higher-level assaults, but are dropped down to 3rd degree because the mindset is lower.

***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:
   1. 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-*

* 1. 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-*

* 1. Assaults full or part-time community corrections officer while the officer is performing official duties;

*-OR-*

* 1. Assaults any other employee of the above facilities while performing official duties.

# C

The Victim is an On-Duty Juvenile Corrections Staff Member / Volunteer in a Detention Facility

The Victim is an On-Duty Adult Corrections Staff Member / Volunteer in a Detention Facility

The Victim is an On-Duty Corrections Officer

The Victim is Any Other On-Duty Employee Working at one of the listed Facilities

**Intent**

Assaults a Person

**C C**

**C**

w/ Intent to Commit a Felony

w/ Deadly Weapon

w/ Poison or Any Other Destructive or Noxious Substance

Thereby *Recklessly* Inflicting Substantial Bodily Harm

By Strangulation

Which by Design Causes Pain or Agony Equivalent to that of Torture

***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-*

1. Assaults another with a deadly weapon;

*-OR-*

1. With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance;

*-OR-*

1. 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-*

1. *Intentionally* assaults another AND *recklessly* inflicts *substantial bodily harm*;

*-OR-*

1. Assaults another by strangulation or suffocation;

*-OR-*

1. *Knowingly* inflicts bodily harm, which by design causes pain or agony equivalent to that of torture.

**B**

**Intent**

Assaults a Person

**B**

**B B**

**B**

**Intent**

Causes Substantial Bodily Harm to an Unborn Child by Injuring the Mother

**B**

**Knowledge**

Inflicts Bodily Harm

**B**

Strangulation was specifically added in 2007; suffocation was added in 2011

*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)**

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

1. With *intent to inflict great bodily harm*, a person:
   1. Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death;

*-OR-*

* 1. 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-*

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

# A A A

w/ Deadly Weapon, Force, or Means Likely to Produce Great Bodily Harm

w/ HIV or Any Other Destructive or Noxious Substance

Causes Great Bodily Harm

**Intent *to Inflict Great Bodily Harm***

Assaults a Person

***11 – Assault & Physical Harm***





Comparison of Assault 1

and Assault 2

|  |  |  |  |
| --- | --- | --- | --- |
| **Result-Based:** | **Assault 1**  Great Bodily Harm | **vs.**  vs. | **Assault 2**  Substantial Bodily Harm |
| **Assault w/ Firearm / Deadly Weapon / Deadly Force:** | Intent to inflict Great Bodily Harm | vs. | No Articulable 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:
   1. 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-*

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

“12 or younger” is another way to say “under the age of 13.” Don’t get confused if you see a scenario question worded a bit differently but still with the same meaning.

DISCUSSION:

What if your suspect is only 17 years old?

▫ It’s a regular Assault.

**C**

w/ Weapon or Other Instrument Likely to Produce Bodily Harm

w/ Substantial Pain that Extends for a Period Sufficient to Cause Considerable Suffering

**Criminal Negligence**

Causes Bodily Harm to a Child

|  |
| --- |
| Victim Age: |
| **< 13** |
|  |

|  |
| --- |
| Suspect Age: |
| **18+** |
|  |

# C

## 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:
   1. Commits Assault in the 2nd Degree defined in RCW 9A.36.021,

*-OR-*

* 1. *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.

Child Abuse

(There’s no RCW titled “Child Abuse.” This is it!)

Pattern must be on/with the same child.

Pattern is two or more times*.*

**B**

As Defined in Assault 2nd Degree

Causes Bodily Harm that is Greater than Transient Physical Pain / Minor Temporary Marks

Has Previously Engaged in Pattern of Causing Bodily Harm that is Greater than Transient Physical Pain / Minor Temporary Marks

Has Previously Engaged in Pattern of Causing Physical Pain or Agony Equivalent to Torture.

**B**

|  |  |  |
| --- | --- | --- |
| Victim Age: |  |  |
|  |  |  |
| **< 13** |  |  |

|  |
| --- |
| Suspect  Age: |
|  |
| **18+** |

**Intent**

Assaults a Child

**B**

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

***-OR-***

* 1. *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.

Even Worse Child Abuse

**A A**

As Defined in Assault 1st Degree

*Recklessly* Inflicts Great Bodily Harm

Has Previously Engaged in Pattern of Causing Bodily Harm that is Greater than Transient Physical Pain / Minor Temporary Marks

Causes Substantial Bodily Harm

**A**

|  |
| --- |
| Victim Age: |
|  |
| **< 13** |

**Intent**

Assaults a Child

Has Previously Engaged in Pattern of Causing Physical Pain or Agony Equivalent to Torture.

|  |
| --- |
| Suspect  Age: |
|  |
| **18+** |

**A**

## 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
   1. Discharge is from a motor vehicle;

*-OR-*

* 1. 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.

1. 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.

# B B

In a Manner Which Creates Substantial Risk of Death or Serious Injury

**Recklessness**

Discharges Firearm

From a Motor Vehicle

From the Immediate Area of a Motor Vehicle that was Used to Transport the Shooter or the Firearm

If injury occurs, it’s a different

crime: murder, assault, etc.

The car doesn’t have to still be moving. The suspect(s) can stop the car get out and then shoot. But the car must be a part of the crime – more than just the mode of transportation to get to the location.

## 11 – Assault & Physical Harm

**Reckless Endangerment**

**Misdemeanor Presence Exception?**

**YES**

* **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.

# GM

Which Creates Substantial Risk of Death or Serious Injury

**Recklessness**

Engages in Conduct

This RCW is a great catch- all.

Can you be charged with Reckless Endangerment if you are endangering only yourself?

Nope.

DISCUSSION:

Difference between Reckless Driving and Reckless Endangerment

* Reckless Driving Mindset: Willful and Wanton disregard for the safety of people or property

Act: Drives any vehicle in that manner

* Reckless

Endangerment Mindset: Reckless

Act: Engages in conduct which creates a substantial risk of death or serious physical injury to another (Note the higher degree of danger)

## 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.

Suspect must cause or aid – more than just mere encouragement.

# C

**Knowledge**

Causes or Aids Another Person to Attempt Suicide

## 11 – Assault & Physical Harm

**Coercion**

**Misdemeanor Presence Exception?**

**YES**

* **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:
   1. Immediately use force against any person present at the time;

*-OR-*

* 1. Cause bodily injury in the future to the person threatened or to any other person;

*-OR-*

* 1. Cause physical damage to the property of another;

*-OR-*

* 1. Subject someone to physical confinement or restraint.

Example: Schoolyard Bully

Compare to Brandishing – no weapon is present.

**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**

*Also commonly called a*

*“Hate Crime”*

* **RCW 9A.36.080 (Class C Felony)**

1. *Maliciously and intentionally* causes:

DISCUSSION:

Why did the legislature make Malicious Harassment a more serious crime? It’s already illegal to do these bad things to other people. Why is it more of a crime when you do it to one of the protected categories?

▫ Who is the victim of a regular old malicious mischief (vandalism)?

* Just that one victim.

▫ Who is the victim when someone burns a cross in the front yard of a black family?

* All black people – hundreds, maybe thousands of victims. It affects more than just the one victim.
  1. Physical injury to the victim or another person;

*-OR-*

* 1. Physical damage to property of the victim or another person;

*-OR-*

* 1. 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.

1. Because of the actor's perception of the victim's:
   1. Race, or
   2. Color, or
   3. Religion, or
   4. Ancestry, or
   5. National origin, or
   6. Gender, or
   7. Sexual orientation, or
   8. 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.

EXAMPLE: White supremacy mailings.

Rude behavior is not illegal.

You can arrest a suspect for the Malicious Harassment AND the actual crimes committed.

## 11 – Assault & Physical Harm

**Malicious Harassment**

* **RCW 9A.36.080 (Class C Felony)**

*-continued from previous page-*

# C

Because the Suspect Believes the Victim is a Certain:

* Race
* Color
* Religion
* Ancestry
* National origin
* Gender
* Sexual orientation
* Handicap (mental, sensory, physical)

**Maliciously and Intentionally**

Causes Injury to Victim or Another

**Maliciously and Intentionally**

Causes Physical Damage to Property of Victim or Another

**Maliciously and Intentionally**

Threatens to Cause Injury or Damage Property

**C**

**C**

## 11 – Assault & Physical Harm

**Interfering with the Reporting of Domestic Violence**

**Misdemeanor Presence Exception?**

**MAYBE**

* **RCW 9A.36.150 (Gross Misdemeanor)**

1. A person commits the crime of Interfering with Reporting of Domestic Violence if the person:
   1. Commits a crime of domestic violence; AND
   2. 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.

This crime cannot be used on its own.

**Intent**

Prevents or Attempts to Prevent the Victim/Witness from Summoning Police or Medics

Suspect Has Committed DV Crime

**GM**

## 11 – Assault & Physical Harm

**Failure to Summon Assistance**

**Misdemeanor Presence Exception?**

**NO**

* **RCW 9A.36.160 (Misdemeanor)**

1. A person is guilty of the crime of Failing to Summon Assistance if:
   1. He or she was present when a crime was committed against another person; AND
   2. 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
   3. 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
   4. He or she fails to summon assistance for the person in need; AND
   5. Another person is not summoning, or has not already summoned, assistance for the person in need of such assistance.

**M**

Suspect was Present for the Crime

**Knowledge**

Fails to Summon Help for a Victim in Need

Suspect Knows the Victim Suffered Substantial Bodily Harm

Suspect Could Reasonably Summon Help

Someone Else Isn’t Already Summoning Help

## 11 – Assault & Physical Harm

**Unlawful Discharge of a Laser 2nd Degree**

**Misdemeanor Presence Exception:**

**YES - BUT ONLY FOR THE SITUATION WHERE A PERSON IS INTIMIDATED OR THREATENED (Crime**

**involving threats of harm)**

**NOT FOR THE OTHER SITUATIONS**

* **RCW 9A.49.030 (Infraction / Gross Misdemeanor)**

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:
   1. 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-*

DISCUSSION:

If you are a cop, on-duty, and you are walking along, and you get a LASER aimed at you from the bushes, can you shoot towards the bushes?

* Nope. You’ve got to know more. It might be a kid with a pen pointer. Do you have other options? Like seeking cover?
* Refer back to definition of Necessary.
  1. 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-*

* 1. At a person in order to intimidate or threaten that person.

# GM

Impairment of Safety or Operation of *Any Vehicle*

At Any Person Not Listed in 1st Degree

At an On-Duty Law Enforcement Officer

Substantial Risk of **GM**

Impairment or Interruption

**Knowingly & Maliciously**

Discharges a Laser

At a Pilot Substantial Risk of **GM**

Impairment or Interruption

# GM GM GM

Substantial Risk of Impairment or Interruption

At a Firefighter

Substantial Risk of Impairment or Interruption

At a Transit Operator

At a School Bus Driver

Substantial Risk of Impairment or Interruption

|  |  |  |
| --- | --- | --- |
| Be able to recognize |  | |
| Unlawful Discharge of Laser | |  |
| (not tested on which degree). | | |

At Any Person

# GM

To Intimidate or Threaten

## 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:
   1. 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-*

* 1. 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-*

* 1. At a pilot, causing an impairment of the safety or operation of an aircraft;

*-OR-*

* 1. At a firefighter, causing an impairment of the safety or operation of an emergency vehicle or interruption of service to the public;

*-OR-*

* 1. 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-*

* 1. 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.

**Knowingly & Maliciously**

Discharges a Laser

At an On-Duty Law Enforcement Officer

At an On-Duty Law Enforcement Officer

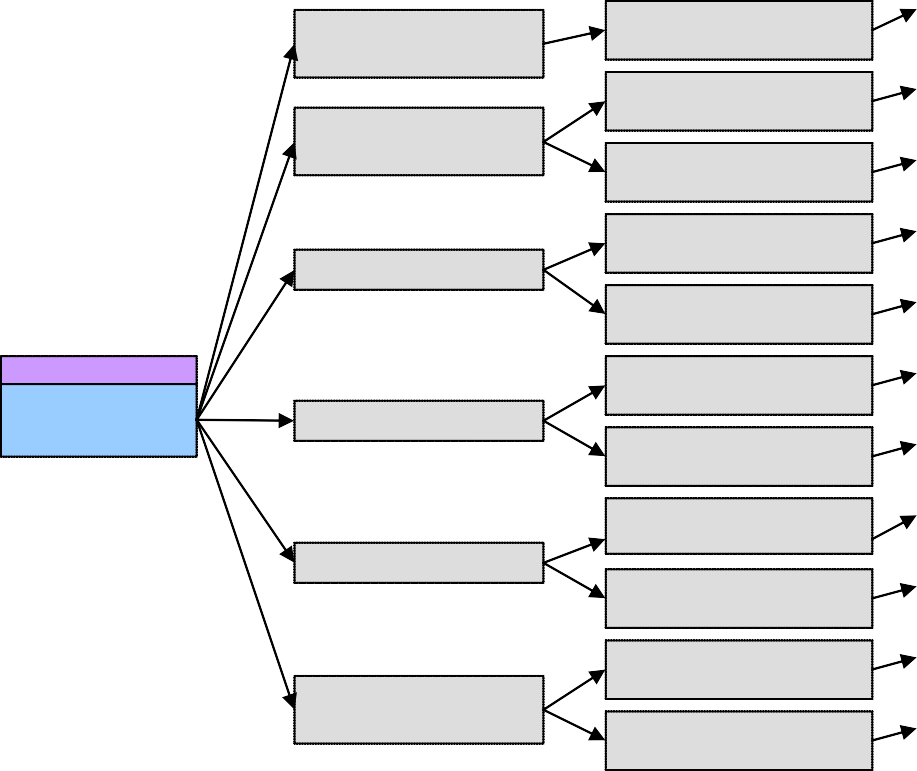
At a Pilot

At a Firefighter

At a Transit Operator

At a School Bus Driver

Makes Officer Think He’s **C**

Being Targeted

Impairment of Safety or **C**

Operation of *Police Vehicle*

Interruption of Service to **C**

the Public

Impairment of Safety or **C**

Operation of Aircraft

Interruption of Service to **C**

the Public

Impairment of Safety or **C**

Operation of *Fire Vehicle*

Interruption of Service to **C**

the Public

Impairment of Safety or **C**

Operation of *Transit Vehicle*

Interruption of Service to **C**

the Public

Impairment of Safety or **C**

Operation of *School Bus*

Interruption of Service to **C**

the Public

## – 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.

“Juvenile” is person under 18

## – Abuse & Neglect

**Definitions**

**– RCW 9A.42.010**

1. **“Basic Necessities of Life”**
   1. Food
   2. Water
   3. Shelter
   4. Clothing
   5. 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:
   1. Resident of a nursing home or adult home
   2. 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.

|  |  |  |  |
| --- | --- | --- | --- |
| This definition does not specify | | |  |
| for how long. We must show | |  | |
| that during the period the victim | | | |
| was left, one of the necessities | | |  |
| of life was needed |  | | |

## 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.

## 12 – Abuse & Neglect

**Criminal Mistreatment 4th Degree**

**Misdemeanor Presence Exception?**

**YES**

* **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:
   1. 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-*

* 1. 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.

*Criminal Negligence*

*Risks: Bodily Injury*

*Causes: Bodily Injury*

*-OR-*

*Extreme Emotional Distress Manifested by Physical Symptoms*

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

**Criminal Negligence**

Creates an Imminent and Substantial Risk of Injury by Withholding a Basic Necessity of Life

**Criminal Negligence**

Causes Bodily Injury or Extreme Emotional Distress Manifested by More than Transient Physical Symptoms by Withholding a Basic Necessity of Life

**M**

**M**

## 12 – Abuse & Neglect

**Criminal Mistreatment 3rd Degree**

**Misdemeanor Presence Exception?**

**YES**

**– RCW 9A.42.035 (Gross Misdemeanor)**

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:
   1. 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;

*Criminal Negligence*

*Risks:*

*Substantial Bodily Harm*

*-OR-*

* 1. 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*

# GM

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

**Criminal Negligence**

Creates an Imminent and Substantial Risk of Substantial Bodily Harm by Withholding a Basic Necessity of Life

**Criminal Negligence**

Causes Substantial Bodily Harm by Withholding a Basic Necessity of Life

**GM**

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

*-OR-*

* 1. *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

**Recklessness**

Creates an Imminent and Substantial Risk of Death or Great Bodily Harm by Withholding a Basic Necessity of Life

**Recklessness**

Causes Substantial Bodily Harm by Withholding a Basic Necessity of Life

**C**

**C**

## 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
   1. *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*

# B

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

**Recklessness**

Causes Great Bodily Harm by Withholding a Basic Necessity of Life

DISCUSSION:

What if the harm was caused intentionally?

* Go Back to Assault
* Mistreatment & Abandonment can only be used with the mental states of Recklessness and Negligence.

## 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.

# B

**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

## 12 – Abuse & Neglect

**Leaving a Child in the Care of a Sex Offender**

**Misdemeanor Presence Exception?**

**NO**

**BUT IF THE SEX OFFENDER DOES SOMETHING CRIMINAL**

**– THAT CRIME MAY BE.**

**– RCW 9A.42.110 (Misdemeanor)**

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.

# M

Person Leaving the Child is one of the Following:

* Parent
* Person Entrusted with Physical Custody
* Person Employed to Provide Basic Necessities of Life

**Knowledge**

Leaves a Child in the Care or Custody of a Sex Offender

*Knowing* that the Sex Offender is Registered or Required to Register as a Sex Offender Because of a Sex Offense Against a Child

Sex Offender is Not a Parent, Guardian, or Lawful Custodian of the Child

## 12 – Abuse & Neglect

**Abandonment of a Dependent Person 3rd Degree**

**Misdemeanor Presence Exception?**

**YES**

* + **RCW 9A.42.080 (Gross Misdemeanor)**

1. A person is guilty of Abandonment of a Dependent Person 3rd Degree if:
   1. 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
   2. The person *recklessly* abandons a child or dependent person, AND
   3. As a result of being abandoned:
      * Creates an imminent and substantial risk that the child or dependent person will suffer substantial bodily harm;

*Recklessly*

*Risks:*

*Substantial Bodily Harm*

*-OR-*

* + - The child or dependent person suffers *bodily harm*.

*Causes: Bodily Harm*

# GM

Person Leaving the Child/Dependent is one of the Following:

* Parent
* Person Entrusted with Physical Custody
* Person Who Has Assumed Responsibility to Provide Basic Necessities of Life – Dependent Person
* Person Employed to Provide Basic Necessities of Life

**Recklessness**

Abandons the Child or Dependent Person

Creates Imminent and Substantial Risk that the Child/Dependent Will Suffer Substantial Bodily Harm

Child/Dependent Suffers Bodily Harm

# GM

*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:

* 1. 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

1. The person *recklessly* abandons a child or dependent, AND
2. 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*

# C C

Person Leaving the Child/Dependent is one of the Following:

* Parent
* Person Entrusted with Physical Custody
* Person Who Has Assumed Responsibility to Provide Basic Necessities of Life – Dependent Person
* Person Employed to Provide Basic Necessities of Life

**Recklessness**

Abandons the Child or Dependent Person

Creates Imminent and Substantial Risk that the Child/Dependent Will Die or Suffer Great Bodily Harm

Child/Dependent Suffers 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

1. The person *recklessly* abandons the child or other dependent person, AND
2. As a result of being abandoned the child or other dependent person suffers *great bodily harm.*

*Recklessly*

*Causes:*

*Great Bodily Harm*

# B

Person Leaving the Child/Dependent is one of the Following:

* Parent
* Person Entrusted with Physical Custody
* Person Who Has Assumed Responsibility to Provide Basic Necessities of Life – Dependent Person
* Person Employed to Provide Basic Necessities of Life

**Recklessness**

Abandons the Child or Dependent Person

Child/Dependent Suffers 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.
   1. 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.
   2. 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.

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

* 1. 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.

1. **“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.
2. **“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.
3. **“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.

#### 13 - Burglary, Trespass & Vehicle Prowling

**Inference of Intent**

**– RCW 9A.52.040**

*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.)*

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.

**[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.

Things to remember for the Burg and Trespass laws:

* Case law tells us that a fenced-in area will be considered to be part of the building.
  + If you don’t have a building or dwelling, you can’t use Burg.
* Car ports and covered porches are considered part of the building –thus, Burg.

#### 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.

**B**

In a Building

**Intent to Commit Crime Therein**

Enters or Remains Unlawfully

#### 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.

**B**

In a Dwelling

**Intent to Commit Crime Therein**

Enters or Remains Unlawfully

#### 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*:
   1. Enters or remains unlawfully in a building, AND
   2. 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 Is armed with a deadly weapon,

*Simply possessing a firearm is considered “being armed.”*

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

just possessed. Assault of any level

*-OR-*

* Assaults any person.

**A**

In a Building

Intent to Commit Crime Therein

Enters or Remains Unlawfully

Suspect (or Partner) is

Armed with Deadly Weapon

Suspect (or Partner)

Assaults Someone

**A**

#### 13 - Burglary, Trespass & Vehicle Prowling

**Misdemeanor Presence Exception?**

**NO – BUT THIS WILL ALMOST ALWAYS OCCUR IN YOUR PRESENCE.**

**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.

|  |  |  |  |
| --- | --- | --- | --- |
| It’s all about the context. | | |  |
| These items are not | |  | |
| necessarily illegal on their | | | |
| own. |  | | |

“Nippers” are cutters, scissors, or something similar.

**GM**

Under Circumstances Showing an Intent to Use Them for a Burglary

**Intent**

Make or Possess any Tool

#### 13 - Burglary, Trespass & Vehicle Prowling

**Criminal Trespass 2nd Degree**

**Misdemeanor Presence Exception?**

**YES**

* **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.

*Outside*

On the property

**M**

In or Upon Premises

**Knowledge**

Enters or Remains Unlawfully

We need to identify a victim for a trespassing case.

#### 13 - Burglary, Trespass & Vehicle Prowling

**Criminal Trespass 1st Degree**

**Misdemeanor Presence Exception?**

**YES**

* **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*.

*Inside*

**GM**

In a Building

**Knowledge**

Enters or Remains Unlawfully

#### 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.

Includes repo-men

#### 13 - Burglary, Trespass & Vehicle Prowling

**Vehicle Prowling 2nd Degree**

**Misdemeanor Presence Exception?**

**YES**

* **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.

*Think of Vehicle Prowl as “Vehicle Burg.” It’s exactly like Burglary – except it’s for vehicles instead of buildings or dwellings.*

*Amended in 2013 to increase the classification to a* ***Class C Felony for repeate offenders.***

**GM**

In a Vehicle

**Intent to Commit Crime Therein**

Enters or Remains Unlawfully

Regular Vehicles

For Vehicle Prowl, actually taking something is not required – it’s the act of entering with intent to. . . (just like Burg).

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

If the *intent to commit a crime therein* cannot be proved, then it drops down to trespass.

Vehicle Prowling 2 also includes motor cycles.

#### 13 - Burglary, Trespass & Vehicle Prowling

**Vehicle Prowling 1st Degree**

*Think of Vehicle Prowl as*

*“Vehicle Burg.”*

* **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.

Vehicles You Live In

A camper shell on a truck is NOT a motor home.

What was the intent of the manufacturer? Was it designed to be lived in?

**C**

In a Motor Home or Vessel Equipped For Living

**Intent to Commit Crime Therein**

Enters or Remains Unlawfully

#### 13 - Burglary, Trespass & Vehicle Prowling

**Computer Trespass 2nd Degree**

**Misdemeanor Presence Exception?**

**NO**

* **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.

**GM**

**Intent**

Gains Access to Computer System or Electronic Database w/o Permission

#### 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

*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.*

* 1. The access is made with the *intent to commit another crime*;

*-OR-*

* 1. The violation involves a computer or database maintained by a government agency.

**C**

With Intent to Commit Another Crime

In a Government Computer or Database

**Intent**

Gains Access to Computer System or Electronic Database w/o Permission

**C**

#### 13 - Burglary, Trespass & Vehicle Prowling

**Interference with a Health Care Facility**

**Misdemeanor Presence Exception:**

**YES - BUT ONLY WITHIN THE LAST 24 HOURS**

* **RCW 9A.50.020 (Gross Misdemeanor)**

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:
   1. 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-*

* 1. Making noise that unreasonably disturbs the peace within the facility;

*-OR-*

* 1. Trespassing on the facility or the common areas of the real property upon which the facility is located;

*-OR-*

* 1. Telephoning the facility repeatedly, or knowingly permitting any telephone under his or her control to be used for such purpose;

*-OR-*

* 1. 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.

**GM**

Physically Obstructing or Impeding the Free Passage

Making Noise that Unreasonably Disturbs the Peace Within the Facility

Trespassing on the Facility

Repeatedly Telephoning the Facility

Threatening to Injure Someone

**Willfully or Recklessly**

Interfere with Access To or From, or Disrupt Normal Functioning by:

**GM**

**GM**

**GM**

**GM**

***14 - Sex Offenses***

**Definitions**

**– RCW 9A.44.010**

1. **“Sexual Intercourse”** holds its ordinary meaning and includes:
   1. 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-*

* 1. Contact of sex organs of one person and the mouth of another, whether such persons are of the same or opposite sex.

1. **“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.
2. **“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.

|  |  |
| --- | --- |
| The marriage has stopped |  |
| once they have separated |  |
| and the divorce is pending. | |

* 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.

1. **“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:
   1. Illness,

When used throughout this section, “minor” is someone under age 18.

Over or under clothes

* 1. Defect,

*-OR-*

*-OR-*

* 1. Influence of a substance,

*-OR-*

* 1. Any other cause.

## 14 - Sex Offenses

**Definitions**

**– RCW 9A.44.010**

*-continued from previous page-*

1. **“Physically Helpless”** means a person who is unconscious or for some reason is physically unable to communicate unwillingness to an act.
2. **“Forcible Compulsion”**
   1. Physical force that overcomes resistance,

*-OR-*

* 1. 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.

A person can revoke consent.

1. **“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.
2. **“Significant Relationship”** means a situation where the perpetrator is:
   1. A person who undertakes the responsibility, professionally or voluntarily, to provide (principally) minors with:
      * Education, or
      * Health, or
      * Welfare, or
      * Organized 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.*

*-OR-*

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

*-OR-*

* 1. 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.

***14 - Sex Offenses***

**Definitions**

**– RCW 9A.44.010**

*-continued from previous page-*

1. **“Abuse of Supervisory Position”** means:
   1. To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor,

-*OR-*

* 1. To exploit a significant relationship in order to obtain consent of a minor.

1. **“Frail Elder or Vulnerable Adult”**
   1. A person 60 years or older who has the functional, mental, or physical inability to care for himself;

DISCUSSION:

What concerns you about investigating sex offenses?

Who normally interviews children under age 12?

PRETEND EXERCISE (don’t

really have class do this!)

* Partner up and interview each other about your most recent sexual experience.
* It’s uncomfortable, right?

*-OR-*

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

*-OR-*

* 1. A person over 18 who has developmental disability;

*-OR-*

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

*-OR-*

* 1. 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 a*t the time of the offense* the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

## 14 - Sex Offenses

**Defenses to Prosecution**

**– RCW 9A.44.030**

*-continued from previous page-*

 *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.

What’s the difference

between these last two?

## 14 - Sex Offenses

**Comparison of the Sex Offenses**

Sex offense investigations can be broken down by two basic questions:

#1 – What happened (intercourse or contact)?

**What Happened?**

#2 – How old are the people involved?

INTERCOURSE SEXUAL CONTACT

**A Rape 1**

**A Rape 2 Indecent Lib. A**

**Indecent Lib. B**

**C Rape 3**

**A Rape of a Child 1 Child Mol. 1 A**

**A Rape of a Child 2**

**Child Mol. 2 B**

**C Rape of a Child 3 Child Mol. 3 C**

**C Sex Misconduct**

**With a Minor 1 Sex Misconduct GM**

**With a Minor 2**

**B Incest 1**

**Incest 2 C**

**C Sexually Violating Human Remains**

## 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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=9.79.190).]

Example – Landlord threatens to evict if tenant doesn’t have sex with him.

# C

Not Married

**Strict Liability**

Intercourse

Without Consent

Threat of Substantial Harm to Property

**C**

***14 - Sex Offenses***

**Rape 2nd Degree**

* **RCW 9A.44.050 (Class A Felony)**

1. Sexual intercourse with another person:

*Forcible Compulsion*

* 1. By forcible compulsion;

*-OR-*

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

*Taking-Advantage Situation #1*

*-OR-*

* 1. Where:
     + Victim is a person with a developmental disability, AND

*Taking-Advantage Situation #2*

* + - 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-*

* 1. Where:

*Taking-Advantage Situation #3*

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

*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-*

* 1. Where:
     + Victim is a resident of a facility for persons with a mental disorder or chemical dependency, AND

*Taking-Advantage Situation #4*

* + - Suspect has supervisory authority over the victim, AND
    - Suspect is not married to the victim.

*-OR-*

## 14 - Sex Offenses

**Rape 2nd Degree**

**– RCW 9A.44.050 (Class A Felony)**

*-continued from previous page-*

* 1. Where:

*Taking-Advantage Situation #5*

* + - 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.

# A

**By Forcible**

Compulsion

Victim is Incapable of Consent

Victim has Developmental Disability

Victim is a Patient

Victim is Resident of Facility

Victim is Frail Elder or Vulnerable Adult

**Strict Liability**

Intercourse

# A A

Supervisory Authority Over Victim

Providing Transportation to Victim Within Course of Employment

Not Married

# A

Not Married

# A

Suspect is Healthcare Provider

Occurs During Treatment Session

# A A

Significant Relationship

Providing Transportation to Victim Within Course of Employment

Supervisory Authority Over Victim

Not Married

Not Married

# A

Not Married

***14 - Sex Offenses***

**Rape 1st Degree**

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

**– RCW 9A.44.040 (Class A Felony)**

1. Sexual intercourse with another person by forcible compulsion, where the perpetrator or an accessory:
   1. Uses or threatens to use a deadly weapon or what appears to be a deadly weapon;
   2. Kidnaps the victim;

*-OR-*

*-OR-*

* 1. The suspect inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious;

*-OR-*

* 1. The suspect feloniously enters the building or vehicle where the victim is situated.

# A A A A

By Forcible Compulsion

**Strict Liability**

Intercourse

Uses/Threatens Deadly Weapon

Kidnaps the Victim

Inflicts Serious Physical Injury

Suspect Feloniously Enters Building/Vehicle

***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:

*Forcible Compulsion*

* 1. By forcible compulsion;

*-OR-*

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

*Taking-Advantage Situation #1*

*-OR-*

* 1. Where:

*Taking-Advantage Situation #2*

* + - 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-*

*Taking-Advantage Situation #3*

* 1. Where:
     + Victim is a patient or client, AND
     + Suspect is a health care provider, AND

*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.*

* + - Sexual contact occurs during a treatment session, interview, consultation or exam.

*-OR-*

* 1. Where:
     + Victim is a resident of a facility for persons with a mental disorder or chemical dependency, AND

*Taking-Advantage Situation #4*

* + - Suspect has supervisory authority over the victim, AND
    - Suspect is not married to the victim.

*-OR-*

## 14 - Sex Offenses

**Indecent Liberties**

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

*-continued from previous page-*

* 1. Where:

*Taking-Advantage Situation #5*

* + - 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.

# A B B

By Forcible Compulsion

Victim is Incapable of Consent

Victim has Developmental Disability

Not Married to Victim

Victim is a Patient

Victim is Resident of Facility

Victim is Frail Elder or Vulnerable Adult

**Knowledge**

Causes Victim to Have Sexual

Contact with Them or Another Person

Supervisory Authority Over Victim

# B

Providing Transportation to Victim Within Course of Employment

# B

Occurs During Treatment Session

Suspect is Healthcare Provider

# B B

Supervisory Authority Over Victim

Significant Relationship

# B

Providing Transportation to Victim Within Course of Employment

***14 - Sex Offenses***

**Rape of a Child 3rd Degree** [“Underage Sex”]

*Rape of a Child 1, 2, & 3 are sometimes called “Statutory Rape”*

* **RCW 9A.44.079 (Class C Felony)**

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

# C

**Strict Liability**

Intercourse

Not Married

|  |
| --- |
| Victim Age: |
| **14 to < 16** |
|  |

|  |
| --- |
| Suspect Age: |
| **48+ Months** |
| **Older** |

*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.*

***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)

***14 - Sex Offenses***

**Rape of a Child 2nd Degree** [“Underage Sex”]

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

* **RCW 9A.44.076 (Class A Felony)**

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

# A

**Strict Liability**

Intercourse

Not Married

|  |
| --- |
| Victim Age: |
| **12 to < 14** |
|  |

|  |
| --- |
| Suspect Age: |
| **36+ Months** |
| **Older** |

*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:
   1. Victim is less than twelve years old, AND
   2. Suspect is at least 24 months older than the victim, AND
   3. Suspect is not married to the victim.

# A

**Strict Liability**

Intercourse

Not Married

|  |
| --- |
| Victim Age: |
| **< 12** |
|  |

|  |
| --- |
| Suspect Age: |
| **24+ Months** |
| **Older** |

*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:
   1. Victim is at least fourteen years old but less than sixteen years old, AND
   2. Suspect is at least 48 months older than the victim, AND
   3. Suspect is not married to the victim.

# C

**Sexual Gratification**

Sexual Contact, or Causes Other Person <18 to Do It

Not Married

|  |
| --- |
| Victim Age: |
| **14 to < 16** |
|  |

|  |
| --- |
| Suspect Age: |
| **48+ Months** |
| **Older** |

*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:
   1. Victim is at least twelve years old but less than fourteen, AND
   2. Suspect is at least 36 months older than the victim, AND
   3. Suspect is not married to the victim.

# B

**Sexual Gratification**

Sexual Contact, or Causes Other Person <18 to Do It

Not Married

|  |
| --- |
| Victim Age: |
| **12 to < 14** |
|  |

|  |
| --- |
| Suspect Age: |
| **36+ Months** |
| **Older** |

*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:
   1. Victim is less than twelve years of age, AND
   2. Suspect is at least 36 months older than the victim, AND
   3. Suspect is not married to the victim

# A

**Sexual Gratification**

Sexual Contact, or Causes Other Person <18 to Do It

Not Married

|  |
| --- |
| Victim Age: |
| **< 12** |
|  |

|  |
| --- |
| Suspect Age: |
| **36+ Months** |
| **Older** |

*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

|  |  |  |  |
| --- | --- | --- | --- |
| DEGREE | VICTIM AGE | SUSPECT AGE | SUSPECT AGE |
|  |  | RAPE | MOLESTATION |

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **< 12** | **24+** Months | **36+** Months |
|  |  | Older | Older |

|  |  |  |  |
| --- | --- | --- | --- |
| **2** | **12 to < 14** | **36+** Months | **36+** Months |
|  |  | Older | Older |

|  |  |  |  |
| --- | --- | --- | --- |
| **3** | **14 to < 16** | **48+** Months | **48+** Months |
|  |  | Older | Older |



## 14 - Sex Offenses

**Sexual Misconduct with a Minor 2nd Degree**

**Misdemeanor Presence Exception?**

**NO**

– **RCW 9A.44.096 (Gross Misdemeanor)**

1. The person has, or knowingly causes another person under the age of eighteen to have, *sexual contact* with another where:
   1. Victim is at least sixteen but less than eighteen years old, AND
   2. Suspect is at least sixty months older than the victim, AND
   3. Suspect is not married to the victim, AND
   4. Suspect is in a significant relationship with the victim, AND
   5. 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-*

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

-*OR-*

1. The person has, or knowingly causes another person under the age of 18 to have, *sexual contact* with another person where:
   1. Victim is at least 16 years old, AND
   2. Suspect is a foster parent.
2. **“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.

# GM

Suspect is Foster Parent

Not Married

Victim Age:

**16 +**

**Sexual Gratification**

Sexual Contact, or Causes Other Person <18 to Do It

# GM

|  |  |
| --- | --- |
| Victim Age: |  |
|  |  |
| **16 to < 18** |  |

**V**

Significant Relationship

Suspect is School Employee

Victim Age:

**16 to 21**

Abuses Supervisory Authority Over Victim

|  |
| --- |
| Suspect Age: |
| **60+ Months** |
| **Older** |

# GM

Victim is a Student

***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:
   1. Victim is at least sixteen but less than eighteen years old, AND
   2. Suspect is at least sixty months older than the victim, AND
   3. Suspect is not married to the victim, AND
   4. Suspect is in a significant relationship with the victim, AND
   5. 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****-***

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

-*OR-*

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

# C

Suspect is Foster Parent

Not Married

Victim Age:

**16 +**

**Knowledge**

Intercourse, or Causes Other Person <18 to Do It



# C

Significant Relationship

Suspect is School Employee

Victim Age:

**16 to 21**

Abuses Supervisory Authority Over Victim

|  |
| --- |
| Suspect Age: |
| **60+ Months** |
| **Older** |

Victim is a Student

***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:
   1. 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-*

* 1. 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.

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

# C

Suspect is Covered Offender

**Strict Liability**

Remains on or Reenters Covered Entity

Has Been Served with Written Notice of Exclusion

# C

Suspect is Covered Offender

**Strict Liability**

Violates Conditions of Entry and use of Covered Entity

Has Been Served With Notice Imposing Conditions of Entry and Use

***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.

# C C

With Dead Human Body

**Strict Liability**

Intercourse

With Dead Human Body

**Sexual Gratification**

Sexual Contact

***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:
   1. Views, photographs, or films another person without that

person’s knowledge and consent; AND

* 1. While the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy;

*-OR-*

* 1. Views, photographs or films the intimate areas of another

person without that person’s knowledge or consent; AND

* 1. Under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

1. **“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.
2. **“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.
3. **“Place where he or she would have a reasonable expectation of privacy”**
   1. 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;

*Protects Private Places*

*This RCW calls for specific intent.*

*Protects “Private Parts”*

*(Intimate Areas)*

*-OR-*

* 1. A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.

1. **“Surveillance”** means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

## 14 - Sex Offenses

**Voyeurism**

**– RCW 9A.44.115 (Class C Felony)**

*-continued from previous page-*

1. **“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.
2. ***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.

# C

Another Person w/o Knowledge and Consent

Intimate Areas of Another Person w/o Knowledge and Consent

Intent - For the Purpose of Arousing or Gratifying the Sexual Desire of any person

Views, Photographs, or Films:

In a Place Where the Victim Would Have a Reasonable Expectation of Privacy

# C

Under Circumstances Where the Victim has a Reasonable Expectation of Privacy (Whether Public or Private)

***14 - Sex Offenses***

**Incest 2nd Degree**

* **RCW 9A.64.020 (Class C Felony)**

1. Knowingly engages in *sexual contact* with:
   1. 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.

**Sexual Gratification & Knowledge**

With Related Person (Legitimately or not) who is a Whole-Blood or Half- Blood Ancestor, Descendant, Brother, or Sister

With Stepchild or Adopted Child < 18

Sexual Contact

# C

**C**

***14 - Sex Offenses***

**Incest 1st Degree**

* **RCW 9A.64.020 (Class B Felony)**

1. Knowingly engages in *sexual intercourse* with:
   1. 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.

# B

With Related Person (Legitimately or not) who is a Whole-Blood or Half- Blood Ancestor, Descendant, Brother, or Sister

With Stepchild or Adopted Child < 18

**Knowledge**

Intercourse

**B**

1. ***- 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.

*This RCW is not a crime*

*– it only pertains to sentencing.*

* 1. 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.
  2. **“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.

## 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:
   1. 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-*

* 1. Penetration of the vagina or rectum by any object;

*-OR-*

* 1. Masturbation;
  2. Sadomasochistic abuse;

*-OR-*

*-OR-*

* 1. Defecation or urination for the purpose of sexual stimulation of the viewer;

*-OR-*

* 1. 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-*

* 1. Touching of a person’s clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

1. **“Minor”** means any person under the age of 18.
2. **“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.

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

1. **“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.

## - 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:
   1. 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-*

* 1. 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-*

* 1. 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.

**B**

Knowing that Such Conduct will be Photographed or Part of a Live Performance

**Strict Liability**

Compels Minor by Threat or Force to Engage in Sexually Explicit Conduct

**Strict Liability**

Aids, Invites, Employs, Authorizes or Causes a Minor to Engage in Sexually Explicit Conduct

**Strict Liability**

Parent/Guardian of a Minor Permits Minor to Engage in Sexually Explicit Conduct

**B**

**B**

## 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:
   1. 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-*

* 1. 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).

Case law has held that animated / drawn child porn is NOT illegal. There must be a real human victim.

**C**

Unclothed Minors

Sexual Touching of Minors

**Knowledge**

Makes or Distributes Child Porn that Depicts:

*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.*

**C**

###### C

Unclothed Minors

Sexual Touching of Minors

**Intent to Distribute**

Possesses Child Porn w/ Intent to Distribute, that Depicts:

*Each incident of dealing constitutes a separate offense.*

**C**

## 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:

* 1. 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
     1. through (e);

*-OR-*

* 1. 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).

Case law has held that animated / drawn child porn is NOT illegal. There must be a real human victim.

**B B**

Sexual Intercourse

Penetration of Vagina or Rectum

Masturbation

Sadomasochistic Abuse

Defecation or Urination

**Knowledge**

Makes or Distributes Child Porn that Depicts:

*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.*

**B**

**B**

**B**

###### B

Sexual Intercourse

Penetration of Vagina or Rectum

Masturbation

Sadomasochistic Abuse

Defecation or Urination

**Intent to Distribute**

Possesses Child Porn w/ Intent to Distribute, that Depicts:

*Each incident of dealing constitutes a separate offense.*

**B B**

**B**

**B**

## 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).

**C C**

For Sale or Distribution, that Depicts:

**Knowledge**

Bringing or Sending Child Porn into the State

Unclothed Minors

Sexual Touching of Minors

*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).

**B B**

Sexual Intercourse

Penetration of Vagina or Rectum

Masturbation

Sadomasochistic Abuse

Defecation or Urination

*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.*

###### B B

For Sale or Distribution, that Depicts:

**Knowledge**

Bringing or Sending Child Porn into the State

*Each incident constitutes a separate offense.*

**B**

## 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).

**C**

Unclothed Minors

Sexual Touching of Minors

**Knowledge**

Possession of Child Porn that Depicts:

*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.*

**C**

*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
   1. through (e).

**B**

Sexual Intercourse

Penetration of Vagina or Rectum

Masturbation

Sadomasochistic Abuse

Defecation or Urination

**Knowledge**

Possession of Child Porn that Depicts:

*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.*

**B**

###### B B

*Each depiction or image constitutes a separate offense.*

**B**

## 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).

*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.*

1. The prosecution must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

**C**

Unclothed Minors

Sexual Touching of Minors

**Intent**

Views Over the Internet Child Porn that Depicts:

*Each separate internet session constitutes a separate offense.*

**C**

## 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).

*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.*

1. The prosecution must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

**B**

Sexual Intercourse

Penetration of Vagina or Rectum

Masturbation

Sadomasochistic Abuse

Defecation or Urination

**Intent**

Views Over the Internet Child Porn that Depicts:

*Each separate internet session constitutes a separate offense.*

**B B**

**B B**

## 15 - Sexual Exploitation of Children

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

**Misdemeanor Presence Exception?**

**NO**

* **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.

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

**GM**

While Processing Visual/Printed Material, Either Privately or Commercially

**Knowledge**

Failing to Report Child Porn

*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**

**Misdemeanor Presence Exception?**

**NO**

* **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.
   1. 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.

*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)*
  1. If the topic of the communication (the behavior being discussed) is illegal, then the communication about it to a minor will also be illegal.

1. 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.

**GM** Case law (Washington State V. Hosier – 05/11/2006) has established that for this RCW, “communication” exists even without actual receipt or awareness of a message.

**Strict Liability**

Communicating w/ Minor for Immoral Purposes

## 15 - Sexual Exploitation of Children

**Commercial Sexual Abuse of a Minor**

* **RCW 9.68A.100 (Class B Felony)**

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

*-OR-*

* 1. 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-*

* 1. Solicits, offers, or requests to engage in sexual conduct with a minor for a fee.

1. **"Sexual conduct"** means sexual intercourse or sexual contact.

**Sexual intercourse is strict liability. Sexual contact requires sexual gratification**

**B**

Pays a Fee to a Person for Having Engaged in Sexual Conduct with a Minor

**Sexual intercourse is strict liability. Sexual contact requires sexual gratification**

**Sexual intercourse is strict liability. Sexual contact requires sexual gratification**

**Sexual intercourse is strict liability. Sexual contact requires sexual gratification**

**Sexual intercourse is strict liability. Sexual contact requires sexual gratification**

Pays/Agrees to Pay a Fee to a Person W/Understanding to Engage in Sexual Conduct with a Minor

**B**

**Sexual intercourse is strict liability. Sexual contact requires sexual gratification**

**B**

Solicits, Offers, Requests to Engage in Sexual Conduct with a Minor for a Fee

**Sexual intercourse is strict liability. Sexual contact requires sexual gratification**

## 15 - Sexual Exploitation of Children

**Permitting Commercial Sexual Abuse of a Minor**

**Misdemeanor Presence Exception?**

**NO**

**– 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.

**GM**

Knowing That It's Being Used for Commercial Sexual Abuse of a Minor

**Knowledge (NS)**

Fails to Stop the Activity and Notify Law Enforcement

Having Control or Possession of Premises

## 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.

**C**

**Knowledge**

Sells/Offers to Sell Travel Services for Engaging in or Promoting Commercial Sexual Abuse of a Minor

## 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:
   1. Causes or aids a person to commit or engage in commercial sexual abuse of a minor;

*-OR-*

* 1. Procures or solicits customers for commercial sexual abuse of a minor;

*-OR-*

* 1. Provides persons or premises for commercial sexual abuse of a minor;

*-OR-*

* 1. Assists in the operation of a house or enterprise for commercial sexual abuse of a minor;

*-OR-*

* 1. Engages in any other conduct designed to institute, cause, assist, or facilitate commercial sexual abuse of a minor.

1. **"Advances a sexually explicit act of a minor"** means a person:
   1. Causes or aids a sexually explicit act of a minor;

*-OR-*

* 1. Procures or solicits customers for a sexually explicit act of a minor;

*-OR-*

* 1. Provides persons or premises for a sexually explicit act of a minor;

*-OR-*

## - Sexual Exploitation of Children

**Promoting Commercial Sexual Abuse of a Minor**

* **RCW 9.68A.101 (Class A Felony)**

*-continued from previous page-*

* 1. Engages in any other conduct designed to institute, cause, assist, or facilitate a sexually explicit act of a minor.

1. **"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.
2. **"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.
3. **"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.
4. **"Sexual conduct"** means sexual intercourse or sexual contact.

**A**

**Knowledge**

Advances Commercial Sexual Abuse or Sexually Explicit Act of a Minor

**A**

**Knowledge**

Profits From a Minor Engaged in Sexual Conduct or a Sexually Explicit Act

## - Indecent Exposure & Prostitution

**Indecent Exposure**

**Misdemeanor Presence Exception?**

**YES**

* **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.

▫ *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.*

1. Breastfeeding in public is not indecent exposure.

**M**

Knowing that it is Likely to Cause Affront or Alarm

**Intent**

Makes an Obscene Exposure of Body

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

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

|  |  |  |
| --- | --- | --- |
| Man with hand in his pocket, | | |
| apparently masturbating, is | |  |
| NOT indecent exposure – no | | |
| “exposure” happened. |  | |

Breastfeeding in public is OK, as long as it’s age- appropriate.

## 16 - Indecent Exposure & Prostitution

**Prostitution**

**Misdemeanor Presence Exception?**

**NO**

* **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.

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

**M**

**Strict Liability**

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

## 16 - Indecent Exposure & Prostitution

**Promoting Prostitution Definitions**

**– RCW 9A.88.060**

1. **“Advances prostitution”** means that a person causes or aids another to commit or engage in prostitution by providing:
   1. Customers or premises,

*-OR-*

* 1. Assistance in the operation of a house of prostitution or enterprise,

*-OR-*

* 1. Any other act designed to facilitate prostitution.

1. **“Profits from prostitution”** means acting other than as a prostitute, a person accepts compensation pursuant to an agreement for an act of 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.

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

**C**

**Strict Liability**

Advances Prostitution or Profits from Prostitution

## 16 - Indecent Exposure & Prostitution

**Promoting Prostitution 1st Degree**

* **RCW 9A.88.070 (Class B Felony)**

1. A person advances or profits from prostitution by:

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

* 1. Compelling another to engage in prostitution by force or threats,

*-OR-*

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

**B**

**Strict Liability**

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

*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.”*

**B**

**Strict Liability**

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

## 16 - Indecent Exposure & Prostitution

**Permitting Prostitution**

**Misdemeanor Presence Exception?**

**NO**

* **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.

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

**M**

Knowing that it’s Being used for Prostitution

**Knowledge (NS)**

Fails to Stop the Prostitution

Having Control or Possession of a Premises

## - Indecent Exposure & Prostitution

**Patronizing a Prostitute**

**Misdemeanor Presence Exception?**

**NO**

* **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;

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

*-OR-*

1. A person pays or agrees to pay a fee in return for sexual conduct;

*-OR-*

1. A person solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

**M**

**Strict Liability**

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

## – Harassment & Court Orders

**Misdemeanor Presence Exception?**

**YES**

**Harassment**

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

1. Without lawful authority, the person *knowingly* threatens:
   1. To cause bodily injury immediately or in the future to the person threatened or any other person;

*-OR-*

* 1. To cause physical damage to another's property;

*-OR-*

* 1. To subject the person threatened or any other person to physical confinement or restraint;

*-OR-*

* 1. 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;

***-AND-***

1. 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.*

*Threatens to:*

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

|  |  |  |
| --- | --- | --- |
| Notice how the things listed | | |
| here are already crimes IF  YOU DID THEM. Now it’s | |  |
| also illegal to threaten to do | | |
| them. |  | |

**GM**

Cause Bodily Injury to the Victim or Another Person

Cause Damage to Property

The Victim Has Reasonable Fear that the Threat Will be Carried Out.

Subject Someone to Confinement or Restraint

Maliciously do Any Other Act Intended to Substantially Harm Someone Physically or with Respect to Mental Health or Safety.

**Knowledge**

Suspect Makes a Threat to:

**GM GM**

**GM**

DISCUSSION:

Explain the difference between Harassment and Assault – the difference between reasonable fear and reasonable + imminent fear.

## 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 Convict ions of Harassme nt”**

**– 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

**Misdemeanor Presence Exception?**

**YES**

**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:

*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.*
  1. A person intentionally and repeatedly harasses or repeatedly follows another person; AND
  2. 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
  3. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; AND
  4. 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.

1. 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.

**GM**

Suspect Intends to Frighten, Intimidate or Harass the Victim

The Fear is Reasonable (a Reasonable Person Would Feel the Same)

Suspect Knows or Should Know that the Victim is Afraid, Intimidated, or Harassed

Victim is Placed in Fear that Stalker Intends to Injure any Person or Harm any Property

**Intent**

Repeatedly Harasses or Follows the Victim

**GM**

After Being Told to Stop

**Mental State: None Required**

Continues to Follow / Contact

**GM**

## 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.

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

*-OR-*

* 1. 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-*

* 1. 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.

1. **“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.
2. **“Repeatedly”** means on two or more separate occasions.

## 17 – Harassment & Court Orders

**Telephone Harassment**

**Misdemeanor Presence Exception:**

**MAYBE - FOR THE LEWDNESS**

**NO - FOR THE INCONVIENIENT CALLS**

**YES - FOR THE THREATS**

* **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:
   1. Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act;

*-OR-*

* 1. Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues;

*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.*

*-OR-*

* 1. Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

**GM**

Using “Dirty” Words or Language, or Suggesting any “Dirty” Act

Anonymously

Repeatedly

At an Extremely Inconvenient Hour

Threatening to Inflict Injury on Victim’s Person or Property, or on Member of Victim’s Family/Household

**GM**

**GM**

|  |
| --- |
| Intent to Harass, Intimidate, Torment, or Embarrass |
| Makes a Telephone Call to Victim |

**GM**

**GM**

## 17 – Harassment & Court Orders

**Cyberstalking**

**Misdemeanor Presence Exception:**

**MAYBE - FOR THE LEWDNESS**

**NO - FOR THE INCONVIENIENT COMMUNICATION**

**YES - FOR THE THREATS**

* **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:
   1. Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;

*-OR-*

* 1. Anonymously or repeatedly whether or not conversation occurs;

*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.*

*-OR-*

* 1. Threatening to inflict injury on the person or property of the person or any member of his or her family or household.

1. **"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.

Using “Dirty” Words, Images, or Language, or Suggesting any “Dirty” Act

Anonymously

Repeatedly

Threatening to Inflict Injury on Victim’s Person or Property, or on Member of Victim’s Family/Household

Intent to Harass, Intimidate, Torment, or Embarrass

Makes an Electronic Communication to Victim or Third Party

**GM**

**GM GM**

**GM**

***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**

**Misdemeanor Presence Exception?**

**MAYBE**

* **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.”

Order Contains the Arrest Warning Language

**Knowledge (Willfully)**

Violates a Court Order Issued For a Harassment Conviction

**GM**

**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.

1. Sometimes called “DV Protection Orders.”
2. 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.
3. Certain behaviors are prohibited by the order. Typical violations include:
   1. Threats,
   2. Coming onto the grounds of daycare, workplace, school, or residence,
   3. Making contact (even through third parties),
   4. Distance violations.

## 17 – Harassment & Court Orders

**Misdemeanor Presence Exception?**

**MAYBE**

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

*-OR-*

* 1. Prohibitions against contact with a protected party;

*-OR-*

* 1. Exclusions from a residence, workplace, or daycare;

-*OR-*

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

*-OR-*

*Mandatory DV arrest if the violation was:*

* *Contact,*
* *Threats,*
* *Acts of violence, or*
* *Exclusion (stay away) & restraint provisions*
  1. Prohibitions against interference with efforts of a protected party to remove a pet;

*-OR-*

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

1. 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.

**GM**

No Assault or Reckless Endangerment

Assault or Reckless Endangerment of Victim, or Two Previous Convictions

**Knowledge**

Violates One of the Listed Provisions of a Protection Order

**C**

## 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**

**Misdemeanor Presence Exception?**

**YES**

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

1. A person *knowingly* violates any of the following provisions of a No- Contact Order:
   1. Prohibitions against acts or threats of violence against, or stalking of, a protected party;

*-OR-*

* 1. Prohibitions against contact with a protected party;

*-OR-*

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

* 1. Exclusions from a residence, workplace, or daycare;

-*OR-*

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

*-OR-*

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

*-OR-*

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

1. 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.

**GM**

Order Contains the Arrest Warning Language

**Knowledge**

Violates One of the Listed Provisions of a No-Contact Order

No Assault or Reckless Endangerment

Assault or Reckless Endangerment of Victim or Two Previous Convictions

**C**

## 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

**Misdemeanor Presence Exception?**

**MAYBE**

**Violation of a Restraining Order**

* **RCW 26.50.110 (Gross Misdemeanor)**

1. A person *knowingly* violates any of the following provisions of a Restraining Order:
   1. Prohibitions against acts or threats of violence against, or stalking of, a protected party;

*-OR-*

* 1. Prohibitions against contact with a protected party;

*-OR-*

* 1. Exclusions from a residence, workplace, or daycare;

*Mandatory DV arrest if the violation was:*

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

-*OR-*

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

*-OR-*

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

*-OR-*

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

1. 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.

**GM**

Order Contains the Arrest Warning Language

**Knowledge**

Violates One of the Listed Provisions of a Restraining Order

No Assault or Reckless Endangerment

Assault or Reckless Endangerment of Victim or Two Previous Convictions

**C**

## 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**

**Misdemeanor Presence Exception?**

**MAYBE**

* **RCW 10.14.170 (Gross Misdemeanor)**

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

**GM**

**Knowledge (“Willfully”)**

Violates a Anti-Harassment

Order

## – Harassment & Court Orders

**“Sole Responsibili ty”**

**– 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.

* 1. 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. . .”
  2. 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.”
  3. 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.*

***“Respondent”*** *is the person that must “respond” to the order’s rules.*

***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:

1. Making contact (even through 3rd parties)
2. Coming onto the grounds of daycare, workplace, school or residence.
3. 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)**

**Misdemeanor Presence**

**Exception?**

**YES**

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-

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

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

Assault or Reckless Endangerment of Victim or Two Previous Convictions

**C**

**GM**

No Assault or Reckless Endangerment

Order Contains the Arrest Warning Language

**Knowledge**

Violates One of the Listed Provisions of a Restraining Order

***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:
   1. Making contact (even through third parties),
   2. Coming onto the grounds of daycare, workplace, school or residence,
   3. 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***

**Misdemeanor Presence Exception?**

**YES**

**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:

* 1. Prohibitions against contact with a protected party;

*-OR-*

* 1. Exclusions from a residence, workplace, or daycare;

-*OR-*

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

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

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.

Assault or Reckless Endangerment of Victim or Two Previous Convictions

**C**

**GM**

No Assault or Reckless Endangerment

**Knowledge**

Violates One of the Listed Provisions of a Vulnerable Adult Protection Order

Order Contains the Arrest Warning Language

***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:
5. Making contact (even through third parties),
6. Coming onto the grounds of daycare, workplace, school or residence,
7. 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:
   1. Making contact (even through third parties),
   2. Coming onto the grounds of daycare, workplace, school or residence,
   3. Distance violations.
   4. 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***

**Misdemeanor Presence Exception?**

**YES**

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

*-OR-*

* 1. Prohibitions against contact with a protected party;

*-OR-*

* 1. Exclusions from a residence, workplace, or daycare;

-*OR-*

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

*-OR-*

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

*-OR-*

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

1. 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.

**C**

**GM**

No Assault or Reckless Endangerment

Assault or Reckless Endangerment of Victim, or Two Previous Convictions

**Knowledge**

Violates One of the Listed Provisions of a Foreign Protection Order

1. ***- 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:

DISCUSSION:

When is it OK to “restrain” someone without consent (lawfully)?

* Helping mentally ill person,
* Parental discipline,
* Etc.
  1. Physical force;
  2. Intimidation;
  3. Deception;

*-OR-*

*-OR-*

*-OR-*

* 1. 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.

1. **“Abduct”** means to restrain a person by either:
   1. Secreting or holding them in a place where they are not likely to be found;

*-OR-*

* 1. Using or threatening to use deadly force.

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

Notice how it is not necessary to move the victim.

#### 18 - Kidnapping, Unlawful Imprisonment

**Unlawful Imprisonment**

* **RCW 9A.40.040 (Class C Felony)**

1. Knowingly restrains another person.

Notice how no time frame is specified in this RCW.

# C

**Knowledge**

Restrains Another Person

***18 - Kidnapping, Unlawful Imprisonment***

**Kidnapping 2nd Degree**

* **RCW 9A.40.030 (Class B Felony)**

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

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

 2. Defense to Kidnapping 2nd Degree:

* 1. Abduction does not include the use of or threat of deadly force, AND
  2. Actor is a relative of the person abducted, AND
  3. Actor’s sole intent is to assume custody of that person.

# B

**Intent**

Abducts Another Person

***18 - Kidnapping, Unlawful Imprisonment***

**Kidnapping 1st Degree**

* **RCW 9A.40.020 (Class A Felony)**

1. To intentionally abduct another with the ***intent to***:
   1. Hold them for ransom or reward;

*-OR-*

* 1. Use them as a shield or hostage;

*-OR-*

* 1. Facilitate the commission or flight from a felony crime;

*-OR-*

The suspect must abduct the victim with one of these situations as his specific goal/plan. It must be the whole reason or point of the abduction.

* 1. Inflict bodily injury;

*-OR-*

* 1. Inflict extreme emotional distress on the victim or a third person;

*-OR-*

* 1. To interfere with a governmental function.

**A A A**

Hold Victim for Ransom or Reward

Use Victim for Shield or Hostage

Facilitate the Commission or Flight from a Felony Crime

Inflict Bodily Injury on the Victim

Inflict Extreme Emotional Distress on the Victim or a Third Person

Interfere with a Governmental Function

Intent to do one of the Listed Aggravators

Abducts Another Person, *with the Plan (Intent) to:*

DISCUSSION:

Scenario: A bad guy steals an SUV warming up in the driveway, while the owner is inside the house. He doesn’t know there is a baby sleeping in the back seat.

What crime do you have?

* Taking Motor Vehicle w/o Permission. It’s not Kidnapping or Unlawful Imprisonment, because he had no intent regarding taking the baby.

Now, imagine that he realizes the baby’s there, so he immediately pulls over, parks the car, and flees on foot into the woods. What crime now?

* Still the same – just Taking Motor Vehicle w/o Permission.

**A A A**

#### 18 - Kidnapping, Unlawful Imprisonment

**Custodial Interference 2nd Degree**

**Misdemeanor Presence Exception?**

**NO**

* **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:
   1. Taking, detaining or concealing that person, AND

*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.*

* 1. The taking does not involve noncompliance with a court- ordered parenting plan.

***-OR- - - - - - - - - - - - - - - - - - - - - - - - - - - - -***

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

***-OR- - - - - - - - - - - - - - - - - - - - - - - - - - - - -***

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

*-OR-*

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

# GM GM

Pawn is a Person

Pawn is Their Child

**Intent**

Takes, Entices, Retains, Detains, or Conceals Pawn to Deny Access

Victim is Parent

Failure to Comply w/ Residential Provisions in Parenting Plan After Finding of Contempt

Suspect is a Parent

Engages in Pattern of Violations of Court-Ordered Residential Provisions

Victim is a Parent, Guardian, Institution, or Other

Suspect is a Relative

No Parenting Plan

Suspect is the Other Parent

Violation of Parenting Plan or Court Order

# GM

Strict Liability

Victim is a Parent, Guardian, Institution, or Other

*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.*

**GM**

***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:
   1. Intending to hold the child or incompetent person permanently or for a protracted period;

*-OR-*

* 1. Exposes the child to a substantial risk of illness or physical injury;

*-OR-*

* 1. Causes the child or incompetent person to be removed from the state of usual residence;

*-OR-*

* 1. 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- - - - - - - - - - - - - - - - - - - - - - - - - - - - -***

1. 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*:
   1. Intending to hold the child or incompetent person permanently or for a protracted period;

*-OR-*

* 1. Exposes the child to a substantial risk of illness or physical injury;

*-OR-*

* 1. Causes the child or incompetent person to be removed from the state of usual residence.

***-OR- - - - - - - - - - - - - - - - - - - - - - - - - - - - -***

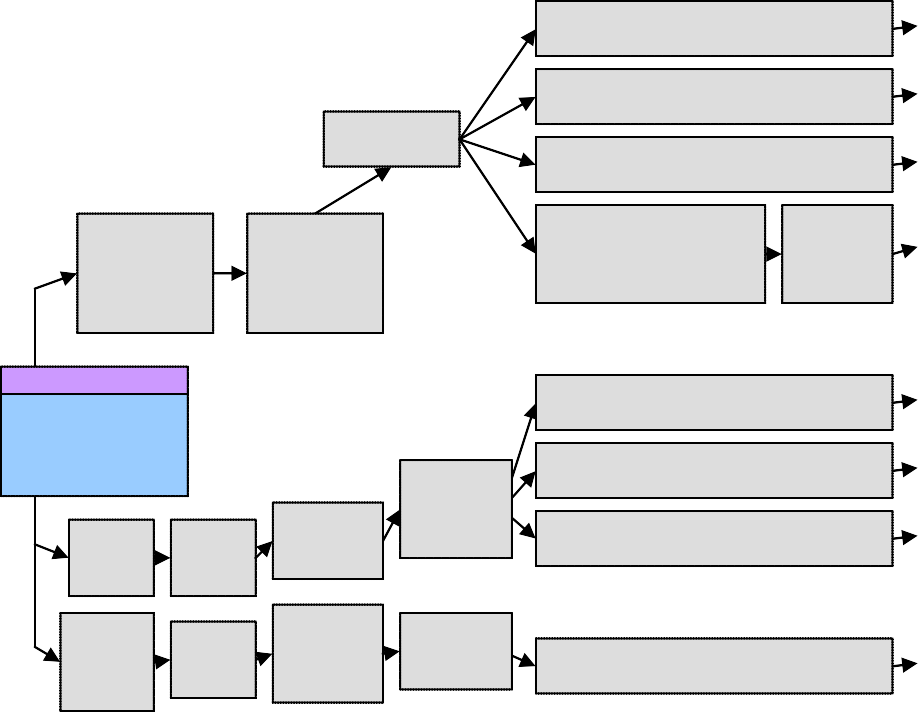
1. A parent or other person acting under the directions of that parent is guilty of this statute if they intentionally take the child under 18 permanently, or for a protracted period, from another parent and there is *no court order* in place.

#### 18 - Kidnapping, Unlawful Imprisonment

**Custodial Interference 1st Degree**

**– RCW 9A.40.060 (Class C Felony)**

*-continued from previous page-*

Intending to hold Pawn for Protracted Period

**C**

Suspect is a Relative

Exposes Pawn to Substantial Risk of

Illness or Physical Injury **C**

Causes Pawn to be Removed from

Usual State of Residence **C**

**C**

Pawn is a Child Under Age 18, or an Incompetent Person

Victim is a Parent, Guardian, Institution, or Other

Retains, Detains, or Conceals Pawn in Another State After Visitation has Ended

w/ Intent to Harass or Intimidate

**Intent**

Takes, Entices, Retains, Detains, or Conceals Pawn to Deny Access

Pawn is Their Child

Pawn is Their Child

< 18

Victim is a Parent

Victim is a Parent

Suspect is the Other Parent

Suspect is the Other Parent (or Agent of)

Violation of Parenting Plan

No Parenting Plan

Intending to hold Pawn for Protracted Period

**C**

Exposes Pawn to Substantial Risk of Illness or Physical Injury

**C**

Causes Pawn to be Removed from Usual State of Residence

**C**

Takes Pawn Permanently or for Protracted Period

**C**

*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.*

1. ***- 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:
   1. 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
   2. The person is unknown to the child or developmentally disabled person; AND
   3. 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.

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

 2. The defense to Luring, which the defendant must prove by a preponderance of the evidence, is that:

DISCUSSION:

How about a good Samaritan that sees a handicapped 14 year old boy standing at the bus stop in the pouring rain. The person stops and invites the boy into his car for a ride into town? Has he committed a crime?

* Technically, yes.
* But are we going to enforce the RCW in this situation? Probably not. Common sense must apply, like always.
* We would investigate to make sure that nothing shady was going on.
* We would also want to educate the good citizen about the risk he took on.

1. 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
2. Acted reasonably under the circumstances.

# C

Into a Structure or Area that is Obscured from or Inaccessible to the Public

Suspect is Unknown to Victim

Into a Vehicle

Away from Bus, Airport, or Other Transportation Terminal

**C C**

Suspect Does Not Have Parent or Guardian’s Consent

**Strict Liability**

Orders, Lures, or Attempts to Lure a Child < 16 or Developmentally Disabled Person

***19 - Arson, Reckless Burning & Malicious Mischief***

**Definitions**

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

**– 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.
   1. 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.
2. **“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.
3. **“Property of another”** means property in which the actor possesses anything less than exclusive ownership.
4. 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.

***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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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.
5. ***- Arson, Reckless Burning & Malicious Mischief***

**Reckless Burning 2nd Degree**

**Misdemeanor Presence Exception?**

**YES**

* **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.

*Risk of Damage*

*To Any Property*

**GM**

Ends Up Recklessly Placing the Property of Another in Danger

**Knowledge**

Causes a Fire or Explosion

## 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*

**C**

Ends Up Recklessly Damaging Building, Structure, Vehicle, Railway Car, Aircraft, Watercraft, Hay, Grain, Crop, or Timber

**Knowledge**

Causes a Fire or Explosion

## 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:

1. 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
2. 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.

**B**

Damages Anything

**Knowingly & Maliciously**

Causes a Fire or Explosion

## 19 - Arson, Reckless Burning & Malicious Mischief

**Arson 1st Degree**

* **RCW 9A.48.020 (Class A Felony)**

1. *Knowingly and maliciously* causes fire or explosion:
   1. Which is manifestly dangerous to any human life, including firefighters;

*-OR-*

* 1. Which damages a dwelling;

*-OR-*

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

*-OR-*

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

**A A A**

Manifestly Dangerous to Human Life (Including Firemen)

Damages a Dwelling

To a Building Occupied By Someone Other than the Suspect(s)

With Intent to Collect Insurance Money, To Property Worth > $10,000

**Knowingly & Maliciously**

Causes a Fire or Explosion

**“Manifestly dangerous”** means more than the automatic and usual amount of danger posed to firemen in any fire.

* We can’t just say that *every call* that the fire department responds to is manifestly dangerous.
* There must be some greater than normal hazard to the firemen to call it “manifestly dangerous.” – Like a floor caves in, or explosive chemicals are present.
* If fire fighters are injured or killed, that’s proof that the fire was manifestly dangerous.

It doesn’t matter whether the

**A** suspect knew the building

was occupied or not.

## 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):
   1. **“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.
   2. 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.”*

*Someone’s time is at*

*least worth $.01.*

## 19 - Arson, Reckless Burning & Malicious Mischief

**Malicious Mischief 3rd Degree**

**Misdemeanor Presence Exception?**

**YES**

* **RCW 9A.48.090 (Gross Misdemeanor)**

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

* 1. 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.

**GM**

**Knowingly & Maliciously**

Causes Damage to Property of Another

**GM**

**Strict Liability**

Graffiti

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

*-OR-*

* 1. *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*

**C**

Worth > $750

**Knowingly & Maliciously**

Causes Damage to Property of Another

**C**

Damaging or Tampering with:

•Emergency Vehicle

•Government Property

•Public Utility

•Public Transportation

•Public Power

•Public Communication

**Knowingly & Maliciously**

Creates Risk of Interruption of Public Service by:

## - 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:
   1. Causes physical damage to the property of another in an amount *exceeding five thousand dollars*;

*-OR-*

* 1. *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-*

* 1. *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*

**B**

Worth > $5000

**Knowingly & Maliciously**

Causes Damage to Property of Another

**B**

Damaging or Tampering with:

•Emergency Vehicle

•Government Property

•Public Utility

•Public Transportation

•Public Power

•Public Communication

**Knowingly & Maliciously**

Causes Interruption of Public Service by:

**B**

Damaging or Tampering with Equipment, Fuel, Lubricant, or Parts

**Knowingly & Maliciously**

Causes Impairment to Safety, Efficiency, or Operation of an Aircraft by:

***20 - Theft & Possession of Stolen Property***

**Definitions**

**– RCW 9A.56.010**

1. To **“Appropriate lost or misdelivered property or services”** means obtaining or exerting control over the property or services of another which is known to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property.
2. **“Access device”** means any card, plate, code, account number or means of account access that can be used alone or in conjunction with another access device to obtain anything of money, goods, services or anything of value or that can be used to initiate a transfer of funds other than a transfer originated solely by paper instrument.
3. **“Deception”** occurs when an actor *knowingly*:
   1. Creates or confirms another’s false impression, which the actor knows to be false;

Finders-Keepers does not apply.

The definition of certain terms in the RCWs is not always the same as the lay- person’s.

A credit card may be an access device even if has not been activated

(State v. Rose 175 Wn2d 10, 2012)

*-OR-*

* 1. Fails to correct another’s impression which the actor has created or confirmed;

*-OR-*

* 1. Prevents another from acquiring information material to the disposition of the property involved;

*-OR-*

* 1. Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record;

*-OR-*

* 1. Promises performance which the actor does not intend to perform or knows will not be performed.

1. **“Deprive”** in addition to its common meaning means to make unauthorized use or copy of records, information, data, trade secrets or computer programs.

Making a copy of (or writing down) someone else’s bank routing numbers is “depriving.”

## - Theft & Possession of Stolen Property

**Definitions**

**– RCW 9A.56.010**

*-continued from previous page-*

1. **"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:
   1. 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
   2. Is not addressed to a generic unnamed occupant or resident, AND
   3. 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.
   4. 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.
2. **“Obtain control over”** in addition to its common meaning, means:
   1. To obtain an unlawful transfer of property,

*-OR-*

* 1. To unlawfully secure labor or service benefits.

1. **“Stolen”** means obtained by theft, robbery, or extortion.
2. **“Receive”** includes but is not limited to:
   1. Acquiring title, or
   2. Possession, or
   3. Control, or
   4. Security interest, or
   5. Any other interest in property.

## 20 - Theft & Possession of Stolen Property

**Definitions**

**– RCW 9A.56.010**

*-continued from previous page-*

1. **“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.

|  |  |  |  |
| --- | --- | --- | --- |
| A string of smaller related | | | |
| crimes can be added | |  | |
| together to make one big | | |  |
| criminal charge. |  | | |

1. **“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.
2. **“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.
3. **"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:
   1. 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;
   2. 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;
   3. 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:
   1. 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-*

* 1. 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-*

* 1. 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**

**Misdemeanor Presence Exception?**

**YES**

* **RCW 9A.56.050 (Gross Misdemeanor)**

1. Theft of:
   1. Property or services valued at less than or equal to $750;

*-OR-*

* 1. Ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.

**GM**

Value <= $750

Property is 10 or More Properly Marked Pallets / Beverage Crates

**Intent to Deprive**

Wrongfully Obtain or Exert Control Over Another’s Property

**GM**

DISCUSSION:

What if a suspect only takes 9 merchandise pallets?

* It’s still regular old theft (less than $750 worth).

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

*-OR-*

* 1. A public record, writing or instrument filed under authority of law with a public office;

*-OR-*

* 1. A credit card or access device;

*-OR-*

* 1. 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.

**C**

Value > $750 and

<= $5000

Property is a Public Record

Property is a Credit Card / Access Device

Metal Wire Taken From Public Service Company or Consumer-Owned Utility With Property Damage > $750 and

<= $5000

**Intent to Deprive**

Wrongfully Obtain or Exert Control Over Another’s Property

**C**

**C**

C

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

*-OR-*

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

*-OR-*

* 1. A search and rescue dog, while the dog is on duty;

-*OR-*

* 1. 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.*

Pick-pocket.

**B**

Value > $5000

Property Taken From the Person (Body) of Another

On Duty Search and Rescue Dog

Metal Wire Taken From Public Service Company or Consumer-Owned Utility With Property Damage > $5000

**Intent to Deprive**

Wrongfully Obtain or Exert Control Over Another’s Property

**B**

**B**

**B**

*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.

You’ll see that PSP is exactly

the same as the Theft RCWs

– except for the mental state.

## 20 - Theft & Possession of Stolen Property

**Possession of Stolen Property 3rd Degree**

**Misdemeanor Presence Exception?**

**YES**

* **RCW 9A.56.170 (Gross Misdemeanor)**

1. Possesses stolen property which does not exceed $750 in value;

*-OR-*

1. 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.

**GM**

Value <= $750

Property is 10 or More Properly Marked Pallets / Beverage Crates

**Knowledge**

Possess Stolen Property

**GM**

## 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-*

1. Possesses a stolen public record, writing or instrument filed or deposited according to law;

*-OR-*

1. Possesses a stolen access device.

**C**

Value > $750 and

<= $5000

Property is a Public Record

Property is a Credit Card / Access Device

**Knowledge**

Possess Stolen Property

**C**

**C**

*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.

**B**

Value > $5000

**Knowledge**

Possess Stolen Property

*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.

**B**

**Intent to Deprive**

Steals a Firearm

*Each firearm taken is a separate offense.*

*This statute applies regardless of the value of the firearm.*

DISCUSSION:

What about a man that breaks into the garage of a house while the owners are at work? He steals $400 worth of tools, a shotgun, a 9mm pistol, and two BB- guns. What crimes do we arrest for?

* Burg 1,
* Theft 2, and
* Theft of a Firearm (2 counts)

*For those that thought BB- guns were “firearms,” have them look up the definition again on page 27.*

*It’s Burg 1, because once he possessed the firearms at any point in the burglary, he is automatically considered “armed with a deadly weapon.”*

## 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.

**B**

**Knowledge**

Possess or Control 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.

**B**

**Intent to Deprive**

Steals a 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.

**B**

**Knowledge**

Possess a Stolen Vehicle

*This statute applies regardless of the value of the vehicle.*

## 20 - Theft & Possession of Stolen Property

**Making or Possessing Motor Vehicle Theft Tools**

**Misdemeanor Presence Exception?**

**NO**

* **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 jiggler 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:
   1. **“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.
   2. **“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.
   3. **“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.

**GM**

Under Circumstances Showing an Intent to Use Them for Theft of a Motor Vehicle

**Knowledge**

Make or Possess any Tool

## 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;

*For personal use (joy-riding)*

*-OR-*

1. 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.

**C**

**Intent**

Takes or Drives Away Another’s Vehicle w/o Permission

**C**

**Knowledge**

Voluntarily Rides In Vehicle Knowing It Was Stolen

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

DISCUSSION:

Imagine a 16 year old kid that takes mom’s car out at night joyriding while mom’s asleep. Mom doesn’t know. But he always has it back every morning in time for her to go to work. Which crime do we charge him with?

* Taking Motor Vehicle. Because it would be hard to prove Theft’s “intent to deprive.”

## 20 - Theft & Possession of Stolen Property

**Taking a Motor Vehicle Without Permission 1st Degree**

* **RCW 9A.56.070 (Class B Felony)**

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:
   1. 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-*

* 1. Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;

*-OR-*

* 1. Exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;

*-OR-*

* 1. Intends to sell the motor vehicle;

*-OR-*

* 1. 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.

*For profit*

**B**

Alters Vehicle to Change Its Appearance or Identification

Removes Parts w/ Intent to Sell Them

Exports Vehicle Across State Lines or Out of U.S.

Intends to Sell Vehicle

Engaged in Conspiracy, the Main Goal of Which is the Theft of Vehicles for Profit, or Engaged in Conspiracy and Solicits Juvenile to Steal Vehicle.

**Intent**

Takes or Drives Away Another’s Vehicle w/o Permission

**B**

**B**

**B**

**B**

## 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.

**C**

Ten or More Separate Pieces

**Intent to Deprive**

Steals 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.

**C**

Ten or More Separate Pieces

**Knowledge**

Possesses Stolen Mail

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

Addressed to Three or More Different Mailboxes

## 20 - Theft & Possession of Stolen Property

**Misdemeanor Presence Exception?**

**MAYBE – DEPENDING ON WHAT WAS OBTAINED BY FRAUD.**

**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-*

1. 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.
2. Gross Misdemeanor if the value is $750 or less (including aggregation).
3. Class C Felony if the value is more than $750 (including aggregation).

Someone trying to pass a stolen check as good – that’s another crime: Forgery.

**GM**

Value <=

$750

Value >

$750

DISCUSSION:

What if a husband and wife are both on their way home from work. Husband sees that HDTV he’s been wanting. Wife sees that tennis bracelet she’s been

wanting. They both decide to purchase the item. There’s only enough money to cover one – not both. Has a crime been committed?

* Nope. No intent.

**C**

Knowing at the Time, There are Not Sufficient Funds

And Does Not Make the Payment Within 20 Days

And Issues a Stop-Payment

**Intent to Defraud**

Make, Draw, Utter, or Deliver to Another Person Any Check, or Draft, on a Bank

**GM**

Value <=

$750

Value >

$750

**C**

## 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.

**C**

w/o Intent to Sell or Exchange

**Intent to Deprive/Defraud**

Steals Livestock

## 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.

**B**

*With* Intent to Sell or Exchange

**Intent to Deprive/Defraud**

Steals Livestock

Theft of Livestock 1

= for profit

Theft of Livestock 2

= personal use (joy-riding)

## 20 - Theft & Possession of Stolen Property

**Theft of Rental, Leased, or Lease-purchase Property**

**Misdemeanor Presence Exception:**

**YES - BUT WE PROBABLY WON’T BECAUSE OF HOW COMPLICATED THESE CASES CAN BE**

* **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:

*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.*

* 1. 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-*

* 1. 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.

1. Replacement value of the property obtained must be utilized in determining the amount involved in the theft.

|  |  |  |
| --- | --- | --- |
| The business owner must | |  |
| take reasonable steps to get | | |
| the property back before this | | |
| RCW can be used. |  | |

* 1. Gross Misdemeanor – if property is valued at less than

$750.

* 1. Class C Felony – if the property is valued at $750 or more but less than $5000.

|  |  |  |  |
| --- | --- | --- | --- |
| There are lots of steps to | | |  |
| investigate and prosecute | | | |
| this crime, so check your | | |  |
| department policies and | |  | |
| procedures. |  | | |

* 1. Class B Felony – if the property is valued at $5000 or more.

**GM**

Value < $750

Value >= $750 and < $5000

Value >= $5000

**Intent to Deprive**

Wrongfully Obtains or Controls Rented, Leased, or Loaned Property

**C**

**B**

## 20 - Theft & Possession of Stolen Property

**Misdemeanor Presence Exception?**

**YES**

**Theft of Motor Vehicle Fuel**

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

* **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.

**GM**

**Knowledge (NS)**

Refuses or Evades Payment for Fuel Pumped Into Motor Vehicle

*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.*

DISCUSSION:

What about fuel pumped into a gas can, not a motor vehicle?

* Not this crime, but it’s still Theft.

## 20 - Theft & Possession of Stolen Property

**Shopping Cart Theft**

**Misdemeanor Presence Exception?**

**YES**

* **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
   1. Notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; AND
   2. 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
   3. 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-*

1. 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.

**M**

Cart is Marked with Permanent Sign Stating:

•Owner’s Info

•Procedure for Authorized Removal

•Notification that Unauthorized Removal is Unlawful

•Phone # or Address

**Intent to Deprive**

Remove Shopping Cart from Retail Parking Area or Possess Removed Shopping Cart

## 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.

*This RCW makes the*

*theft of information illegal. Once that information is used, other crimes have been committed as well.*

1. 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:
   1. 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.
   2. In excess of $1500 in value shall constitute identity theft in the first degree, a Class B Felony.
2. 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.
3. Theory of aggregation can be used with respect to each victim.

*Each crime prosecuted under this section shall be punished separately.*

1. 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.
2. **“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:
   1. 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;

*Nothing to $1500*

*= Class C Felony*

*More than $1500*

*= Class B Felony*

Charge under RCW 46.20.0921

*-OR-*

* 1. 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-*

* 1. Any social security, driver’s license, or tax identification number of the individual or any member of his or her family;

*-OR-*

* 1. Any other information which could be used to identify the person, including unique biometric data.

## 20 - Theft & Possession of Stolen Property

**Identity Theft**

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

*-continued from previous page-*

**C**

Value <= $1500

With Intent to Commit / Aid / Abet Any Crime

Value > $1500

**Knowledge**

Obtain, Possess, Use, Or Transfer Means Of ID or Financial Info of Any Person, Living or Dead

**B**

## 20 - Theft & Possession of Stolen Property

**Posses sion of Ano ther’s Identificat ion**

**Misdemeanor Presence Exception?**

**NO**

* **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:

Charge under RCW 46.20.0921

* 1. A person who obtains, by means other than theft, another person's personal identification for the sole purpose of misrepresenting his or her age;
  2. A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of business;
  3. 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
  4. 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.

**GM**

Without Permission

**Knowledge**

Possesses Another’s ID

## 20 - Theft & Possession of Stolen Property

**Obscuring the Identity of a Machine**

**Misdemeanor Presence Exception?**

**YES**

* **RCW 9A.56.180 (Gross Misdemeanor)**

1. A person *knowingly* obscures the identity of a machine if he:
   1. 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-*

* 1. 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.

1. **“Obscure”** means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.

**GM**

**Intent to Render it Unidentifiable**

Obscures the Serial # or Mark to Thwart Identification

**GM**

**Knowledge**

Selling a Vehicle, Machine, Engine, Apparatus, Appliance, or Device Which has an Obscured Serial # or Mark

## 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.

**C**

*with* Intent to Resell

**Intent to Deprive**

Theft from a Mercantile Establishment

Value >= $250 and

< $1500

## 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.

**B**

*with* Intent to Resell

**Intent to Deprive**

Theft from a Mercantile Establishment

Value >= $1500

## 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.

**C**

With an Accomplice

**Intent to Deprive**

Theft from a Mercantile Establishment

Value >= $750 and

< $5000

C

With an Accomplice

**Knowledge**

Possesses Stolen Property from a Mercantile Establishment

Value >= $750 and

< $5000

## 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.

**B**

With an Accomplice

**Intent to Deprive**

Theft from a Mercantile Establishment

Value >= $5000

B

With an Accomplice

**Knowledge**

Possesses Stolen Property from a Mercantile Establishment

Value >= $5000

## 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

**C**

Leaves Through an Emergency Exit

**Intent to Deprive**

Had a Device to Overcome Security Measures

**C**

Theft from a Mercantile Establishment

The Theft Would Qualify as a Theft 2nd or 3rd Degree

Committed Theft at Three Different Stores w/in 180 Days

**C**

**Intent to Deprive**

**B**

Had a Device to Overcome Security Measures

**B**

Leaves Through an Emergency Exit

The Theft Would Qualify as a Theft 1st Degree

**B**

Theft from a Mercantile Establishment

Committed Theft at Three Different Stores w/in 180 Days

***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:
3. To facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;

*-OR-*

1. 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-*

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

Theft from a Mercantile Establishment

**B**

Had a Device to Overcome Security Measures

**B**

Leaves Through an Emergency Exit

The Theft Would Qualify as a Theft 1st Degree

**B**

**Intent to Deprive**

Committed Theft at Three Different Stores w/in 180 Days

## - Robbery & Extortion

**Robbery Defined**

**– RCW 9A.56.190**

*Robbery:*

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

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*.”

*(BOTH ARE IMMEDIATE!)*

*Extortion:*

*Force Later & Loss Now*

*-OR-*

*Force Later & Loss Later*

*-OR-*

*Force Now & Loss Later*

*(BOTH ARE* ***NOT***

*IMMEDIATE)*

1. Includes using threats to obtain sexual favors.

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

*Also called “Strong-Arm Robbery”*

**Intent**

Commits Robbery

***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.

**B**

## 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:
   1. Is armed with a deadly weapon,

*-OR-*

* 1. Displays what appears to be a firearm or deadly weapon,

*-OR-*

* 1. Inflicts bodily injury on the victim;

*-OR-*

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

**A**

Armed w/ Deadly Weapon

Displays what Appears to be a Firearm or Deadly Weapon

Inflicts Bodily Injury on Victim

Against and Within a Financial Institution

**Intent**

Commits Robbery

**A**

**A**

**A**

## 21 - Robbery & Extortion

**Extortion 2nd Degree**

* **RCW 9A.56.130 (Class C Felony)**

1. A person commits extortion by means of a threat:
   1. To accuse another person of a crime or to initiate criminal charges against another;

*-OR-*

* 1. To expose a secret (whether true or not) which would subject another person to ridicule, hatred, or contempt;

*-OR-*

* 1. To reveal information about another person that was concealed;

*-OR-*

* 1. To testify or withhold testimony regarding another person's legal claim or defense;

*-OR-*

* 1. To wrongfully take official action or wrongfully withhold action or cause the same to occur;

*-OR-*

* 1. To cause or continue a strike or boycott to obtain property which is not sought by the represented group;

*-OR-*

* 1. 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-*

**C**

Accuse Victim of Crime or Initiate Charges

Expose a Secret and Expose Victim to Ridicule

Reveal Concealed Info about a Person

Testify or Withhold Testimony

Wrongfully Take Official Action or Hold-up Action

Inappropriately Cause or Continue Boycott/Strike

Commit an Act that Would Substantially Harm Another's Health, Safety, Business, Financial Condition, or Personal Relationships

**Knowledge**

Commits Extortion By a Threat to:

**C**

**C**

**C**

**C**

**C**

**C**

## - Robbery & Extortion

**Extortion 1st Degree**

* **RCW 9A.56.120 (Class B Felony)**

1. A person commits extortion by means of a threat:
   1. To cause bodily injury in the future to another;

*-OR-*

* 1. To cause physical damage to the property of another;

*-OR-*

* 1. To subject another person to confinement or restraint.

**B**

Cause Injury to a Person

Cause Damage to Another’s Property

Subject a Person to Confinement or Restraint

**Knowledge**

Commits Extortion By a Threat to:

**B**

**B**

## - Animal Cruelty

**Animal Cruelty 2nd Degree**

**Misdemeanor Presence Exception?**

**MAYBE**

**DEPENDS ON IF THE ANIMAL IS SOMEONE’S PROPERTY (PET)**

* **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-*

1. If an owner *knowingly, recklessly or with criminal negligence:*
   1. 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-*

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

**-***OR-*

* 1. 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.

|  |
| --- |
| **Knowledge, Recklessness OR Negligence** |
| Inflicts Unnecessary Suffering or Pain Upon an Animal |

**GM**

Suspect is a Person (Owner or Not)

**Negligence**

|  |
| --- |
| **Knowledge, Recklessness, OR Negligence** |
| Fails to Provide the Basic Care and Causes Suffering |

###### GM

Animal Suffers Bodily Harm

Suspect is the Owner

Imminent and Substantial Risk of Substantial Bodily Harm to Animal

Animal is Otherwise Abandoned

**Knowledge, Recklessness, OR Negligence**

Abandons the Animal

**GM**

**GM**

**GM**

## 22 - Animal Cruelty

**Animal Cruelty 1st Degree**

* **RCW 16.52.205 (Class C Felony)**

1. A person *intentionally*:
   1. Inflicts substantial pain on or causes physical injury to or kills any animal by a means causing undue suffering,

**A sexual motivation enhancement may be added to this charge.**

*-OR-*

* 1. Forces a minor to inflict unnecessary pain, injury or death on an animal.

***-OR-***

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

*-OR-*

* 1. Death.

***-OR-***

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

1. A person *knowingly*:
   1. Engages in sexual conduct or sexual contact with an animal;

*-OR-*

* 1. Causes/aids another to engage in sexual conduct or sexual contact with an animal;

*-OR-*

* 1. Permits any sexual conduct or sexual contact with an animal to be conducted on premises under his control;

*-OR-*

* 1. 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-*

* 1. Photographs or films, for purposes of sexual gratification, a person engaged in a sexual act or sexual contact with an animal.

## - Animal Cruelty

**Animal Cruelty 1st Degree**

* **RCW 16.52.205 (Class C Felony)**

*-continued from previous page-*

**C**

Torture

Death

Suspect is a Person (Owner or Not)

**Intent**

Tortures an Animal

**Intent**

Forces a Minor to Inflict Unnecessary Pain, Injury or Death on an Animal

**Criminal Negligence**

Starves, Dehydrates, or Suffocates an Animal Causing:

**Knowledge**

Sex with Animal

**Knowledge**

Causes or Aids Another to Have Sex with Animal

**Knowledge**

Allows Sex with Animal to Occur on Premises Under His Control

**Knowledge**

Performs Services to Further Sex with Animal for Commercial or Recreational Purpose

**Knowledge**

Photographs/Films Sex with Animal for Sexual Gratification

**C**

**C**

**C**

**C**

**C**

**C**

**C**

**C**

## 22 - Animal Cruelty

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

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.

**– RCW 16.52.320 (Class C Felony)**

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

**C**

Livestock Belongs to Another

**Maliciously**

Kills or Causes Substantial Bodily Harm to Livestock

## 23 - Fraud

**Definitions**

**– RCW 9A.60.010**

1. **“Written Instrument”**
   1. Any paper, document, or other instrument containing written or printed matter or its equivalent;

*-OR-*

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

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

## - Fraud

**Forgery**

* **RCW 9A.60.020 (Class C Felony)**

1. A person, with *intent to injure or defraud*:
   1. Falsely makes, completes, or alters a written instrument;

*-OR-*

* 1. Possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged.

**C**

**Intent to Injure/Defraud**

Falsely Makes, Completes, or Alters a Written Instrument

**C**

**Intent to Injure/Defraud**

Passes a Forged Written Instrument

Note: Prescription Forgery is charged under RCW 69.50.403 (VUCSA), a Class C Felony.

## 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:
   1. 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-*

* 1. 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-*

* 1. 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-*

* 1. To make or utter any false or forged prescription or false or forged written order;

*-OR-*

* 1. To affix any false or forged label to a package or receptacle containing controlled substances;

*-OR-*

* 1. 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-*

* 1. To possess a false or fraudulent prescription with intent to obtain a controlled substance;

*-OR-*

* 1. To attempt to illegally obtain controlled substances by providing more than one name to a practitioner when obtaining a prescription for a controlled substance.

*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.*

 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.

## 23 - Fraud

**Prescription Forgery**

* **RCW 69.50.403 (Class C Felony)**

*-continued from previous page-*

**C**

To Make, Distribute, Dispense, Acquire, or Obtain a Controlled Substance

**Knowledge OR Intent**

Use Fake, Suspended, or Another Person’s Registration Number

**C**

By Fraud, Deceit, Misrepresentation, or Subterfuge

By Forgery or Alteration of Prescription or Written Order

By the Concealment of Material Fact

By False Name or Address

**Knowledge OR Intent**

Attempt to Obtain Controlled Substance

**C**

**C C**

**C**

To Obtain Controlled Substance

**Knowledge OR Intent**

Falsely Pretend to be Authorized Person

**C**

**Knowledge OR Intent**

Make / Utter any False or Forged Prescription of Written Order

**C**

**Knowledge OR Intent**

Attach False or Forged Label to Receptacle Containing Controlled Substance

**C**

**Knowledge OR Intent**

Falsify any Report or Document Concerning Controlled Substances

**C**

w/ Intent to Obtain Controlled Substance

**Knowledge OR Intent**

Possess False Prescription

**C**

To Illegally Obtain Controlled Substance

**Knowledge OR Intent**

Provide Multiple Names to Practitioner

## 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.

**C**

**Intent to Defraud or Deprive**

By Deception or Duress, Causes a Person to Sign

## 23 - Fraud

**Criminal Impersonation 2nd Degree**

**Misdemeanor Presence Exception?**

**NO**

* **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-

1. 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.

**GM**

Acts in a Way that Would Make a Reasonable Person Believe that He/She is acting in an Official Capacity as a Law Enforcement Officer

**Intent**

Claims to be, Or Creates the Impression that He/She is a Law Enforcement Officer

**GM**

For Personal Gain

To Facilitate Any Unlawful Activity

**Intent to Defraud**

Falsely Assumes the Identity of a Veteran or Active Duty Member of the US Armed Forces

**GM**

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## - 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-*

1. 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.

**C**

Acts Under that Identify to Defraud Another or For Any Unlawful Purpose

**Intent to Defraud**

Assumes a False Identity

**C**

Acts Under that Pretended Capacity to Defraud Another or For Any Unlawful Purpose

**Intent to Defraud**

Pretends to be a Public Servant or a Representative of an Organization or Person

## - 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-*

1. 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.

**B**

**Intent to Get Result**

To Influence a Public Servant, Person Offers or Agrees to Give Compensation

**B**

**Corrupt Intent**

Public Servant Accepts or Agrees to Accept Compensation in Return for Influence

## 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.

**Strict Liability**

Public Servant Requests Compensation(or at any level of compensation lower than requested) for an Act He/She is Required to do Anyway

**C**

## 24 - Bribery & Official Proceedings

**Perjury 2nd Degree**

* **RCW 9A.72.030 (Class C Felony)**

Filing a false or fraudulent insurance claim is 48.30.020

This is an easier charge to prove than perjury.

1. He or she,required or authorized by law, makes a

materially false statement which he or she *knows* to be false:

**under an oath**

* 1. In an examination, under oath, under the terms of a contract of insurance;

*-OR-*

* 1. With intent to mislead a public servant in the performance of his or her duty.

**C**

In an Examination Under the Terms of a Contract of Insurance

Under Oath

w/ Intent to Mislead a Public Servant in the Performance of his Duty

**Knowledge**

Makes a False Statement that He/She Knows to be False

**C**

**\*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.**

## 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.

**B**

Under Oath, in an Official Proceeding

**Knowledge**

Makes a False Statement that He/She Knows to be False

## 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:
   1. Influence the testimony of that person;

*-OR-*

* 1. Induce that person to avoid legal process summoning them to testimony;

*-OR-*

* 1. Induce that person to absent himself from an official proceeding to which he or she has been legally summoned;

*-OR-*

* 1. Induce that person to refrain from reporting information relevant to a criminal investigation or the abuse or neglect of a minor child.

**B**

Influence the Person’s Testimony

Induce a Person to Avoid Testimony

Induce a Person to Avoid or Leave a Legal Proceeding

Induce a Person to Not Report Info About Child Abuse/Neglect

**Intent**

Offers or Agrees to Provide a Benefit to a Witness with Intent to:

**B**

**B**

**B**

## 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:
   1. Influence the testimony of that person;

*-OR-*

Induce that person to elude legal process summoning him or her to testify;

*Each instance of an attempt to intimidate a witness constitutes a separate offense.*

*-OR-*

* 1. Induce that person to avoid testimony;

*-OR-*

* 1. 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-*

* 1. Induce that person to not give truthful testimony relevant to a criminal investigation or the abuse or neglect of a minor child.

*-OR-*

**B**

Influence the Person’s Testimony

Induce a Person to Avoid Summons to Testify

Induce a Person to Avoid Testimony

Induce a Person to Not Report Info About Child Abuse/Neglect

Induce a Person to Not Give Truthful Testimony About Child Abuse/Neglect

**Intent**

Threatens a Witness with Intent to:

**B**

**B**

**B**

**B**

***24 - Bribery & Official Proceedings***

**Intimidating a Witness**

**– RCW 9A.72.110 (Class B Felony)**

**Continued-**

1. Threatens a former witness because of the witness’s role in an official proceeding.

Directs a threat to a former Witness:

**Intent**

**B**

A person whom the actor believes may be called as a witness in an official proceeding

**B**

A person was endorsed as a witness in an official proceeding

**B**

A person testified in an official proceeding

**B**

A person whom the actor has reason to believe may have information or relevant information to a criminal investigation or the abuse or neglect of a minor child

**B**

A person who testified in an official proceeding

A person whom the actor has knew or believed may have been called as a witness related to criminal investigation or the abuse or neglect of a minor child

**B**

**\*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:
   1. Withhold or give false testimony;

*-OR-*

*Each instance of an attempt to tamper with a witness constitutes a separate offense.*

* 1. Avoid any official proceeding;

*-OR-*

* 1. Withhold from a law enforcement agency information relevant to a criminal investigation or the abuse or neglect of a minor child.

**C**

Withhold or Give False Testimony

Avoid Any Official Proceeding

Withhold Info About Child Abuse/Neglect

**Intent**

Attempts to Induce a Witness to:

**C**

**C**

*Bribing a Witness, Intimidating a Witness, and Tampering with a Witness involve the same general goals. It depends on how the suspect tried to accomplish those goals:*

* *By Benefit (Bribing),*
* *By Threat (Intimidating),or*
* *By Tampering (Persuasiveness).*

***25 - Obstructing Governmental Operation***

**Definitions**

**– RCW 9A.76.010**

*Note – This RCW definition of “custody” is not always the same as the Court’s understanding or interpretation of “custody.”*

1. **“Custody”** means restraint pursuant to a lawful arrest or court order.
2. **“Detention Facility”** means any place used for confinement of a person:
   1. Arrested for, charged with, or convicted of an offense;

*-OR-*

* 1. Charged with being or adjudicated to be a juvenile offender;

*-OR-*

* 1. Held for extradition or as a material witness;

*-OR-*

* 1. Otherwise confined by court order;

*-OR-*

* 1. In any work release, furlough, or other such facility or program.

#### 25 - Obstructing Governmental Operation

**Obstructing a Law Enforcement Officer**

**Misdemeanor Presence Exception:**

**NO – BUT AN OFFICER WILL MOST LIKELY BE THERE. . . THINK ABOUT IT.**

* **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.

**GM**

**Knowledge (“Willfully”)**

Hinders, Delays, or Obstructs a Law Enforcement Officer in the Discharge of Official Duties.

*It is important for officers not to abuse this RCW.*

**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:

*Note that it doesn’t have to be a firearm. Any weapon will qualify.*

* 1. The officer is acting within the scope of the officer’s duties,

AND

* 1. Does not consent to the removal, AND
  2. The person has reasonable cause to know or knows that the individual is a law enforcement or corrections officer.

1. If the firearm is discharged during its removal, the crime becomes a Class B Felony.

**C**

Officer is Acting Within Scope of Duty

**Intent to Interfere**

Knowingly Removes Firearm or Weapon from a Law Enforcement or Corrections Officer, Or Stops Him from Using it

Firearm is Not Discharged

Suspect Knows the Person is an Officer

Firearm is Discharged During Removal

w/o Officer’s Permission

**B**

#### 25 - Obstructing Governmental Operation

**Refusing to Summon Aid for a Peace Officer**

**Misdemeanor Presence Exception?**

**NO**

* **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.

**M**

**Knowledge (NS)**

Upon Request by a Peace Officer, Unreasonably Refuses or Fails to Summon Aid

#### 25 - Obstructing Governmental Operation

**Resisting Arrest**

**Misdemeanor Presence Exception:**

**NO -** NOT ON THE EXCEPTION LIST, BUT WHEN IS THIS GOING TO HAPPEN OUTSIDE AN OFFICER’S PRESENCE

* **RCW 9A.76.040 (Misdemeanor)**

1. A person intentionally prevents or attempts to prevent a peace officer from lawfully arresting him.

**M**

**Intent**

Prevents or Attempts to Prevent a Peace Officer from Lawfully Arresting Him/Her

DISCUSSION:

What do you have to tell the suspect first?

* “You’re under arrest.”

You should be giving good, clear verbal commands at the same time you’re moving in.

#### 25 - Obstructing Governmental Operation

**Escape 3rd Degree**

**Misdemeanor Presence Exception?**

**NO – BUT THE ESCAPE IS ON-GOING AS LONG AS THE SUSPECT IS EVADING CUSTODY, THERFORE POLICE CAN ARREST BECAUSE THE ESCAPE IS STILL OCCURING IN THEIR PRESENCE.**

* **RCW 9A.76.130 (Gross Misdemeanor)**

1. A person escapes custody.

**GM**

**Strict Liability**

Escapes Custody

**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)**

**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)**

1. A person knowingly escapes from a detention facility;

*-OR-*

1. Having been *charged* with a felony or an equivalent juvenile offense, he or she knowingly escapes from custody;

*-OR-*

1. 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.

**C**

**Knowledge**

Escapes From Detention Facility

**C**

Having Been Charged w/ a Felony

**Knowledge**

Escapes Custody

**C**

Having Been Committed for Sex, Violent, or Felony Harassment Offense and Under an Order of Conditional Release

**Knowledge**

Leaves or Remains out of the State w/o Authorization

#### 25 - Obstructing Governmental Operation

**Escape 1st Degree**

**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)**

* **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.

**B**

Having Been Convicted of a Felony

**Knowledge**

Escapes Custody

**Knowledge**

Escapes from a Detention Facility

**B**

#### 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:
   1. While confined to the special commitment center or another secure facility under court order, the person escapes from the secure facility;

*-OR-*

* 1. 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.

The courts assign the label

“Sexually Violent Predator.”

**A**

Having Been Found to be Sexually Violent Predator

Under Conditional Release

**Knowledge (NS)**

Escapes from a Secure Facility

**Knowledge**

Leaves or Remains out of the State w/o Authorization

**Knowledge**

Leaves or Remains Away From Where He’s Supposed to Be

**Knowledge**

Tampers with or Removes Monitoring Device

**Knowledge**

Escapes from Escort

**A**

**A**

**A**

**A**

#### 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:
   1. Harbors or conceals such person;

*-OR-*

* 1. Warns such person of impending discovery or apprehension;

*-OR-*

* 1. Provides such person with money, transportation, disguise or other means of avoiding discovery or apprehension;

*-OR-*

* 1. 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-*

* 1. Conceals, alters or destroys any physical evidence that would aid in the discovery or apprehension of a wanted person;

*-OR-*

* 1. Provides such person with a weapon.

This is helping after the fact.

The person rendering criminal assistance did not help commit the actual crime(s).

The person rendering criminal assistance need not know exactly why the police are seeking the wanted person – only that they *are* seeking the wanted person.

#### 25 - Obstructing Governmental Operation

**Rendering Criminal Assistance 3rd Degree**

**Misdemeanor Presence Exception?**

**NO**

* **RCW 9A.76.090 (Misdemeanor)**

1. A person renders criminal assistance to a person who has committed a Gross Misdemeanor or a Misdemeanor.

**M**

**Intent to Prevent, Hinder, Delay**

Renders Criminal Assistance to a Person that Committed a GM or M

#### 25 - Obstructing Governmental Operation

**Rendering Criminal Assistance 2nd Degree**

**Misdemeanor Presence Exception?**

**NO**

* **RCW 9A.76.080 (Misdemeanor / Gross Misdemeanor)**

1. A person renders criminal assistance to:
   1. A person who has committed or is being sought for a class B or Class C Felony or an equivalent juvenile offense;

*-OR-*

* 1. Someone being sought for violation of parole, probation, or community supervision.

1. If the actor is a relative of the wanted person then it is a Misdemeanor.

Suspect is the Wanted Person’s Relative

Suspect Not Related to Wanted Person

Suspect is the Wanted Person’s Relative

Suspect Not Related to Wanted Person

**M**

Renders Criminal Assistance to a Person that Committed a Class C or B Felony

**Intent to Prevent, Hinder, Delay**

**GM**

**M**

Renders Criminal Assistance to a Person Being Sought for Violation of Parole, Probation, or Community Supervision

**Intent to Prevent, Hinder, Delay**

**GM**

#### 25 - Obstructing Governmental Operation

**Rendering Criminal Assistance 1st Degree**

**Misdemeanor Presence Exception?**

**NO**

* **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.

**Intent to Prevent, Hinder, Delay**

**GM**

Renders Criminal Assistance to a Person that Committed a Class A Felony

Suspect is the Wanted Person’s Relative and Under 18

Suspect Not Related to Wanted Person

###### B

#### 25 - Obstructing Governmental Operation

**Making a False or Misleading Statement to a Public Servant**

**Misdemeanor Presence Exception?**

**NO**

* **RCW 9A.76.175 (Gross Misdemeanor)**

1. A person who *knowingly* makes a false or misleading material statement to a public servant.

***“Material”*** *in legal terms means important, substantial, or vital.*

1. **“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.

**If a person is operating a motor vehicle and false statements are given (name, etc...), consider charging RCW 46.61.020**

**GM**

**Knowledge**

Makes a False or Misleading Statement to a Public Servant

|  |  |  |  |
| --- | --- | --- | --- |
| This RCW differs from | | |  |
| Perjury in that no oath or | | | |
| official proceeding is | |  | |
| required. Simply lying is | | | |
| enough. |  | | |

## 26 - Public Disturbance

**Misdemeanor Presence Exception?**

**YES**

**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.

1. (a) Except as provided in (b) of this subsection, the crime of criminal mischief is a gross misdemeanor.
   1. The crime of criminal mischief is a class C felony if the actor is armed with a deadly weapon.

*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).*

**C**

Armed w/ Deadly Weapon

Acting w/ Three or More Others

Not Armed w/ Deadly Weapon

**Knowledge**

Uses, Participates in, or Threatens to Use Force Against Person or Property

**GM**

## 26 - Public Disturbance

**Failure to Disperse**

**Misdemeanor Presence Exception?**

**YES**

* **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

*The suspect*

*plus*

*1*

*+*

1. 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.

*At least three others 3*

*Total =4*

**M**

Congregating Where There are Acts Creating a Risk of Injury to a Person or Harm to Property

**Knowledge (NS)**

Fails/Refuses to Disperse After Being Ordered By Public Servant

Acting w/ Three or More Others

*The wording of this RCW requires that a warning from the police must precede any arrest.*

## 26 - Public Disturbance

**Disorderly Conduct**

**Misdemeanor Presence Exception?**

**MAYBE**

* **RCW 9A.84.030 (Misdemeanor)**

1. A person uses abusive language and thereby intentionally creates a risk of assault;

*-OR-*

1. Intentionally disrupts any lawful assembly or meeting without legal authority;

*"fighting words"*

*-OR-*

1. Intentionally obstructs vehicular or pedestrian traffic without lawful authority.

*-OR-*

1. 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:
   1. The location where a funeral or burial is being performed;
   2. A funeral home during the viewing of a deceased person;
   3. A funeral procession, if the actor knows that the funeral procession is taking place; or
   4. A building in which a funeral or memorial service is being conducted.

**M**

**Intent**

Uses Abusive Language Creating Risk of Assault

**M**

**Intent**

Disrupts Lawful Assembly or Meeting

**M**

**Intent**

Obstructs Vehicular or Pedestrian Traffic

**M**

Knowing it will Adversely Affect the Ceremony

**Intent**

Disrupts a Funeral

This RCW is good for bar fights or mutual combat where no one wants to press charges, but action needs to be taken.

## - Public Disturbance

**False Reporting**

**Misdemeanor Presence Exception?**

**NO**

* **RCW 9A.84.040 (Gross Misdemeanor)**

1. A person, with *knowledge* that the information reported, conveyed or circulated is false:
   1. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency; AND
   2. 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.

**GM**

Knowing it will Likely Cause Evacuation or Public Inconvenience or Alarm

**Knowledge**

Falsely Warns of an Emergency

## 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.

## - 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)
   1. A person knowingly engages in conduct which aids a form of gambling; or
   2. While acting other than a player accepts something of value from another for participating in the proceeds of gambling activity; or
   3. The person engages in bookmaking; or
   4. The person conducts a lottery; or
   5. The person pays a fee to participate in gambling activity; or
   6. 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:
   1. Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;

*-OR-*

* 1. 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-*

* 1. 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-*

* 1. 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
   1. Knowingly causes, aids, abets, or conspires with another to engage in cheating;

**Misdemeanor Presence Exception?**

**YES**

Notice that winning isn’t necessary – just the act of cheating.

*-OR-*

* 1. 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.

## - Gambling Laws - Overview

**Professional Gambling 3rd Degree**

**Misdemeanor Presence Exception?**

**NO**

* **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
   1. He operates any unlicensed gambling activity;

*-OR-*

* 1. 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
   1. Acts in concert or conspires with less than five people;

*-OR-*

* 1. Accepts bets exceeding $2,000 during any 30 day period on future contingent events;

*-OR-*

* 1. Maintains a gambling premises;

*-OR-*

* 1. 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
   1. Acts in concert or conspires with at least five other people;

*-OR-*

* 1. Accepts bets exceeding $5,000 during any 30 day period on future contingent events;

*-OR-*

* 1. Operates or profits from the operation of premises where persons are charged a fee to participate in unauthorized gambling activities.

## - 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.

***“Minor”*** *for the purposes of the liquor laws means a person under 21 years old.*

1. **"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.
2. **"Package"** means any container or receptacle used for holding liquor.
3. **"Person"** means an individual, copartnership, association, or corporation.
4. **"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.
5. **"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.

## 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:

* 1. 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
  2. They are employees in a restaurant/establishment and are performing normal duties (RCW 66.44.350).

Parent must be preesnt

They can serve – but not pour.

## 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:

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

 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.

**Opening or Consuming Liquor in Public Place**

**Misdemeanor Presence Exception?**

**NO**

* **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]**

**Misdemeanor Presence Exception?**

**NO**

* **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

**Misdemeanor Presence Exception?**

**NO**

* **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.
   1. 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.

1. 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.

## 28 - Liquor & Tobacco Laws – Overview

**No Sale of Liquor to Minors, Intoxicated Persons, etc.**

**Misdemeanor Presence Exception?**

**NO**

* **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.

**[MIP &] Furnishing Liquor to Minors – Possession, Use**

**Misdemeanor Presence Exception?**

**YES**

* **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):
   1. It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor.
   2. 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:
      1. Is in possession of or close proximity to a container that has or recently had liquor in it;

*-OR-*

* + 1. By speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor.

## 28 - Liquor & Tobacco Laws – Overview

**Minor Purchasing or Attempting to Purchase Liquor**

**Misdemeanor Presence Exception?**

**NO**

* **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

**Misdemeanor Presence Exception?**

**NO**

* **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**

**Misdemeanor Presence Exception?**

**NO**

* **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:

*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.*

* 1. 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;
  2. 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;
  3. 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.

*When the ID being misused is a DL or State ID Card use 46.20.0921 for enforcement.*

*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**

**Misdemeanor Presence Exception?**

**NO**

* **RCW 66.20.200 (Misdemeanor)**

1. Relating to the purchase of liquor, the possession of liquor, or being in off-limits areas:
   1. 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.

*When the ID being misused is a DL or State ID Card use 46.20.0921 for enforcement.*

* 1. 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.
  2. It’s unlawful for a person to unlawfully procure or have issued or transferred to him an ID card.
  3. It’s unlawful for any person to possess an ID card not issued to him or her.
  4. 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]**

**Misdemeanor Presence Exception?**

**NO**

* **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).

*When the ID being misused is a DL or State ID Card use 46.20.0921 for enforcement.*

## - 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:
   1. Sell liquor,
   2. Offer liquor for sale,

*-OR-*

*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*

*-OR-*

* 1. 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-*

* 1. Permit the removal of liquor from the premises;

*-OR-*

* 1. Allow liquor to be consumed on the premises;

*-OR-*

* 1. 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**

**Misdemeanor Presence Exceptions?**

**NO**

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)

*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).*

*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*

*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*

1. RCW 70.155.080 – Obtain, attempted obtain, purchase, attempted purchase, or possession of cigarettes or tobacco product by person under 18 years old. (Infraction)

*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*

1. RCW 70.160.030 – Smoking prohibited in public places or places of employment. – (Infraction)
2. RCW 70.160.075 – Smoking prohibited within 25 feet of public places or places of employment. – (Infraction)

## - 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**

*A landlord may NOT consent to a warrantless search by the police of the tenant’s premises.*

A landlord may NOT consent to a warrantless search by the police of the tenant’s premise.

**– RCW 59.18**

1. With consent and at reasonable times, a landlord may enter a tenant's premises:
   1. To make repairs, alterations and inspections, the tenant must receive two day's notice;

A landlord may NOT consent to a warrantless search by the police of the tenant’s premise.

A landlord may NOT consent to a warrantless search by the police of the tenant’s premise.

*-OR-*

* 1. 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.

## 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.

## - 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

1. Drug violations - also covered in RCW 59.18.180
2. Health/safety violations - also addressed in RCW 59.18.180 & 190
3. 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])

1. 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])
2. Have an inspection for conditions that substantially endanger the tenant's health or safety and pay rent into escrow account after following statutory procedures
3. ***- 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:
   1. The juvenile is brought into a juvenile detention facility;

*-OR-*

* 1. When law enforcement arrests and the juvenile is not taken into custody.

If parents waive rights and child refuses to waive, the right is not waived.

**Waiver of Rights**

**– RCW 13.40.140[9]&[10]**

1. Waiver of rights by a juvenile must 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:
   1. 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;

Remember back to the ages of culpability for kids

This does not apply for kids that are not suspects. (Witnesses, victims are OK).

The parents must be given the opportunity to be present and invoke the child’s rights.

*-OR-*

* 1. 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.

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**[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:
   1. 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-*

* 1. 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-*

* 1. 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.

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*-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?” better establishes capacity. A suggested follow-up question might be, “Why was it wrong?”

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**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:
   1. Violent offenses as defined in 9.94A.030, or
   2. Sex offenses as defined in 9.94A.030, or
   3. Inhaling toxic fumes, or
   4. Controlled substance, or
   5. Liquor violations / M.I.P., or
   6. Assault, firearm, kidnapping, harassment and arson statues.
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.

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**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**

*NOT an arrest*

**– RCW 13.32A.050**

1. A law enforcement officer shall take a child into custody:
   1. 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-*

* 1. 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.

*Runaway*

*Safety Concerns*

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**Transporting**

**– RCW 13.32A.060**

*Attempt to deliver kids to these people (IN ORDER):*

* *Parent (Home or Work)*
* *Adult Family Member*
* *Responsible Adult*
* *Crisis Center*
* *DSHS*

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.

*Remember to run a warrant check to make sure the adult is not a sex offender or has warrants.*

**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.

*State law DOES NOT require that the child be missing for at least 24 hours before a report can be filed - You’ve been watching too much TV.*

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**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:
   1. Fails to release the minor to a law enforcement officer after being requested to do so by the officer;

*-OR-*

* 1. 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-*

* 1. Obstructs a law enforcement officer from taking the minor into custody;

*-OR-*

* 1. 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.

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**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:
   1. Any practitioner
   2. County Coroner
   3. Medical examiner
   4. Law enforcement officer
   5. Professional school personnel
   6. Registered or licensed nurse
   7. Social services counselor
   8. Psychologist
   9. Pharmacist
   10. Licensed or certified child care providers or their employees
   11. Employee of DSHS
   12. Juvenile probation officer
   13. Employee of the department of early learning
   14. Placement and liaison specialist
   15. Responsible living skills program staff
   16. HOPE center staff
   17. State family and children's ombudsman (including volunteers)
   18. Guardians ad litem
   19. DOC personnel
   20. 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.
   1. **“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 then 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.

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**Duty to Report Child Abuse**

**– RCW 26.44.030**

*-continued from previous page-*

1. 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.
2. 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.
3. 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.
4. **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](http://apps.leg.wa.gov/rcw/default.aspx?cite=69.50.401) (1) and (2) (a) through (e) relating to manufacture of methamphetamine; or (2) an allegation under RCW [69.50.440](http://apps.leg.wa.gov/rcw/default.aspx?cite=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.

1. ***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](http://apps.leg.wa.gov/rcw/default.aspx?cite=13.34.050) or [26.44.050](http://apps.leg.wa.gov/rcw/default.aspx?cite=26.44.050). For purposes of this section, "child" means any person under thirteen years of age.

1. ***- Juvenile Law & Procedures - Overview***

**Misdemeanor Presence Exception?**

**YES**

**[Failure to Report Child Abuse] – Violation – Penalty**

* **RCW 26.44.080 (Gross Misdemeanor)**

DISCUSSION:

This is a useful tool to gain cooperation from other adults in the home. What is the crime if they cover up for the suspect?

* Unless we can prove that this person participated in the abuse or that they knew in advance, we would use Rendering Criminal Assistance or Failure to Report Child Abuse.

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.

*Police can remove a child, but cannot place a child. CPS must be contacted.*

*Coordination beforehand is preferred when possible.*

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**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](http://apps.leg.wa.gov/rcw/default.aspx?cite=71A.12) RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter [71A.12](http://apps.leg.wa.gov/rcw/default.aspx?cite=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.

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(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](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.20) RCW, assisted living facilities; chapter [18.51](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.51) RCW, nursing homes; chapter [70.128](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.128) RCW, adult family homes; chapter [72.36](http://apps.leg.wa.gov/rcw/default.aspx?cite=72.36) RCW, soldiers' homes; or chapter [71A.20](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=30.22.040) and [30.22.041](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=74.09) or [74.39A](http://apps.leg.wa.gov/rcw/default.aspx?cite=74.39A) RCW.

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(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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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.

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   (16) "Social worker" means:   
  
     (a) A social worker as defined in RCW [18.320.010](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=11.88) RCW; or  
  
     (c) Who has a developmental disability as defined under RCW [71A.10.020](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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.]

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**Reports — Mandated and permissive — Contents — Confidentiality.**

**- RCW 74.34.035 MANDATORY REPORTING**

(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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=68.50.010).

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.   
     (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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=4.24.250), [18.20.390](http://apps.leg.wa.gov/rcw/default.aspx?cite=18.20.390), [43.70.510](http://apps.leg.wa.gov/rcw/default.aspx?cite=43.70.510), [70.41.200](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.41.200), [70.230.080](http://apps.leg.wa.gov/rcw/default.aspx?cite=70.230.080), and [74.42.640](http://apps.leg.wa.gov/rcw/default.aspx?cite=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***

**Reports — Contents — Identity confidential.**

- **RCW 74.34.040**

The reports made under \*RCW [74.34.030](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=74.04.060), chapter [42.56](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=18) RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult.

1. ***– 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:
   1. Cigarettes, cigars, or other tobacco products that are capable of starting a fire;

*-OR-*

* 1. Glass;

*-OR-*

* 1. A container or other product made predominantly or entirely of glass;

*-OR-*

* 1. A hypodermic needle or other medical instrument designed to cut or pierce;

*-OR-*

* 1. Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort;

*-OR-*

* 1. Nails or tacks.

1. **“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.
2. **“Junk vehicle”** means a vehicle certified under RCW 46.55.230 as meeting at least three of the following requirements:
   1. Is three years old or older;
   2. 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;
   3. Is apparently inoperable;
   4. Has an approximate fair market value equal only to the approximate value of the scrap in it.

### 32 – Litter & Illegal Dumping - Overview

**Littering Prohibited**

**Misdemeanor Presence Exception?**

**NO**

* **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.

*Infractions must occur in the Officer’s presence in order for the officer to issue an NOI (RCW 7.80.050 (2)*

* 1. Class 3 Civil Infraction: Less than or equal to one cubic foot of litter.
  2. Misdemeanor: More than one cubic foot of litter, but less than or equal to one cubic yard.
  3. Gross Misdemeanor: More than one cubic yard of litter.
  4. Class 1 Civil Infraction: Any amount of potentially dangerous litter.

*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.*

*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.*

1. 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.

*Infractions must occur in the Officer’s presence in order for the officer to issue an NOI (RCW 7.80.050 (2)*

### 32 – Litter & Illegal Dumping - Overview

**Unlawful to Dump or Deposit Solid Waste Without Permit**

**Misdemeanor Presence Exception?**

**NO**

* **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.
   1. Class 3 Civil Infraction: Less than or equal to one cubic foot of litter.
   2. Misdemeanor: More than one cubic foot of litter, but less than or equal to one cubic yard.
   3. 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).

### – Litter & Illegal Dumping - Overview

**Abandoning Junk Vehicle**

**Misdemeanor Presence Exception?**

**NO**

* **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.
   1. 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.

## – I.T.A. & Alcohol/Drug Treatment

**Involuntary Treatment Act (I.T.A.)**

*NOT an arrest*

**– 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.
   1. This protective custody is not an arrest.
   2. Reasonable force may be used to affect the custody.
   3. The goal of the protective custody is to deliver the person to a facility that can provide treatment.
   4. 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:
   1. The behavior(s) must be the result of a mental illness, AND
   2. 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**

*NOT an arrest*

**– 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.”
   1. This protective custody is not an arrest.
   2. Reasonable force may be used to effect the custody.
   3. The goal of the protective custody is to deliver the person to a facility that can provide treatment.

## - 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](http://apps.leg.wa.gov/rcw/default.aspx?cite=66.44.270), or involving criminal trespass under RCW [9A.52.070](http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.52.070) or [9A.52.080](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=26.44.063), or chapter [7.92](http://apps.leg.wa.gov/rcw/default.aspx?cite=7.92), [7.90](http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90), [9A.46](http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.46), [10.99](http://apps.leg.wa.gov/rcw/default.aspx?cite=10.99), [26.09](http://apps.leg.wa.gov/rcw/default.aspx?cite=26.09), [26.10](http://apps.leg.wa.gov/rcw/default.aspx?cite=26.10), [26.26](http://apps.leg.wa.gov/rcw/default.aspx?cite=26.26), [26.50](http://apps.leg.wa.gov/rcw/default.aspx?cite=26.50), or [74.34](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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 imminent serious bodily injury

***34 - Misdemeanor Presence Rule***

*- continued from previous page –*

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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=46.61.502) or [46.61.504](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=46.52.010), relating to duty on striking an unattended car or other property;  
  
     (b) RCW [46.52.020](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=46.61.500) or [46.61.530](http://apps.leg.wa.gov/rcw/default.aspx?cite=46.61.530), relating to reckless driving or racing of vehicles;  
  
     (d) RCW [46.61.502](http://apps.leg.wa.gov/rcw/default.aspx?cite=46.61.502) or [46.61.504](http://apps.leg.wa.gov/rcw/default.aspx?cite=46.61.504), relating to persons under the influence of intoxicating liquor or drugs;  
  
     (e) RCW [46.61.503](http://apps.leg.wa.gov/rcw/default.aspx?cite=46.61.503) or [46.25.110](http://apps.leg.wa.gov/rcw/default.aspx?cite=46.25.110), relating to persons having alcohol or THC in their system;  
  
     (f) RCW [46.20.342](http://apps.leg.wa.gov/rcw/default.aspx?cite=46.20.342), relating to driving a motor vehicle while operator's license is suspended or revoked;  
  
     (g) RCW [46.61.5249](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=9.41.010) and the term "dangerous weapon" has the meaning defined in RCW [9.41.250](http://apps.leg.wa.gov/rcw/default.aspx?cite=9.41.250) and [9.41.280](http://apps.leg.wa.gov/rcw/default.aspx?cite=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](http://apps.leg.wa.gov/rcw/default.aspx?cite=46) RCW.

(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.

***34 - Misdemeanor Presence Rule***

**Arrest Without a Warrant**

**- RCW 10.31.100**

**Felonies**

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. Always. Period.

**Misdemeanors and Gross Misdemeanors**

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 FOR THE FOLLOWING SITUATIONS:

* Crime involving physical harm or threats of harm to any person or property, or
* Crime involving the unlawful taking of property, or
* Crime involving the use or possession of cannabis, or
* Crime involving the acquisition, possession, or consumption of alcohol by a person under 21 under RCW 66.44.270, or
* Criminal Trespass, or
* Violation of a court order’s provisions regarding:
  + Acts or threats of violence, or
  + Going onto the grounds of or entering a residence, workplace, school, or day care, or
  + Knowingly coming within, or knowingly remaining within, a specified distance of a location, or
  + In the case of a child abuse order, any restrictions or conditions, or
  + Criminal violations of a foreign protection order, or
* DV Assault within the last 4 hours, or
* Hit and Run (RCW 46.52.010 or 46.52.020), or
* Reckless Driving and Racing, or
* DUI and Physical Control (alcohol and/or marijuana – RCW 46.61.502, 46.61.503, 46.61.504 & 46.25.110), or
* Driving While Suspended / Revoked, or
* Negligent Driving 1st Degree, or
* Any traffic violation resulting in a traffic accident, or
* Boating Under the Influence resulting in a vessel accident, or
* Reckless Boating, or
* On the request of another officer that witnessed the traffic violation, or
* Indecent Exposure, or
* Criminal violation of a harassment order, or
* Interference with a Health Care Facility *within the last 24 hours*, or
* Possessing Dangerous Weapons on School Facilities, or
* DUI or Physical Control if officer has knowledge that the person has a prior offense as defined in 46.61.5055 within ten years.