

2 EHB 1007 - S COMM AMD
3 By Committee on Judiciary

4 ADOPTED 4/12/99

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.16 RCW
8 to read as follows:

9 A violation of RCW 9.16.030 or 9.16.040 is a class C felony if:

- 10 (1) The violation involves the manufacture, production, or
- 11 distribution of items bearing counterfeit marks; and
- 12 (2) The defendant knew or should have known that the counterfeit
- 13 items, by their intended use, endangered the health or safety of
- 14 others.

15 **Sec. 2.** RCW 9.94A.320 and 1998 c 290 s 4, 1998 c 219 s 4, 1998 c
16 82 s 1, and 1998 c 78 s 1 are each reenacted and amended to read as
17 follows:

18 TABLE 2

19 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

20	XV	Aggravated Murder 1 (RCW 10.95.020)
21	XIV	Murder 1 (RCW 9A.32.030)
22		Homicide by abuse (RCW 9A.32.055)
23		Malicious explosion 1 (RCW 70.74.280(1))
24	XIII	Murder 2 (RCW 9A.32.050)
25		Malicious explosion 2 (RCW 70.74.280(2))
26		Malicious placement of an explosive 1 (RCW
27		70.74.270(1))
28	XII	Assault 1 (RCW 9A.36.011)
29		Assault of a Child 1 (RCW 9A.36.120)
30		Rape 1 (RCW 9A.44.040)
31		Rape of a Child 1 (RCW 9A.44.073)

1 Malicious placement of an imitation device
2 1 (RCW 70.74.272(1)(a))

3 XI Rape 2 (RCW 9A.44.050)
4 Rape of a Child 2 (RCW 9A.44.076)
5 Manslaughter 1 (RCW 9A.32.060)

6 X Kidnapping 1 (RCW 9A.40.020)
7 Child Molestation 1 (RCW 9A.44.083)
8 Malicious explosion 3 (RCW 70.74.280(3))
9 Over 18 and deliver heroin, a narcotic from
10 Schedule I or II, or flunitrazepam
11 from Schedule IV to someone under 18
12 (RCW 69.50.406)
13 Leading Organized Crime (RCW
14 9A.82.060(1)(a))
15 Indecent Liberties (with forcible
16 compulsion) (RCW 9A.44.100(1)(a))
17 Manufacture of methamphetamine (RCW
18 69.50.401(a)(1)(ii))

19 IX Assault of a Child 2 (RCW 9A.36.130)
20 Robbery 1 (RCW 9A.56.200)
21 Explosive devices prohibited (RCW
22 70.74.180)
23 Malicious placement of an explosive 2 (RCW
24 70.74.270(2))
25 Over 18 and deliver narcotic from Schedule
26 III, IV, or V or a nonnarcotic, except
27 flunitrazepam, from Schedule I-V to
28 someone under 18 and 3 years junior
29 (RCW 69.50.406)
30 Controlled Substance Homicide (RCW
31 69.50.415)
32 Sexual Exploitation (RCW 9.68A.040)
33 Inciting Criminal Profiteering (RCW
34 9A.82.060(1)(b))
35 Vehicular Homicide, by being under the
36 influence of intoxicating liquor or
37 any drug (RCW 46.61.520)

1 Homicide by Watercraft, by being under the
2 influence of intoxicating liquor or
3 any drug (RCW 88.12.029)

4 VIII Arson 1 (RCW 9A.48.020)
5 Promoting Prostitution 1 (RCW 9A.88.070)
6 Selling for profit (controlled or
7 counterfeit) any controlled substance
8 (RCW 69.50.410)
9 Manufacture, deliver, or possess with
10 intent to deliver heroin or cocaine
11 (RCW 69.50.401(a)(1)(i))
12 Deliver or possess with intent to deliver
13 methamphetamine (RCW
14 69.50.401(a)(1)(ii))
15 Manufacture, deliver, or possess with
16 intent to deliver amphetamine (RCW
17 69.50.401(a)(1)(ii))
18 Possession of ephedrine or pseudoephedrine
19 with intent to manufacture
20 methamphetamine (RCW 69.50.440)
21 Vehicular Homicide, by the operation of any
22 vehicle in a reckless manner (RCW
23 46.61.520)
24 Homicide by Watercraft, by the operation of
25 any vessel in a reckless manner (RCW
26 88.12.029)
27 Manslaughter 2 (RCW 9A.32.070)

28 VII Burglary 1 (RCW 9A.52.020)
29 Vehicular Homicide, by disregard for the
30 safety of others (RCW 46.61.520)
31 Homicide by Watercraft, by disregard for
32 the safety of others (RCW 88.12.029)
33 Introducing Contraband 1 (RCW 9A.76.140)
34 Indecent Liberties (without forcible
35 compulsion) (RCW 9A.44.100(1) (b) and
36 (c))
37 Child Molestation 2 (RCW 9A.44.086)

1 Dealing in depictions of minor engaged in
2 sexually explicit conduct (RCW
3 9.68A.050)
4 Sending, bringing into state depictions of
5 minor engaged in sexually explicit
6 conduct (RCW 9.68A.060)
7 Involving a minor in drug dealing (RCW
8 69.50.401(f))
9 Drive-by Shooting (RCW 9A.36.045)
10 Unlawful Possession of a Firearm in the
11 first degree (RCW 9.41.040(1)(a))
12 Malicious placement of an explosive 3 (RCW
13 70.74.270(3))
14 VI Bribery (RCW 9A.68.010)
15 Rape of a Child 3 (RCW 9A.44.079)
16 Intimidating a Juror/Witness (RCW
17 9A.72.110, 9A.72.130)
18 Malicious placement of an imitation device
19 2 (RCW 70.74.272(1)(b))
20 Incest 1 (RCW 9A.64.020(1))
21 Manufacture, deliver, or possess with
22 intent to deliver narcotics from
23 Schedule I or II (except heroin or
24 cocaine) or flunitrazepam from
25 Schedule IV (RCW 69.50.401(a)(1)(i))
26 Intimidating a Judge (RCW 9A.72.160)
27 Bail Jumping with Murder 1 (RCW
28 9A.76.170(2)(a))
29 Theft of a Firearm (RCW 9A.56.300)
30 V Persistent prison misbehavior (RCW
31 9.94.070)
32 Criminal Mistreatment 1 (RCW 9A.42.020)
33 Abandonment of dependent person 1 (RCW
34 9A.42.060)
35 Rape 3 (RCW 9A.44.060)
36 Sexual Misconduct with a Minor 1 (RCW
37 9A.44.093)
38 Child Molestation 3 (RCW 9A.44.089)

1 Kidnapping 2 (RCW 9A.40.030)
2 Extortion 1 (RCW 9A.56.120)
3 Incest 2 (RCW 9A.64.020(2))
4 Perjury 1 (RCW 9A.72.020)
5 Extortionate Extension of Credit (RCW
6 9A.82.020)
7 Advancing money or property for
8 extortionate extension of credit (RCW
9 9A.82.030)
10 Extortionate Means to Collect Extensions of
11 Credit (RCW 9A.82.040)
12 Rendering Criminal Assistance 1 (RCW
13 9A.76.070)
14 Bail Jumping with class A Felony (RCW
15 9A.76.170(2)(b))
16 Sexually Violating Human Remains (RCW
17 9A.44.105)
18 Delivery of imitation controlled substance
19 by person eighteen or over to person
20 under eighteen (RCW 69.52.030(2))
21 Possession of a Stolen Firearm (RCW
22 9A.56.310)

23 IV Residential Burglary (RCW 9A.52.025)
24 Theft of Livestock 1 (RCW 9A.56.080)
25 Robbery 2 (RCW 9A.56.210)
26 Assault 2 (RCW 9A.36.021)
27 Escape 1 (RCW 9A.76.110)
28 Arson 2 (RCW 9A.48.030)
29 Commercial Bribery (RCW 9A.68.060)
30 Bribing a Witness/Bribe Received by Witness
31 (RCW 9A.72.090, 9A.72.100)
32 Malicious Harassment (RCW 9A.36.080)
33 Threats to Bomb (RCW 9.61.160)
34 Willful Failure to Return from Furlough
35 (RCW 72.66.060)
36 Hit and Run--Injury Accident (RCW
37 46.52.020(4))
38 Hit and Run with Vessel--Injury Accident
39 (RCW 88.12.155(3))

1 Vehicular Assault (RCW 46.61.522)
2 Assault by Watercraft (RCW 88.12.032)
3 Manufacture, deliver, or possess with
4 intent to deliver narcotics from
5 Schedule III, IV, or V or nonnarcotics
6 from Schedule I-V (except marijuana,
7 amphetamine, methamphetamines, or
8 flunitrazepam) (RCW 69.50.401(a)(1)
9 (iii) through (v))
10 Influencing Outcome of Sporting Event (RCW
11 9A.82.070)
12 Use of Proceeds of Criminal Profiteering
13 (RCW 9A.82.080 (1) and (2))
14 Knowingly Trafficking in Stolen Property
15 (RCW 9A.82.050(2))
16 Counterfeiting (section 1 of this act)

17 III Criminal Gang Intimidation (RCW 9A.46.120)
18 Criminal Mistreatment 2 (RCW 9A.42.030)
19 Abandonment of dependent person 2 (RCW
20 9A.42.070)
21 Extortion 2 (RCW 9A.56.130)
22 Unlawful Imprisonment (RCW 9A.40.040)
23 Assault 3 (RCW 9A.36.031)
24 Assault of a Child 3 (RCW 9A.36.140)
25 Custodial Assault (RCW 9A.36.100)
26 Unlawful possession of firearm in the
27 second degree (RCW 9.41.040(1)(b))
28 Harassment (RCW 9A.46.020)
29 Promoting Prostitution 2 (RCW 9A.88.080)
30 Willful Failure to Return from Work Release
31 (RCW 72.65.070)
32 Burglary 2 (RCW 9A.52.030)
33 Introducing Contraband 2 (RCW 9A.76.150)
34 Communication with a Minor for Immoral
35 Purposes (RCW 9.68A.090)
36 Patronizing a Juvenile Prostitute (RCW
37 9.68A.100)
38 Escape 2 (RCW 9A.76.120)
39 Perjury 2 (RCW 9A.72.030)

1 Bail Jumping with class B or C Felony (RCW
2 9A.76.170(2)(c))
3 Intimidating a Public Servant (RCW
4 9A.76.180)
5 Tampering with a Witness (RCW 9A.72.120)
6 Manufacture, deliver, or possess with
7 intent to deliver marijuana (RCW
8 69.50.401(a)(1)(iii))
9 Delivery of a material in lieu of a
10 controlled substance (RCW
11 69.50.401(c))
12 Manufacture, distribute, or possess with
13 intent to distribute an imitation
14 controlled substance (RCW
15 69.52.030(1))
16 Recklessly Trafficking in Stolen Property
17 (RCW 9A.82.050(1))
18 Theft of livestock 2 (RCW 9A.56.080)
19 Securities Act violation (RCW 21.20.400)
20 II Unlawful Practice of Law (RCW 2.48.180)
21 Malicious Mischief 1 (RCW 9A.48.070)
22 Possession of Stolen Property 1 (RCW
23 9A.56.150)
24 Theft 1 (RCW 9A.56.030)
25 Class B Felony Theft of Rental, Leased, or
26 Lease-purchased Property (RCW
27 9A.56.096(4))
28 Trafficking in Insurance Claims (RCW
29 48.30A.015)
30 Unlicensed Practice of a Profession or
31 Business (RCW 18.130.190(7))
32 Health Care False Claims (RCW 48.80.030)
33 Possession of controlled substance that is
34 either heroin or narcotics from
35 Schedule I or II or flunitrazepam from
36 Schedule IV (RCW 69.50.401(d))
37 Possession of phencyclidine (PCP) (RCW
38 69.50.401(d))

1 Create, deliver, or possess a counterfeit
2 controlled substance (RCW
3 69.50.401(b))
4 Computer Trespass 1 (RCW 9A.52.110)
5 Escape from Community Custody (RCW
6 72.09.310)

7 I Theft 2 (RCW 9A.56.040)
8 Class C Felony Theft of Rental, Leased, or
9 Lease-purchased Property (RCW
10 9A.56.096(4))
11 Possession of Stolen Property 2 (RCW
12 9A.56.160)
13 Forgery (RCW 9A.60.020)
14 Taking Motor Vehicle Without Permission
15 (RCW 9A.56.070)
16 Vehicle Prowl 1 (RCW 9A.52.095)
17 Attempting to Elude a Pursuing Police
18 Vehicle (RCW 46.61.024)
19 Malicious Mischief 2 (RCW 9A.48.080)
20 Reckless Burning 1 (RCW 9A.48.040)
21 Unlawful Issuance of Checks or Drafts (RCW
22 9A.56.060)
23 Unlawful Use of Food Stamps (RCW 9.91.140
24 (2) and (3))
25 False Verification for Welfare (RCW
26 74.08.055)
27 Forged Prescription (RCW 69.41.020)
28 Forged Prescription for a Controlled
29 Substance (RCW 69.50.403)
30 Possess Controlled Substance that is a
31 Narcotic from Schedule III, IV, or V
32 or Non-narcotic from Schedule I-V
33 (except phencyclidine or
34 flunitrazepam) (RCW 69.50.401(d))

35 **Sec. 3.** RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read
36 as follows:

37 (1) Decision not to prosecute.

1 STANDARD: A prosecuting attorney may decline to prosecute, even
2 though technically sufficient evidence to prosecute exists, in
3 situations where prosecution would serve no public purpose, would
4 defeat the underlying purpose of the law in question or would result in
5 decreased respect for the law.

6 GUIDELINE/COMMENTARY:

7 Examples

8 The following are examples of reasons not to prosecute which could
9 satisfy the standard.

10 (a) Contrary to Legislative Intent - It may be proper to decline to
11 charge where the application of criminal sanctions would be clearly
12 contrary to the intent of the legislature in enacting the particular
13 statute.

14 (b) Antiquated Statute - It may be proper to decline to charge
15 where the statute in question is antiquated in that:

16 (i) It has not been enforced for many years; and

17 (ii) Most members of society act as if it were no longer in
18 existence; and

19 (iii) It serves no deterrent or protective purpose in today's
20 society; and

21 (iv) The statute has not been recently reconsidered by the
22 legislature.

23 This reason is not to be construed as the basis for declining cases
24 because the law in question is unpopular or because it is difficult to
25 enforce.

26 (c) De Minimus Violation - It may be proper to decline to charge
27 where the violation of law is only technical or insubstantial and where
28 no public interest or deterrent purpose would be served by prosecution.

29 (d) Confinement on Other Charges - It may be proper to decline to
30 charge because the accused has been sentenced on another charge to a
31 lengthy period of confinement; and

32 (i) Conviction of the new offense would not merit any additional
33 direct or collateral punishment;

34 (ii) The new offense is either a misdemeanor or a felony which is
35 not particularly aggravated; and

36 (iii) Conviction of the new offense would not serve any significant
37 deterrent purpose.

1 (e) Pending Conviction on Another Charge - It may be proper to
2 decline to charge because the accused is facing a pending prosecution
3 in the same or another county; and

4 (i) Conviction of the new offense would not merit any additional
5 direct or collateral punishment;

6 (ii) Conviction in the pending prosecution is imminent;

7 (iii) The new offense is either a misdemeanor or a felony which is
8 not particularly aggravated; and

9 (iv) Conviction of the new offense would not serve any significant
10 deterrent purpose.

11 (f) High Disproportionate Cost of Prosecution - It may be proper to
12 decline to charge where the cost of locating or transporting, or the
13 burden on, prosecution witnesses is highly disproportionate to the
14 importance of prosecuting the offense in question. This reason should
15 be limited to minor cases and should not be relied upon in serious
16 cases.

17 (g) Improper Motives of Complainant - It may be proper to decline
18 charges because the motives of the complainant are improper and
19 prosecution would serve no public purpose, would defeat the underlying
20 purpose of the law in question or would result in decreased respect for
21 the law.

22 (h) Immunity - It may be proper to decline to charge where immunity
23 is to be given to an accused in order to prosecute another where the
24 accused's information or testimony will reasonably lead to the
25 conviction of others who are responsible for more serious criminal
26 conduct or who represent a greater danger to the public interest.

27 (i) Victim Request - It may be proper to decline to charge because
28 the victim requests that no criminal charges be filed and the case
29 involves the following crimes or situations:

30 (i) Assault cases where the victim has suffered little or no
31 injury;

32 (ii) Crimes against property, not involving violence, where no
33 major loss was suffered;

34 (iii) Where doing so would not jeopardize the safety of society.

35 Care should be taken to insure that the victim's request is freely
36 made and is not the product of threats or pressure by the accused.

37 The presence of these factors may also justify the decision to
38 dismiss a prosecution which has been commenced.

39 Notification

1 The prosecutor is encouraged to notify the victim, when practical,
2 and the law enforcement personnel, of the decision not to prosecute.

3 (2) Decision to prosecute.

4 STANDARD:

5 Crimes against persons will be filed if sufficient admissible
6 evidence exists, which, when considered with the most plausible,
7 reasonably foreseeable defense that could be raised under the evidence,
8 would justify conviction by a reasonable and objective fact-finder.
9 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
10 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
11 9A.64.020 the prosecutor should avoid prefiling agreements or
12 diversions intended to place the accused in a program of treatment or
13 counseling, so that treatment, if determined to be beneficial, can be
14 provided pursuant to RCW 9.94A.120(8).

15 Crimes against property/other crimes will be filed if the
16 admissible evidence is of such convincing force as to make it probable
17 that a reasonable and objective fact-finder would convict after hearing
18 all the admissible evidence and the most plausible defense that could
19 be raised.

20 See table below for the crimes within these categories.

21 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

22 CRIMES AGAINST PERSONS

23 Aggravated Murder

24 1st Degree Murder

25 2nd Degree Murder

26 1st Degree Kidnaping

27 1st Degree Assault

28 1st Degree Assault of a Child

29 1st Degree Rape

30 1st Degree Robbery

31 1st Degree Rape of a Child

32 1st Degree Arson

33 2nd Degree Kidnaping

34 2nd Degree Assault

35 2nd Degree Assault of a Child

36 2nd Degree Rape

37 2nd Degree Robbery

38 1st Degree Burglary

1 1st Degree Manslaughter
2 2nd Degree Manslaughter
3 1st Degree Extortion
4 Indecent Liberties
5 Incest
6 2nd Degree Rape of a Child
7 Vehicular Homicide
8 Vehicular Assault
9 3rd Degree Rape
10 3rd Degree Rape of a Child
11 1st Degree Child Molestation
12 2nd Degree Child Molestation
13 3rd Degree Child Molestation
14 2nd Degree Extortion
15 1st Degree Promoting Prostitution
16 Intimidating a Juror
17 Communication with a Minor
18 Intimidating a Witness
19 Intimidating a Public Servant
20 Bomb Threat (if against person)
21 3rd Degree Assault
22 3rd Degree Assault of a Child
23 Unlawful Imprisonment
24 Promoting a Suicide Attempt
25 Riot (if against person)
26 Counterfeiting (if a violation of section 1 of this act)

27 CRIMES AGAINST PROPERTY/OTHER CRIMES
28 2nd Degree Arson
29 1st Degree Escape
30 2nd Degree Burglary
31 1st Degree Theft
32 1st Degree Perjury
33 1st Degree Introducing Contraband
34 1st Degree Possession of Stolen Property
35 Bribery
36 Bribing a Witness
37 Bribe received by a Witness
38 Bomb Threat (if against property)
39 1st Degree Malicious Mischief

1 2nd Degree Theft
2 2nd Degree Escape
3 2nd Degree Introducing Contraband
4 2nd Degree Possession of Stolen Property
5 2nd Degree Malicious Mischief
6 1st Degree Reckless Burning
7 Taking a Motor Vehicle without Authorization
8 Forgery
9 2nd Degree Perjury
10 2nd Degree Promoting Prostitution
11 Tampering with a Witness
12 Trading in Public Office
13 Trading in Special Influence
14 Receiving/Granting Unlawful Compensation
15 Bigamy
16 Eluding a Pursuing Police Vehicle
17 Willful Failure to Return from Furlough
18 Escape from Community Custody
19 Riot (if against property)
20 Thefts of Livestock

21 ALL OTHER UNCLASSIFIED FELONIES

22 Selection of Charges/Degree of Charge

23 (1) The prosecutor should file charges which adequately describe
24 the nature of defendant's conduct. Other offenses may be charged only
25 if they are necessary to ensure that the charges:

26 (a) Will significantly enhance the strength of the state's case at
27 trial; or

28 (b) Will result in restitution to all victims.

29 (2) The prosecutor should not overcharge to obtain a guilty plea.

30 Overcharging includes:

31 (a) Charging a higher degree;

32 (b) Charging additional counts.

33 This standard is intended to direct prosecutors to charge those
34 crimes which demonstrate the nature and seriousness of a defendant's
35 criminal conduct, but to decline to charge crimes which are not
36 necessary to such an indication. Crimes which do not merge as a matter
37 of law, but which arise from the same course of conduct, do not all
38 have to be charged.

1 GUIDELINES/COMMENTARY:

2 Police Investigation

3 A prosecuting attorney is dependent upon law enforcement agencies
4 to conduct the necessary factual investigation which must precede the
5 decision to prosecute. The prosecuting attorney shall ensure that a
6 thorough factual investigation has been conducted before a decision to
7 prosecute is made. In ordinary circumstances the investigation should
8 include the following:

9 (1) The interviewing of all material witnesses, together with the
10 obtaining of written statements whenever possible;

11 (2) The completion of necessary laboratory tests; and

12 (3) The obtaining, in accordance with constitutional requirements,
13 of the suspect's version of the events.

14 If the initial investigation is incomplete, a prosecuting attorney
15 should insist upon further investigation before a decision to prosecute
16 is made, and specify what the investigation needs to include.

17 Exceptions

18 In certain situations, a prosecuting attorney may authorize filing
19 of a criminal complaint before the investigation is complete if:

20 (1) Probable cause exists to believe the suspect is guilty; and

21 (2) The suspect presents a danger to the community or is likely to
22 flee if not apprehended; or

23 (3) The arrest of the suspect is necessary to complete the
24 investigation of the crime.

25 In the event that the exception to the standard is applied, the
26 prosecuting attorney shall obtain a commitment from the law enforcement
27 agency involved to complete the investigation in a timely manner. If
28 the subsequent investigation does not produce sufficient evidence to
29 meet the normal charging standard, the complaint should be dismissed.

30 Investigation Techniques

31 The prosecutor should be fully advised of the investigatory
32 techniques that were used in the case investigation including:

33 (1) Polygraph testing;

34 (2) Hypnosis;

35 (3) Electronic surveillance;

36 (4) Use of informants.

37 Pre-Filing Discussions with Defendant

1 Discussions with the defendant or his/her representative regarding
2 the selection or disposition of charges may occur prior to the filing
3 of charges, and potential agreements can be reached.

4 Pre-Filing Discussions with Victim(s)

5 Discussions with the victim(s) or victims' representatives
6 regarding the selection or disposition of charges may occur before the
7 filing of charges. The discussions may be considered by the prosecutor
8 in charging and disposition decisions, and should be considered before
9 reaching any agreement with the defendant regarding these decisions."

10 **EHB 1007** - S COMM AMD
11 By Committee on Judiciary

12 ADOPTED 4/12/99

13 On page 1, line 1 of the title, after "counterfeiting;" strike the
14 remainder of the title and insert "amending RCW 9.94A.440; reenacting
15 and amending RCW 9.94A.320; adding a new section to chapter 9.16 RCW;
16 and prescribing penalties."

--- END ---