

1 1007.E AMS HARG S2628.2

2 EHB 1007 - S AMD - 323

3 By Senators Hargrove, Zarelli and Long

4 DETERMINED OUT OF ORDER 4/12/99; COMMITTEE AMENDMENT ADOPTED

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 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

11 (1) "Counterfeit mark" means:

12 (a) Any unauthorized reproduction or copy of intellectual property;
13 or

14 (b) Intellectual property affixed to any item knowingly sold,
15 offered for sale, manufactured, or distributed, or identifying services
16 offered or rendered, without the authority of the owner of the
17 intellectual property.

18 (2) "Intellectual property" means any trademark, service mark,
19 trade name, label, term, device, design, or work adopted or used by a
20 person to identify such person's goods or services. Intellectual
21 property does not have exclusive use rights to trade names registered
22 under chapter 19.80 RCW.

23 (3) "Retail value" means the counterfeiter's regular selling price
24 for the item or service bearing or identified by the counterfeit mark.
25 In the case of items bearing a counterfeit mark which are components of
26 a finished product, the retail value shall be the counterfeiter's
27 regular selling price of the finished product on or in which the
28 component would be utilized.

29 **Sec. 2.** RCW 9.16.030 and 1909 c 249 s 344 are each amended to read
30 as follows:

31 ~~((Every person who shall use or display or have in his possession
32 with intent to use or display, the genuine label, trademark, term,
33 design, device, or form of advertisement of any person, corporation,
34 association or union, lawfully filed for record in the office of the
35 secretary of state, or the exclusive right to use which is guaranteed~~

1 to any person, corporation, association or union, by the laws of the
2 United States, without the written authority of such person,
3 corporation, association or union, or who shall wilfully forge or
4 counterfeit or use or display or have in his possession with intent to
5 use or display any representation, likeness, similitude, copy or
6 imitation of any genuine label, trademark, term, design, device, or
7 form of advertisement, so filed or protected, or any die, plate, stamp
8 or other device for manufacturing the same, shall be guilty of a gross
9 misdemeanor.) Any person who willfully and knowingly, and for
10 financial gain, manufactures, uses, displays, advertises, distributes,
11 offers for sale, sells or possesses with intent to sell or distribute
12 any item, or offers any services, bearing or identified by a
13 counterfeit mark, is guilty of the crime of counterfeiting.

14 Any state or federal certificate of registration of any
15 intellectual property is prima facie evidence of the facts stated in
16 the certificate.

17 NEW SECTION. Sec. 3. A new section is added to chapter 9.16 RCW
18 to read as follows:

19 (1) Counterfeiting is a misdemeanor, except as provided in
20 subsections (2), (3) and (4) of this section.

21 (2) Counterfeiting is a gross misdemeanor if:

22 (a) The defendant has previously been convicted under RCW 9.16.030;
23 or

24 (b) The violation involves more than one hundred but fewer than one
25 thousand items bearing a counterfeit mark or the total retail value of
26 all items bearing a counterfeit mark or the total retail value of all
27 items bearing, or services identified by, a counterfeit mark is more
28 than one thousand dollars but less than ten thousand dollars.

29 (3) Counterfeiting is a class C felony if:

30 (a) The defendant has been previously convicted of two or more
31 offenses under RCW 9.16.030;

32 (b) The violation involves the manufacture or production of items
33 bearing counterfeit marks; or

34 (c) The violation involves one thousand or more items bearing a
35 counterfeit mark or the total retail value of all items bearing, or
36 services identified by, a counterfeit mark is ten thousand dollars or
37 more.

38 (4) Counterfeiting is a class C felony if:

1 (a) The violation involves the manufacture, production, or
2 distribution of items bearing counterfeit marks; and

3 (b) The defendant knew or should have known that the counterfeit
4 items, by their intended use, endangered the health or safety of
5 others.

6 (5) For purposes of this section, the quantity or retail value of
7 items or services shall include the aggregate quantity or retail value
8 of all items bearing, or services identified by, every counterfeit mark
9 the defendant manufactures, uses, displays, advertises, distributes,
10 possesses, or possesses with intent to sell.

11 (6) A person guilty of counterfeiting shall be fined an amount up
12 to three times the retail value of the items bearing, or services
13 identified by, a counterfeit mark, unless extenuating circumstances are
14 shown by the defendant.

15 (7) The penalties provided for in this section are cumulative and
16 do not affect any other civil and criminal penalties provided by law.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.16 RCW
18 to read as follows:

19 (1) Any items bearing a counterfeit mark, and all personal property
20 employed or used in connection with counterfeiting, including but not
21 limited to, any items, objects, tools, machines, equipment,
22 instruments, or vehicles of any kind, shall be seized by any law
23 enforcement officer.

24 All seized personal property referenced in this subsection shall be
25 forfeited in accordance with RCW 10.105.010.

26 (2) Upon request of the intellectual property owner, all seized
27 items bearing a counterfeit mark shall be released to the intellectual
28 property owner for destruction or disposition.

29 (3) If the intellectual property owner does not request release of
30 seized items bearing a counterfeit mark, such items shall be destroyed
31 unless the intellectual property owner consents to another disposition.

32 **Sec. 5.** RCW 9.94A.320 and 1998 c 290 s 4, 1998 c 219 s 4, 1998 c
33 82 s 1, and 1998 c 78 s 1 are each reenacted and amended to read as
34 follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

1		
2		
3	XV	Aggravated Murder 1 (RCW 10.95.020)
4	XIV	Murder 1 (RCW 9A.32.030)
5		Homicide by abuse (RCW 9A.32.055)
6		Malicious explosion 1 (RCW 70.74.280(1))
7	XIII	Murder 2 (RCW 9A.32.050)
8		Malicious explosion 2 (RCW 70.74.280(2))
9		Malicious placement of an explosive 1 (RCW
10		70.74.270(1))
11	XII	Assault 1 (RCW 9A.36.011)
12		Assault of a Child 1 (RCW 9A.36.120)
13		Rape 1 (RCW 9A.44.040)
14		Rape of a Child 1 (RCW 9A.44.073)
15		Malicious placement of an imitation device
16		1 (RCW 70.74.272(1)(a))
17	XI	Rape 2 (RCW 9A.44.050)
18		Rape of a Child 2 (RCW 9A.44.076)
19		Manslaughter 1 (RCW 9A.32.060)
20	X	Kidnapping 1 (RCW 9A.40.020)
21		Child Molestation 1 (RCW 9A.44.083)
22		Malicious explosion 3 (RCW 70.74.280(3))
23		Over 18 and deliver heroin, a narcotic from
24		Schedule I or II, or flunitrazepam
25		from Schedule IV to someone under 18
26		(RCW 69.50.406)
27		Leading Organized Crime (RCW
28		9A.82.060(1)(a))
29		Indecent Liberties (with forcible
30		compulsion) (RCW 9A.44.100(1)(a))
31		Manufacture of methamphetamine (RCW
32		69.50.401(a)(1)(ii))
33	IX	Assault of a Child 2 (RCW 9A.36.130)
34		Robbery 1 (RCW 9A.56.200)

1 Explosive devices prohibited (RCW
2 70.74.180)
3 Malicious placement of an explosive 2 (RCW
4 70.74.270(2))
5 Over 18 and deliver narcotic from Schedule
6 III, IV, or V or a nonnarcotic, except
7 flunitrazepam, from Schedule I-V to
8 someone under 18 and 3 years junior
9 (RCW 69.50.406)
10 Controlled Substance Homicide (RCW
11 69.50.415)
12 Sexual Exploitation (RCW 9.68A.040)
13 Inciting Criminal Profiteering (RCW
14 9A.82.060(1)(b))
15 Vehicular Homicide, by being under the
16 influence of intoxicating liquor or
17 any drug (RCW 46.61.520)
18 Homicide by Watercraft, by being under the
19 influence of intoxicating liquor or
20 any drug (RCW 88.12.029)
21 VIII Arson 1 (RCW 9A.48.020)
22 Promoting Prostitution 1 (RCW 9A.88.070)
23 Selling for profit (controlled or
24 counterfeit) any controlled substance
25 (RCW 69.50.410)
26 Manufacture, deliver, or possess with
27 intent to deliver heroin or cocaine
28 (RCW 69.50.401(a)(1)(i))
29 Deliver or possess with intent to deliver
30 methamphetamine (RCW
31 69.50.401(a)(1)(ii))
32 Manufacture, deliver, or possess with
33 intent to deliver amphetamine (RCW
34 69.50.401(a)(1)(ii))
35 Possession of ephedrine or pseudoephedrine
36 with intent to manufacture
37 methamphetamine (RCW 69.50.440)

1 Vehicular Homicide, by the operation of any
2 vehicle in a reckless manner (RCW
3 46.61.520)
4 Homicide by Watercraft, by the operation of
5 any vessel in a reckless manner (RCW
6 88.12.029)
7 Manslaughter 2 (RCW 9A.32.070)

8 VII Burglary 1 (RCW 9A.52.020)
9 Vehicular Homicide, by disregard for the
10 safety of others (RCW 46.61.520)
11 Homicide by Watercraft, by disregard for
12 the safety of others (RCW 88.12.029)
13 Introducing Contraband 1 (RCW 9A.76.140)
14 Indecent Liberties (without forcible
15 compulsion) (RCW 9A.44.100(1) (b) and
16 (c))
17 Child Molestation 2 (RCW 9A.44.086)
18 Dealing in depictions of minor engaged in
19 sexually explicit conduct (RCW
20 9.68A.050)
21 Sending, bringing into state depictions of
22 minor engaged in sexually explicit
23 conduct (RCW 9.68A.060)
24 Involving a minor in drug dealing (RCW
25 69.50.401(f))
26 Drive-by Shooting (RCW 9A.36.045)
27 Unlawful Possession of a Firearm in the
28 first degree (RCW 9.41.040(1)(a))
29 Malicious placement of an explosive 3 (RCW
30 70.74.270(3))

31 VI Bribery (RCW 9A.68.010)
32 Rape of a Child 3 (RCW 9A.44.079)
33 Intimidating a Juror/Witness (RCW
34 9A.72.110, 9A.72.130)
35 Malicious placement of an imitation device
36 2 (RCW 70.74.272(1)(b))
37 Incest 1 (RCW 9A.64.020(1))

1 Manufacture, deliver, or possess with
2 intent to deliver narcotics from
3 Schedule I or II (except heroin or
4 cocaine) or flunitrazepam from
5 Schedule IV (RCW 69.50.401(a)(1)(i))
6 Intimidating a Judge (RCW 9A.72.160)
7 Bail Jumping with Murder 1 (RCW
8 9A.76.170(2)(a))
9 Theft of a Firearm (RCW 9A.56.300)

10 V Persistent prison misbehavior (RCW
11 9.94.070)
12 Criminal Mistreatment 1 (RCW 9A.42.020)
13 Abandonment of dependent person 1 (RCW
14 9A.42.060)
15 Rape 3 (RCW 9A.44.060)
16 Sexual Misconduct with a Minor 1 (RCW
17 9A.44.093)
18 Child Molestation 3 (RCW 9A.44.089)
19 Kidnapping 2 (RCW 9A.40.030)
20 Extortion 1 (RCW 9A.56.120)
21 Incest 2 (RCW 9A.64.020(2))
22 Perjury 1 (RCW 9A.72.020)
23 Extortionate Extension of Credit (RCW
24 9A.82.020)
25 Advancing money or property for
26 extortionate extension of credit (RCW
27 9A.82.030)
28 Extortionate Means to Collect Extensions of
29 Credit (RCW 9A.82.040)
30 Rendering Criminal Assistance 1 (RCW
31 9A.76.070)
32 Bail Jumping with class A Felony (RCW
33 9A.76.170(2)(b))
34 Sexually Violating Human Remains (RCW
35 9A.44.105)
36 Delivery of imitation controlled substance
37 by person eighteen or over to person
38 under eighteen (RCW 69.52.030(2))

1 Possession of a Stolen Firearm (RCW
2 9A.56.310)

3 IV Residential Burglary (RCW 9A.52.025)
4 Theft of Livestock 1 (RCW 9A.56.080)
5 Robbery 2 (RCW 9A.56.210)
6 Assault 2 (RCW 9A.36.021)
7 Escape 1 (RCW 9A.76.110)
8 Arson 2 (RCW 9A.48.030)
9 Commercial Bribery (RCW 9A.68.060)
10 Bribing a Witness/Bribe Received by Witness
11 (RCW 9A.72.090, 9A.72.100)
12 Malicious Harassment (RCW 9A.36.080)
13 Threats to Bomb (RCW 9.61.160)
14 Willful Failure to Return from Furlough
15 (RCW 72.66.060)
16 Hit and Run--Injury Accident (RCW
17 46.52.020(4))
18 Hit and Run with Vessel--Injury Accident
19 (RCW 88.12.155(3))
20 Vehicular Assault (RCW 46.61.522)
21 Assault by Watercraft (RCW 88.12.032)
22 Manufacture, deliver, or possess with
23 intent to deliver narcotics from
24 Schedule III, IV, or V or nonnarcotics
25 from Schedule I-V (except marijuana,
26 amphetamine, methamphetamines, or
27 flunitrazepam) (RCW 69.50.401(a)(1)
28 (iii) through (v))
29 Influencing Outcome of Sporting Event (RCW
30 9A.82.070)
31 Use of Proceeds of Criminal Profiteering
32 (RCW 9A.82.080 (1) and (2))
33 Knowingly Trafficking in Stolen Property
34 (RCW 9A.82.050(2))
35 Counterfeiting (section 3(4) of this act)

1 III Criminal Gang Intimidation (RCW 9A.46.120)
2 Criminal Mistreatment 2 (RCW 9A.42.030)
3 Abandonment of dependent person 2 (RCW
4 9A.42.070)
5 Extortion 2 (RCW 9A.56.130)
6 Unlawful Imprisonment (RCW 9A.40.040)
7 Assault 3 (RCW 9A.36.031)
8 Assault of a Child 3 (RCW 9A.36.140)
9 Custodial Assault (RCW 9A.36.100)
10 Unlawful possession of firearm in the
11 second degree (RCW 9.41.040(1)(b))
12 Harassment (RCW 9A.46.020)
13 Promoting Prostitution 2 (RCW 9A.88.080)
14 Willful Failure to Return from Work Release
15 (RCW 72.65.070)
16 Burglary 2 (RCW 9A.52.030)
17 Introducing Contraband 2 (RCW 9A.76.150)
18 Communication with a Minor for Immoral
19 Purposes (RCW 9.68A.090)
20 Patronizing a Juvenile Prostitute (RCW
21 9.68A.100)
22 Escape 2 (RCW 9A.76.120)
23 Perjury 2 (RCW 9A.72.030)
24 Bail Jumping with class B or C Felony (RCW
25 9A.76.170(2)(c))
26 Intimidating a Public Servant (RCW
27 9A.76.180)
28 Tampering with a Witness (RCW 9A.72.120)
29 Manufacture, deliver, or possess with
30 intent to deliver marijuana (RCW
31 69.50.401(a)(1)(iii))
32 Delivery of a material in lieu of a
33 controlled substance (RCW
34 69.50.401(c))
35 Manufacture, distribute, or possess with
36 intent to distribute an imitation
37 controlled substance (RCW
38 69.52.030(1))

1 Recklessly Trafficking in Stolen Property
2 (RCW 9A.82.050(1))
3 Theft of livestock 2 (RCW 9A.56.080)
4 Securities Act violation (RCW 21.20.400)

5 II Unlawful Practice of Law (RCW 2.48.180)
6 Malicious Mischief 1 (RCW 9A.48.070)
7 Possession of Stolen Property 1 (RCW
8 9A.56.150)
9 Theft 1 (RCW 9A.56.030)
10 Class B Felony Theft of Rental, Leased, or
11 Lease-purchased Property (RCW
12 9A.56.096(4))
13 Trafficking in Insurance Claims (RCW
14 48.30A.015)
15 Unlicensed Practice of a Profession or
16 Business (RCW 18.130.190(7))
17 Health Care False Claims (RCW 48.80.030)
18 Possession of controlled substance that is
19 either heroin or narcotics from
20 Schedule I or II or flunitrazepam from
21 Schedule IV (RCW 69.50.401(d))
22 Possession of phencyclidine (PCP) (RCW
23 69.50.401(d))
24 Create, deliver, or possess a counterfeit
25 controlled substance (RCW
26 69.50.401(b))
27 Computer Trespass 1 (RCW 9A.52.110)
28 Escape from Community Custody (RCW
29 72.09.310)
30 Counterfeiting (section 3(3) of this act)

31 I Theft 2 (RCW 9A.56.040)
32 Class C Felony Theft of Rental, Leased, or
33 Lease-purchased Property (RCW
34 9A.56.096(4))
35 Possession of Stolen Property 2 (RCW
36 9A.56.160)
37 Forgery (RCW 9A.60.020)

1 Taking Motor Vehicle Without Permission
2 (RCW 9A.56.070)
3 Vehicle Prowl 1 (RCW 9A.52.095)
4 Attempting to Elude a Pursuing Police
5 Vehicle (RCW 46.61.024)
6 Malicious Mischief 2 (RCW 9A.48.080)
7 Reckless Burning 1 (RCW 9A.48.040)
8 Unlawful Issuance of Checks or Drafts (RCW
9 9A.56.060)
10 Unlawful Use of Food Stamps (RCW 9.91.140
11 (2) and (3))
12 False Verification for Welfare (RCW
13 74.08.055)
14 Forged Prescription (RCW 69.41.020)
15 Forged Prescription for a Controlled
16 Substance (RCW 69.50.403)
17 Possess Controlled Substance that is a
18 Narcotic from Schedule III, IV, or V
19 or Non-narcotic from Schedule I-V
20 (except phencyclidine or
21 flunitrazepam) (RCW 69.50.401(d))

22 **Sec. 6.** RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read
23 as follows:

24 (1) Decision not to prosecute.

25 STANDARD: A prosecuting attorney may decline to prosecute, even
26 though technically sufficient evidence to prosecute exists, in
27 situations where prosecution would serve no public purpose, would
28 defeat the underlying purpose of the law in question or would result in
29 decreased respect for the law.

30 GUIDELINE/COMMENTARY:

31 Examples

32 The following are examples of reasons not to prosecute which could
33 satisfy the standard.

34 (a) Contrary to Legislative Intent - It may be proper to decline to
35 charge where the application of criminal sanctions would be clearly
36 contrary to the intent of the legislature in enacting the particular
37 statute.

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

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

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

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

8 (iv) The statute has not been recently reconsidered by the
9 legislature.

10 This reason is not to be construed as the basis for declining cases
11 because the law in question is unpopular or because it is difficult to
12 enforce.

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

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

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

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

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

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

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

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

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

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

35 (f) High Disproportionate Cost of Prosecution - It may be proper to
36 decline to charge where the cost of locating or transporting, or the
37 burden on, prosecution witnesses is highly disproportionate to the
38 importance of prosecuting the offense in question. This reason should

1 be limited to minor cases and should not be relied upon in serious
2 cases.

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

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

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

16 (i) Assault cases where the victim has suffered little or no
17 injury;

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

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

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

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

25 Notification

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

28 (2) Decision to prosecute.

29 STANDARD:

30 Crimes against persons will be filed if sufficient admissible
31 evidence exists, which, when considered with the most plausible,
32 reasonably foreseeable defense that could be raised under the evidence,
33 would justify conviction by a reasonable and objective fact-finder.
34 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
35 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
36 9A.64.020 the prosecutor should avoid prefiling agreements or
37 diversions intended to place the accused in a program of treatment or
38 counseling, so that treatment, if determined to be beneficial, can be
39 provided pursuant to RCW 9.94A.120(8).

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

6 See table below for the crimes within these categories.

7 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

8 CRIMES AGAINST PERSONS

9 Aggravated Murder
10 1st Degree Murder
11 2nd Degree Murder
12 1st Degree Kidnaping
13 1st Degree Assault
14 1st Degree Assault of a Child
15 1st Degree Rape
16 1st Degree Robbery
17 1st Degree Rape of a Child
18 1st Degree Arson
19 2nd Degree Kidnaping
20 2nd Degree Assault
21 2nd Degree Assault of a Child
22 2nd Degree Rape
23 2nd Degree Robbery
24 1st Degree Burglary
25 1st Degree Manslaughter
26 2nd Degree Manslaughter
27 1st Degree Extortion
28 Indecent Liberties
29 Incest
30 2nd Degree Rape of a Child
31 Vehicular Homicide
32 Vehicular Assault
33 3rd Degree Rape
34 3rd Degree Rape of a Child
35 1st Degree Child Molestation
36 2nd Degree Child Molestation
37 3rd Degree Child Molestation
38 2nd Degree Extortion

1 1st Degree Promoting Prostitution
2 Intimidating a Juror
3 Communication with a Minor
4 Intimidating a Witness
5 Intimidating a Public Servant
6 Bomb Threat (if against person)
7 3rd Degree Assault
8 3rd Degree Assault of a Child
9 Unlawful Imprisonment
10 Promoting a Suicide Attempt
11 Riot (if against person)
12 Counterfeiting (if a violation of section 3(4) of this act)

13 CRIMES AGAINST PROPERTY/OTHER CRIMES

14 2nd Degree Arson
15 1st Degree Escape
16 2nd Degree Burglary
17 1st Degree Theft
18 1st Degree Perjury
19 1st Degree Introducing Contraband
20 1st Degree Possession of Stolen Property
21 Bribery
22 Bribing a Witness
23 Bribe received by a Witness
24 Bomb Threat (if against property)
25 1st Degree Malicious Mischief
26 2nd Degree Theft
27 2nd Degree Escape
28 2nd Degree Introducing Contraband
29 2nd Degree Possession of Stolen Property
30 2nd Degree Malicious Mischief
31 1st Degree Reckless Burning
32 Taking a Motor Vehicle without Authorization
33 Forgery
34 2nd Degree Perjury
35 2nd Degree Promoting Prostitution
36 Tampering with a Witness
37 Trading in Public Office
38 Trading in Special Influence
39 Receiving/Granting Unlawful Compensation

1 Bigamy
2 Eluding a Pursuing Police Vehicle
3 Willful Failure to Return from Furlough
4 Escape from Community Custody
5 Riot (if against property)
6 Thefts of Livestock

7 ALL OTHER UNCLASSIFIED FELONIES

8 Selection of Charges/Degree of Charge

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

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

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

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

16 Overcharging includes:

17 (a) Charging a higher degree;

18 (b) Charging additional counts.

19 This standard is intended to direct prosecutors to charge those
20 crimes which demonstrate the nature and seriousness of a defendant's
21 criminal conduct, but to decline to charge crimes which are not
22 necessary to such an indication. Crimes which do not merge as a matter
23 of law, but which arise from the same course of conduct, do not all
24 have to be charged.

25 GUIDELINES/COMMENTARY:

26 Police Investigation

27 A prosecuting attorney is dependent upon law enforcement agencies
28 to conduct the necessary factual investigation which must precede the
29 decision to prosecute. The prosecuting attorney shall ensure that a
30 thorough factual investigation has been conducted before a decision to
31 prosecute is made. In ordinary circumstances the investigation should
32 include the following:

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

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

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

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

4 Exceptions

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

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

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

10 (3) The arrest of the suspect is necessary to complete the
11 investigation of the crime.

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

17 Investigation Techniques

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

20 (1) Polygraph testing;

21 (2) Hypnosis;

22 (3) Electronic surveillance;

23 (4) Use of informants.

24 Pre-Filing Discussions with Defendant

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

28 Pre-Filing Discussions with Victim(s)

29 Discussions with the victim(s) or victims' representatives
30 regarding the selection or disposition of charges may occur before the
31 filing of charges. The discussions may be considered by the prosecutor
32 in charging and disposition decisions, and should be considered before
33 reaching any agreement with the defendant regarding these decisions.

34 NEW SECTION. **Sec. 7.** RCW 9.16.040 (Displaying goods with false
35 trademark) and 1909 c 249 s 345 are each repealed."

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2 By Senators Hargrove, Zarelli and Long

3

4 On page 1, line 1 of the title, after "counterfeiting;" strike the
5 remainder of the title and insert "amending RCW 9.16.030 and 9.94A.440;
6 reenacting and amending RCW 9.94A.320; adding new sections to chapter
7 9.16 RCW; repealing RCW 9.16.040; and prescribing penalties."

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