

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1007

56th Legislature
1999 Regular Session

Passed by the House April 24, 1999
Yeas 96 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 22, 1999
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1007** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1007

AS AMENDED BY THE SENATE

Passed Legislature - 1999 Regular Session

State of Washington 56th Legislature 1999 Regular Session

By Representatives Ballasiotes, O'Brien, Radcliff, Benson, Quall, Mitchell, Cairnes and Morris

Read first time 01/11/1999. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to counterfeiting; amending RCW 9.16.030 and
2 9.94A.440; reenacting and amending RCW 9.94A.320; adding new sections
3 to chapter 9.16 RCW; repealing RCW 9.16.040; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.16 RCW
6 to read as follows:

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

9 (1) "Counterfeit mark" means:

10 (a) Any unauthorized reproduction or copy of intellectual property;
11 or

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

16 (2) "Intellectual property" means any trademark, service mark,
17 trade name, label, term, device, design, or work adopted or used by a
18 person to identify such person's goods or services. Intellectual

1 property does not have exclusive use rights to trade names registered
2 under chapter 19.80 RCW.

3 (3) "Retail value" means the counterfeiter's regular selling price
4 for the item or service bearing or identified by the counterfeit mark.
5 In the case of items bearing a counterfeit mark which are components of
6 a finished product, the retail value shall be the counterfeiter's
7 regular selling price of the finished product on or in which the
8 component would be utilized.

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

11 ~~((Every person who shall use or display or have in his possession
12 with intent to use or display, the genuine label, trademark, term,
13 design, device, or form of advertisement of any person, corporation,
14 association or union, lawfully filed for record in the office of the
15 secretary of state, or the exclusive right to use which is guaranteed
16 to any person, corporation, association or union, by the laws of the
17 United States, without the written authority of such person,
18 corporation, association or union, or who shall wilfully forge or
19 counterfeit or use or display or have in his possession with intent to
20 use or display any representation, likeness, similitude, copy or
21 imitation of any genuine label, trademark, term, design, device, or
22 form of advertisement, so filed or protected, or any die, plate, stamp
23 or other device for manufacturing the same, shall be guilty of a gross
24 misdemeanor.))~~ Any person who willfully and knowingly, and for
25 financial gain, manufactures, uses, displays, advertises, distributes,
26 offers for sale, sells or possesses with intent to sell or distribute
27 any item, or offers any services, bearing or identified by a
28 counterfeit mark, is guilty of the crime of counterfeiting.

29 Any state or federal certificate of registration of any
30 intellectual property is prima facie evidence of the facts stated in
31 the certificate.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.16 RCW
33 to read as follows:

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

36 (2) Counterfeiting is a gross misdemeanor if:

1 (a) The defendant has previously been convicted under RCW 9.16.030;
2 or

3 (b) The violation involves more than one hundred but fewer than one
4 thousand items bearing a counterfeit mark or the total retail value of
5 all items bearing a counterfeit mark or the total retail value of all
6 items bearing, or services identified by, a counterfeit mark is more
7 than one thousand dollars but less than ten thousand dollars.

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

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

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

13 (c) The violation involves one thousand or more items bearing a
14 counterfeit mark or the total retail value of all items bearing, or
15 services identified by, a counterfeit mark is ten thousand dollars or
16 more.

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

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

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

23 (5) For purposes of this section, the quantity or retail value of
24 items or services shall include the aggregate quantity or retail value
25 of all items bearing, or services identified by, every counterfeit mark
26 the defendant manufactures, uses, displays, advertises, distributes,
27 possesses, or possesses with intent to sell.

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

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

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

36 (1) Any items bearing a counterfeit mark, and all personal property
37 employed or used in connection with counterfeiting, including but not
38 limited to, any items, objects, tools, machines, equipment,

1 instruments, or vehicles of any kind, shall be seized by any law
2 enforcement officer.

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

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

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

11 **Sec. 5.** RCW 9.94A.320 and 1998 c 290 s 4, 1998 c 219 s 4, 1998 c
12 82 s 1, and 1998 c 78 s 1 are each reenacted and amended to read as
13 follows:

14 TABLE 2

15 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

16	XV	Aggravated Murder 1 (RCW 10.95.020)
17	XIV	Murder 1 (RCW 9A.32.030)
18		Homicide by abuse (RCW 9A.32.055)
19		Malicious explosion 1 (RCW 70.74.280(1))
20	XIII	Murder 2 (RCW 9A.32.050)
21		Malicious explosion 2 (RCW 70.74.280(2))
22		Malicious placement of an explosive 1 (RCW
23		70.74.270(1))
24	XII	Assault 1 (RCW 9A.36.011)
25		Assault of a Child 1 (RCW 9A.36.120)
26		Rape 1 (RCW 9A.44.040)
27		Rape of a Child 1 (RCW 9A.44.073)
28		Malicious placement of an imitation device
29		1 (RCW 70.74.272(1)(a))
30	XI	Rape 2 (RCW 9A.44.050)
31		Rape of a Child 2 (RCW 9A.44.076)
32		Manslaughter 1 (RCW 9A.32.060)
33	X	Kidnapping 1 (RCW 9A.40.020)
34		Child Molestation 1 (RCW 9A.44.083)

1 Malicious explosion 3 (RCW 70.74.280(3))
2 Over 18 and deliver heroin, a narcotic from
3 Schedule I or II, or flunitrazepam
4 from Schedule IV to someone under 18
5 (RCW 69.50.406)
6 Leading Organized Crime (RCW
7 9A.82.060(1)(a))
8 Indecent Liberties (with forcible
9 compulsion) (RCW 9A.44.100(1)(a))
10 Manufacture of methamphetamine (RCW
11 69.50.401(a)(1)(ii))
12 IX Assault of a Child 2 (RCW 9A.36.130)
13 Robbery 1 (RCW 9A.56.200)
14 Explosive devices prohibited (RCW
15 70.74.180)
16 Malicious placement of an explosive 2 (RCW
17 70.74.270(2))
18 Over 18 and deliver narcotic from Schedule
19 III, IV, or V or a nonnarcotic, except
20 flunitrazepam, from Schedule I-V to
21 someone under 18 and 3 years junior
22 (RCW 69.50.406)
23 Controlled Substance Homicide (RCW
24 69.50.415)
25 Sexual Exploitation (RCW 9.68A.040)
26 Inciting Criminal Profiteering (RCW
27 9A.82.060(1)(b))
28 Vehicular Homicide, by being under the
29 influence of intoxicating liquor or
30 any drug (RCW 46.61.520)
31 Homicide by Watercraft, by being under the
32 influence of intoxicating liquor or
33 any drug (RCW 88.12.029)
34 VIII Arson 1 (RCW 9A.48.020)
35 Promoting Prostitution 1 (RCW 9A.88.070)
36 Selling for profit (controlled or
37 counterfeit) any controlled substance
38 (RCW 69.50.410)

1 Manufacture, deliver, or possess with
2 intent to deliver heroin or cocaine
3 (RCW 69.50.401(a)(1)(i))
4 Deliver or possess with intent to deliver
5 methamphetamine (RCW
6 69.50.401(a)(1)(ii))
7 Manufacture, deliver, or possess with
8 intent to deliver amphetamine (RCW
9 69.50.401(a)(1)(ii))
10 Possession of ephedrine or pseudoephedrine
11 with intent to manufacture
12 methamphetamine (RCW 69.50.440)
13 Vehicular Homicide, by the operation of any
14 vehicle in a reckless manner (RCW
15 46.61.520)
16 Homicide by Watercraft, by the operation of
17 any vessel in a reckless manner (RCW
18 88.12.029)
19 Manslaughter 2 (RCW 9A.32.070)
20 VII Burglary 1 (RCW 9A.52.020)
21 Vehicular Homicide, by disregard for the
22 safety of others (RCW 46.61.520)
23 Homicide by Watercraft, by disregard for
24 the safety of others (RCW 88.12.029)
25 Introducing Contraband 1 (RCW 9A.76.140)
26 Indecent Liberties (without forcible
27 compulsion) (RCW 9A.44.100(1) (b) and
28 (c))
29 Child Molestation 2 (RCW 9A.44.086)
30 Dealing in depictions of minor engaged in
31 sexually explicit conduct (RCW
32 9.68A.050)
33 Sending, bringing into state depictions of
34 minor engaged in sexually explicit
35 conduct (RCW 9.68A.060)
36 Involving a minor in drug dealing (RCW
37 69.50.401(f))
38 Drive-by Shooting (RCW 9A.36.045)

1 Unlawful Possession of a Firearm in the
2 first degree (RCW 9.41.040(1)(a))
3 Malicious placement of an explosive 3 (RCW
4 70.74.270(3))

5 VI Bribery (RCW 9A.68.010)
6 Rape of a Child 3 (RCW 9A.44.079)
7 Intimidating a Juror/Witness (RCW
8 9A.72.110, 9A.72.130)
9 Malicious placement of an imitation device
10 2 (RCW 70.74.272(1)(b))
11 Incest 1 (RCW 9A.64.020(1))
12 Manufacture, deliver, or possess with
13 intent to deliver narcotics from
14 Schedule I or II (except heroin or
15 cocaine) or flunitrazepam from
16 Schedule IV (RCW 69.50.401(a)(1)(i))
17 Intimidating a Judge (RCW 9A.72.160)
18 Bail Jumping with Murder 1 (RCW
19 9A.76.170(2)(a))
20 Theft of a Firearm (RCW 9A.56.300)

21 V Persistent prison misbehavior (RCW
22 9.94.070)
23 Criminal Mistreatment 1 (RCW 9A.42.020)
24 Abandonment of dependent person 1 (RCW
25 9A.42.060)
26 Rape 3 (RCW 9A.44.060)
27 Sexual Misconduct with a Minor 1 (RCW
28 9A.44.093)
29 Child Molestation 3 (RCW 9A.44.089)
30 Kidnapping 2 (RCW 9A.40.030)
31 Extortion 1 (RCW 9A.56.120)
32 Incest 2 (RCW 9A.64.020(2))
33 Perjury 1 (RCW 9A.72.020)
34 Extortionate Extension of Credit (RCW
35 9A.82.020)
36 Advancing money or property for
37 extortionate extension of credit (RCW
38 9A.82.030)

1 Extortionate Means to Collect Extensions of
2 Credit (RCW 9A.82.040)
3 Rendering Criminal Assistance 1 (RCW
4 9A.76.070)
5 Bail Jumping with class A Felony (RCW
6 9A.76.170(2)(b))
7 Sexually Violating Human Remains (RCW
8 9A.44.105)
9 Delivery of imitation controlled substance
10 by person eighteen or over to person
11 under eighteen (RCW 69.52.030(2))
12 Possession of a Stolen Firearm (RCW
13 9A.56.310)

14 IV Residential Burglary (RCW 9A.52.025)
15 Theft of Livestock 1 (RCW 9A.56.080)
16 Robbery 2 (RCW 9A.56.210)
17 Assault 2 (RCW 9A.36.021)
18 Escape 1 (RCW 9A.76.110)
19 Arson 2 (RCW 9A.48.030)
20 Commercial Bribery (RCW 9A.68.060)
21 Bribing a Witness/Bribe Received by Witness
22 (RCW 9A.72.090, 9A.72.100)
23 Malicious Harassment (RCW 9A.36.080)
24 Threats to Bomb (RCW 9.61.160)
25 Willful Failure to Return from Furlough
26 (RCW 72.66.060)
27 Hit and Run--Injury Accident (RCW
28 46.52.020(4))
29 Hit and Run with Vessel--Injury Accident
30 (RCW 88.12.155(3))
31 Vehicular Assault (RCW 46.61.522)
32 Assault by Watercraft (RCW 88.12.032)

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

15 III Criminal Gang Intimidation (RCW 9A.46.120)
16 Criminal Mistreatment 2 (RCW 9A.42.030)
17 Abandonment of dependent person 2 (RCW
18 9A.42.070)
19 Extortion 2 (RCW 9A.56.130)
20 Unlawful Imprisonment (RCW 9A.40.040)
21 Assault 3 (RCW 9A.36.031)
22 Assault of a Child 3 (RCW 9A.36.140)
23 Custodial Assault (RCW 9A.36.100)
24 Unlawful possession of firearm in the
25 second degree (RCW 9.41.040(1)(b))
26 Harassment (RCW 9A.46.020)
27 Promoting Prostitution 2 (RCW 9A.88.080)
28 Willful Failure to Return from Work Release
29 (RCW 72.65.070)
30 Burglary 2 (RCW 9A.52.030)
31 Introducing Contraband 2 (RCW 9A.76.150)
32 Communication with a Minor for Immoral
33 Purposes (RCW 9.68A.090)
34 Patronizing a Juvenile Prostitute (RCW
35 9.68A.100)
36 Escape 2 (RCW 9A.76.120)
37 Perjury 2 (RCW 9A.72.030)
38 Bail Jumping with class B or C Felony (RCW
39 9A.76.170(2)(c))

1 Intimidating a Public Servant (RCW
2 9A.76.180)
3 Tampering with a Witness (RCW 9A.72.120)
4 Manufacture, deliver, or possess with
5 intent to deliver marijuana (RCW
6 69.50.401(a)(1)(iii))
7 Delivery of a material in lieu of a
8 controlled substance (RCW
9 69.50.401(c))
10 Manufacture, distribute, or possess with
11 intent to distribute an imitation
12 controlled substance (RCW
13 69.52.030(1))
14 Recklessly Trafficking in Stolen Property
15 (RCW 9A.82.050(1))
16 Theft of livestock 2 (RCW 9A.56.080)
17 Securities Act violation (RCW 21.20.400)
18 II Unlawful Practice of Law (RCW 2.48.180)
19 Malicious Mischief 1 (RCW 9A.48.070)
20 Possession of Stolen Property 1 (RCW
21 9A.56.150)
22 Theft 1 (RCW 9A.56.030)
23 Class B Felony Theft of Rental, Leased, or
24 Lease-purchased Property (RCW
25 9A.56.096(4))
26 Trafficking in Insurance Claims (RCW
27 48.30A.015)
28 Unlicensed Practice of a Profession or
29 Business (RCW 18.130.190(7))
30 Health Care False Claims (RCW 48.80.030)
31 Possession of controlled substance that is
32 either heroin or narcotics from
33 Schedule I or II or flunitrazepam from
34 Schedule IV (RCW 69.50.401(d))
35 Possession of phencyclidine (PCP) (RCW
36 69.50.401(d))
37 Create, deliver, or possess a counterfeit
38 controlled substance (RCW
39 69.50.401(b))

1 Computer Trespass 1 (RCW 9A.52.110)
2 Escape from Community Custody (RCW
3 72.09.310)
4 Counterfeiting (section 3(3) of this act)

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

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

35 (1) Decision not to prosecute.

36 STANDARD: A prosecuting attorney may decline to prosecute, even
37 though technically sufficient evidence to prosecute exists, in
38 situations where prosecution would serve no public purpose, would

1 defeat the underlying purpose of the law in question or would result in
2 decreased respect for the law.

3 GUIDELINE/COMMENTARY:

4 Examples

5 The following are examples of reasons not to prosecute which could
6 satisfy the standard.

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

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

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

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

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

18 (iv) The statute has not been recently reconsidered by the
19 legislature.

20 This reason is not to be construed as the basis for declining cases
21 because the law in question is unpopular or because it is difficult to
22 enforce.

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

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

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

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

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

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

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

- 1 (ii) Conviction in the pending prosecution is imminent;
- 2 (iii) The new offense is either a misdemeanor or a felony which is
- 3 not particularly aggravated; and
- 4 (iv) Conviction of the new offense would not serve any significant
- 5 deterrent purpose.

6 (f) High Disproportionate Cost of Prosecution - It may be proper to

7 decline to charge where the cost of locating or transporting, or the

8 burden on, prosecution witnesses is highly disproportionate to the

9 importance of prosecuting the offense in question. This reason should

10 be limited to minor cases and should not be relied upon in serious

11 cases.

12 (g) Improper Motives of Complainant - It may be proper to decline

13 charges because the motives of the complainant are improper and

14 prosecution would serve no public purpose, would defeat the underlying

15 purpose of the law in question or would result in decreased respect for

16 the law.

17 (h) Immunity - It may be proper to decline to charge where immunity

18 is to be given to an accused in order to prosecute another where the

19 accused's information or testimony will reasonably lead to the

20 conviction of others who are responsible for more serious criminal

21 conduct or who represent a greater danger to the public interest.

22 (i) Victim Request - It may be proper to decline to charge because

23 the victim requests that no criminal charges be filed and the case

24 involves the following crimes or situations:

25 (i) Assault cases where the victim has suffered little or no

26 injury;

27 (ii) Crimes against property, not involving violence, where no

28 major loss was suffered;

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

30 Care should be taken to insure that the victim's request is freely

31 made and is not the product of threats or pressure by the accused.

32 The presence of these factors may also justify the decision to

33 dismiss a prosecution which has been commenced.

34 Notification

35 The prosecutor is encouraged to notify the victim, when practical,

36 and the law enforcement personnel, of the decision not to prosecute.

37 (2) Decision to prosecute.

38 STANDARD:

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

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

16 See table below for the crimes within these categories.

17 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

18 CRIMES AGAINST PERSONS

- 19 Aggravated Murder
- 20 1st Degree Murder
- 21 2nd Degree Murder
- 22 1st Degree Kidnaping
- 23 1st Degree Assault
- 24 1st Degree Assault of a Child
- 25 1st Degree Rape
- 26 1st Degree Robbery
- 27 1st Degree Rape of a Child
- 28 1st Degree Arson
- 29 2nd Degree Kidnaping
- 30 2nd Degree Assault
- 31 2nd Degree Assault of a Child
- 32 2nd Degree Rape
- 33 2nd Degree Robbery
- 34 1st Degree Burglary
- 35 1st Degree Manslaughter
- 36 2nd Degree Manslaughter
- 37 1st Degree Extortion
- 38 Indecent Liberties

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

23 CRIMES AGAINST PROPERTY/OTHER CRIMES

24 2nd Degree Arson
25 1st Degree Escape
26 2nd Degree Burglary
27 1st Degree Theft
28 1st Degree Perjury
29 1st Degree Introducing Contraband
30 1st Degree Possession of Stolen Property
31 Bribery
32 Bribing a Witness
33 Bribe received by a Witness
34 Bomb Threat (if against property)
35 1st Degree Malicious Mischief
36 2nd Degree Theft
37 2nd Degree Escape
38 2nd Degree Introducing Contraband
39 2nd Degree Possession of Stolen Property

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

17 ALL OTHER UNCLASSIFIED FELONIES

18 Selection of Charges/Degree of Charge

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

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

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

25 (2) The prosecutor should not overcharge to obtain a guilty plea.
26 Overcharging includes:

27 (a) Charging a higher degree;

28 (b) Charging additional counts.

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

35 GUIDELINES/COMMENTARY:

36 Police Investigation

37 A prosecuting attorney is dependent upon law enforcement agencies
38 to conduct the necessary factual investigation which must precede the

1 decision to prosecute. The prosecuting attorney shall ensure that a
2 thorough factual investigation has been conducted before a decision to
3 prosecute is made. In ordinary circumstances the investigation should
4 include the following:

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

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

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

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

13 Exceptions

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

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

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

19 (3) The arrest of the suspect is necessary to complete the
20 investigation of the crime.

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

26 Investigation Techniques

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

29 (1) Polygraph testing;

30 (2) Hypnosis;

31 (3) Electronic surveillance;

32 (4) Use of informants.

33 Pre-Filing Discussions with Defendant

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

37 Pre-Filing Discussions with Victim(s)

38 Discussions with the victim(s) or victims' representatives
39 regarding the selection or disposition of charges may occur before the

1 filing of charges. The discussions may be considered by the prosecutor
2 in charging and disposition decisions, and should be considered before
3 reaching any agreement with the defendant regarding these decisions.

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

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