



Criminal Division Filing Standards

SEATTLE CITY ATTORNEY'S OFFICE
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Purpose

These filing guidelines are intended to govern the charging of cases and to increase their uniformity, equity, and proportionality. We strive to avoid unwarranted disparities through standardized policies, guidance, and procedures. We balance this with discretion, making individualized, fact-specific appraisals of each case. We harmonize these competing issues to obtain a just result.

Thoughtful filing guidelines require an understanding of the various societal purposes of the criminal code, criminal prosecution, and sentencing.

The Seattle City Council has enumerated three “general purposes” of the Criminal Code:

1. To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests.
2. To safeguard conduct that is without culpability from condemnation as criminal.
3. To give fair warning of the nature of the conduct declared to constitute an offense.

Filing Decision

The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants. - ABA standards.

“My goal is to re-center victims in the public safety conversation. Victims of crime do not choose to become victims and deserve the full protection of our criminal justice system. When handling a criminal case, a prosecutor should consider the victim when making charging decisions.” -Ann Davison

Nature and Number of Charges

The prosecutor must decide how many charges and what charges to file. It is a well settled principle that the prosecuting attorney should not overcharge to obtain a guilty plea to lesser or fewer charges.

A prosecutor should file charges that accurately and adequately describe the nature of a defendant’s conduct. This standard is intended to direct prosecutors to charge those crimes which demonstrate the seriousness of the impact of the defendant’s criminal conduct and its effect on society, but to decline to charge crimes which are not necessary to such an indication.

Evidentiary Sufficiency

In Washington state, cases are subjected to one of two evidentiary sufficiency tests to determine whether charges should be filed: one applies to crimes of violence and the second applies to other cases. The distinction: the evidentiary sufficiency standard for crimes against persons directs prosecutors to aggressively file those cases; it states that crimes against persons will be prosecuted if available evidence is sufficient to take the case to the jury for decision. By contrast, other crimes are to be prosecuted only when there is sufficient evidence to make convictions probable. Through these standards, the prosecutor's discretion is guided into dedicating greater emphasis and staff to crimes against persons. Furthermore, both tests require a higher standard than the mere existence of probable cause. If the probable cause test were utilized, time and effort would be needlessly wasted on cases that could not be proven at trial.

Non-evidentiary decline: Not every case that is technically fileable should be filed. The filing inquiry is more than a strictly legal one. There are several non-evidentiary grounds for the prosecutor to decline to prosecute, and Washington law and the Seattle City Attorney's Office policies each contain a nonexclusive list of non-evidentiary reasons not to prosecute. Retaining this discretion at the filing stage guards against an inflexible policy of filing all legally sufficient charges despite valid circumstances for non-enforcement. RCW 9.94A.411

Contrary to Legislative Intent or Antiquated Statute: Charges may be declined where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute. Charges may be declined where the statute in question is antiquated in that: it has not been enforced for many years; most members of society act as if it were no longer in existence; it serves no deterrent or protective purpose in today's society; and the statute has not been recently reconsidered by the legislature. This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

De Minimis Violation: Charges may be declined where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

Confinement or Pending Conviction on Other Charges: Charges may be declined where the accused has been sentenced on another charge to a lengthy period confinement and: conviction of the new offense would not merit any additional direct or collateral punishment, the new offense is either a misdemeanor or a felony that is not particularly aggravated, and conviction of the new offense would not serve any significant deterrent purpose. Charges may be declined where the accused is facing a pending prosecution in the same or another county, conviction of the new offense would not merit any additional direct or collateral punishment, conviction in the pending prosecution is imminent, the new offense is either a misdemeanor or

a felony that is not particularly aggravated, and conviction of the new offense would not serve any significant deterrent purpose.

High Disproportionate Cost of Prosecution: Charges may be declined where the cost of locating or transporting, or the burden on that witness is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

Improper Motives of Complainant: Charges may be declined where the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law.

Immunity: Charges may be declined where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

Victim Request: Charges may be declined where the victim requests that no criminal charges be filed and the case involves the following crimes or situations: **(a)** assault cases where the victim is an adult and has suffered little or no injury; **(b)** crimes against property, not involving violence, where no major loss was suffered; or **(c)** where doing so would not jeopardize the safety of society. Care should be taken to ensure that the victim's request is freely made and is not the product of threats or pressure by the accused.

General Filing Guidelines

The Seattle City Attorney's Office has adopted a close in time filing policy to review all incoming cases. All referrals for out of custody individuals should, as best practice, be reviewed (whether to file, decline, or return for more information) for legal sufficiency and an initial charging decision made within five business days of receipt. In-custody cases shall be reviewed for legal sufficiency, and an initial charging decision made, before the scheduled arraignment.

Exceptions for Standard Time for Review:

- For all referrals for individuals involved in any of the LEAD (includes arrest diversion referrals)/Vital/LINC and Mental Health Court programs, the time for review is extended to 30 days, unless there is a specific community or victim safety concern.
 - The rationale to extend is to allow coordination with our community partners and avoid the potential disruption for clients actively engaging in services and to honor LEAD protocols related to arrest diversions.
- Review may be extended up to 90 days for any individual who is pending a competency determination while out of custody, unless there is a community or public safety concern.

- The rationale to extend is to allow competency to be determined before filing. The length of time is necessary due to Western State Hospital out-of-custody evaluation scheduling wait times.
- For all referrals for individuals eligible for screening by the Pre-Filing Diversion unit, the time for review is extended to 30 days, unless there is a specific community or victim safety concern.
 - The rationale to extend is to allow time to determine eligibility with community partners and to contact victims for their input on filing and diversion.
- These exceptions are subject to change.

High Utilizer Initiative

The High Utilizer Initiative will coordinate greater accountability and services for the most impactful individuals.

A small number of individuals cause a disproportionate harm to public safety. Seattle’s criminal justice system must disrupt the cycle of crime in our city. Collaboration between agencies will ensure that when individuals meet the criteria of the High Utilizer Initiative, they are getting the services and attention they need to change their behavior. Community, victim safety, and accountability for the crimes committed are among our highest priorities, and should be reflected in our bail request, charges filed, and sentencing recommendations.

Prosecutors retain the ability and discretion upon careful consideration of the factors above to refer individuals in the High Utilizer Initiative to other pre-file/pre-trial diversion programs where appropriate, and with supervisor approval.

Prosecution alternatives

Seattle City Attorney’s Office is committed to implementing and supporting policy initiatives, such as Pre-File Diversion, LINC (Legal Intervention & Network of Care), LEAD (Law Enforcement Assisted Diversion/Let Everyone Advance with Dignity), CoLEAD, and Vital that provide alternative prosecution to mainstream track.

Pre-File Diversion

YOUNG ADULT PROGRAMS

- Eligibility: 18-24-year-olds on all non-DV, DV-Roommate and non-DUI cases. PFD screens each report to determine eligibility.
 - Partners: [CHOOSE 180](#).
- Eligibility: 18-34-year-olds on family domestic violence cases. PFD screens each report to determine eligibility with input from the victim.
 - Seattle’s LGBTQ+: [Gay City](#).
- Eligibility: 25 and older on non-DV, non-DUI, non-indecent exposure, non-HUI. PFD screens each report to determine eligibility with input from victim as necessary.

- Partners: Urban League, Unified Outreach, Uplift Northwest.
- Pending contracts for MH/SUD defendants to TAD and Consejo
- Eligibility: All ages. DWLS3 cases that are currently not being filed by our office. If you see those cases, let PFD know. The only exceptions are if it is an accident where restitution documents have been received, DUI TX non-compliance and an open DUI, or companion to Moving/DUI related or criminal code (SMC 12A) offense.
 - Partner: [LELO | Legacy of Equality Leadership & Organizing](#).
- The PFD team screens all reports and offers diversion to those eligible. PFD also screens out and files ineligible cases for 18–24-year-olds, or cases that have been referred over 60 days ago and have not completed diversion requirements. With limited exceptions, PFD accepts individuals regardless of criminal history. PFD Attorneys retain filing or referral discretion and will use judgement on whether additional screening is necessary.

LINC (Legal Intervention and Network of Care)

LINC is a prosecutor-driven **mental health** diversion program. Our office provides one Prosecutor, funded through the Behavioral Health & Recovery Division, to coordinate LINC referrals. SCAO partners with Community House who assigns LINC representatives to referred defendants who provide necessary resources to help with mental illness-related issues. The LINC program can assist with housing through respite or shelters, resources such as phones, food, clothing, transportation, and medications, as well as appointments with an on-staff psychiatrist. LINC is a harm reduction program that focuses on intervening with the cycle of incompetent defendants being released back into the community without resources to address the underlying mental health issues. The LINC prosecutor screens all Trueblood Class members (competency has been raised at some point) and any Potential Trueblood Class members (based on behavior there is reason to believe competency may be raised in the future). The LINC prosecutor may screen out a defendant based on a history of violence, egregious facts of a case or other reasons that are community safety based. LINC referrals are dismissed without prejudice and can be re-filed if deemed necessary for community safety.

LEAD/CoLEAD/Vital Programs

LEAD provides resources to the SCAO for a team of two prosecutors and one half-time paralegal dedicated to coordinating legal involvement for program clients enrolled in [LEAD](#), [CoLEAD](#), and [Vital Programs](#). This team participates in all filing decisions and is the primary negotiator on all mainstream, non-DV SMC program client cases.

LEAD, CoLEAD, and Vital are all trauma informed, person-centered, participant driven case management programs that serve clients experiencing unmet behavioral health challenges, houselessness, and/or extreme poverty. The information received from these programs and law enforcement is invaluable to our ability to create individualized resolutions that seek to assist a person on their path to stability and out of the criminal legal system, while also addressing victim/community safety concerns.

The SCAO's successful relationships with these programs are emblematic of our willingness to both re-examine society's response to crime and how we define justice. It allows us to re-imagine alternative, more effective accountability measures for low-level crimes, while protecting and promoting community safety with fairness and dignity.

Please contact SCAOLEADFF@seattle.gov with any questions related to the SCAO's coordination of legal involvement for program clients.

Veterans Court

Veterans Treatment Court ("VTC") is a therapeutic court where an interdisciplinary team of legal, healthcare, and social work professionals work collaboratively to guide veterans through a process where the goal is to help veterans learn to productively manage mental health and substance addiction issues to avoid future criminal offenses.

Mental Health Court

Mental Health Court ("MHC") addresses the needs of mentally ill offenders in the criminal justice system. MHC functions as a competency court and as a therapeutic court for those who voluntarily engage in the program. MHC employs a collaborative team concept where each member of the team (court, probation, court clinician, prosecution, and defense) works together to find the best solutions for defendants whose mental illness was a significant contributing factor in the commission of the offense.

Charge Specific Guidance

Special Allegations

Domestic Violence: RCW 9.94A.030

A. Definitions

Domestic violence includes but is not limited to the crimes set forth in RCW 10.99.020(4) when committed either by one family or household member against another family or household member, or one intimate partner against another intimate partner. These crimes include but are not limited to assault in the fourth degree, reckless endangerment, criminal trespass in the first degree, criminal trespass in the second degree, malicious mischief in the third degree, unlawful imprisonment, violation of a court order, stalking, and interference with the reporting of domestic violence. RCW 10.99.020(4)(i-xxiii).

"Family or household members" means (a) adult persons related by blood or marriage; (b) adult persons who are presently residing together or who have resided together in the past;

and (c) persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren. RCW 10.99.020(7) & WPIC 2.27.

“Intimate partners” means (a) spouses or domestic partners; (b) former spouses or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time; (d) adult persons presently or previously residing together who have or have had a dating relationship; (e) persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship; or (f) persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship. RCW 10.99.020(8) & WPIC 2.27.

“Dating relationship” means a social relationship of a romantic nature. Factors to consider in determining whether a dating relationship exists include: (i) the length of time the relationship has existed; (ii) the nature of the relationship; and (iii) the frequency of the interaction between the parties. RCW 7.105.010(9) & WPIC 2.27.

B. Discussion

Domestic violence cases between family members and intimate partners will be handled by the Domestic Violence Unit. Domestic violence cases between household members who are not family members or intimate partners will be handled by the Trial Team Unit.

Sexual Motivation: RCW 9.94A.835 incorporated by reference in SMC 12A.09.020

A. Definition

“Sexual motivation means that one of the purposes for which the defendant committed the crime was for the purpose of their sexual gratification. RCW 9.94A.835 & SMC 12A.09.020.

B. Discussion

A special allegation of sexual motivation shall generally be filed when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder. RCW 9.94A.835.

Multiple counts: one count should be filed for each crime/victim.

Normally, a special allegation of sexual motivation will not be dismissed in return for a plea of guilty.

All cases with a special allegation of sexual motivation will be handled by the Domestic Violence Unit, regardless of the relationship between the defendant and the victim.

Person Crimes

Assault: RCW 9A.36.041 incorporated by reference in SMC 12A.09.020

A. Definition

A person commits the crime of Assault when he or she intentionally assaults another person. SMC 12A.09.020 & RCW 9A.36.041. Assault is a gross misdemeanor.

B. Elements of Assault

The elements of Assault are:

1. That on or about the (Date of incident), the defendant assaulted another person;
2. That the defendant acted intentionally; and
3. That the assault occurred in the City of Seattle.

C. Discussion

Assault is not defined in the SMCs or the RCWs, so Washington courts apply the common law definition of assault, which has three alternative means:

1. Attempted Battery (an attempt, with unlawful force, to inflict bodily injury upon another);
2. Battery (an unlawful touching with criminal intent); and
3. Apprehension of Harm (putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm).

State v. Stevens, 158 Wn.2d 304, 310-11 (2006). When you charge assault, you by implication have all three prongs charged, and they are alternative means of committing the crime of assault, only one of which needs to be proved. Washington courts imply a *mens rea* of intent as an element of the crime. *Id.*

The majority of assault cases filed by the SCAO are batteries. For battery, “unlawful touching” means a touching that is harmful or offensive. *State v. Jarvis*, 160 Wn. App. 111, 117-18 (2011). Keep this “offensive” category of assaults in mind for cases of unwanted touching.

Some helpful definitions from [WPIC 35.50](#) include:

- Battery prong: An assault is an intentional touching or striking 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 is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.
- Attempted battery prong: 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 bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

- Apprehension of harm prong: 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.
- Include the phrase “with unlawful force” if there is a claim of self-defense or other lawful use of force. WPIC 35.50. (*see* Self-defense, *infra*)

The *mens rea* for assault is intent. WPIC 10.01 defines intent as: a person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime.

Multiple counts: one count should be filed for each crime/victim.

If the case meets the filing and disposition standards of the King County Prosecuting Attorney’s Office for Assault in the First, Second, or Third Degree, the case may be referred to a unit lead or supervisor for felony referral review.

D. Defenses

Self-defense. [SMC 12A.04.200\(C\)](#), [RCW 9A.16.020\(3\)](#). Self-defense is raised in almost every case of assault. It is an affirmative defense, so the defendant has to show some direct or indirect evidence in the record tending to prove self-defense in order to get self-defense instructions. The threshold is very low. When the defense can show some evidence of self-defense anywhere in the record, then the burden shifts to the City to disprove self-defense beyond a reasonable doubt. *State v. Graves*, 97 Wn. App. 55, 61-62 (1999). If you are filing assault or going to trial on assault, you should always evaluate the case in the context of needing to disprove self-defense beyond a reasonable doubt because self-defense is raised in so many of our cases.

To prove self-defense, there must be evidence that the defendant subjectively feared that he or she was in imminent danger of injury, this belief was objectively reasonable, the defendant exercised no greater force than was reasonably necessary, and the defendant was not the aggressor. *State v. Callahan*, 87 Wn. App. 925, 929 (1997).

When evaluating evidence at trial, consider these self-defense instructions and the cases associated with them:

- [WPIC 17.02](#) Self-defense
- [WPIC 16.05](#) Necessary
- [WPIC 17.05](#) No Duty to Retreat
- [WPIC 16.04](#) First Aggressor

Consent: A consent defense is unusual in our assault cases, the majority of which are one person hitting or punching another person where it is clear that the hitting or punching was not consensual. Consent will be an issue in offensive touching assault cases, so be sure to elicit evidence from the victim to defeat a possible defense claim of consent. An act is not an assault if it is done with the consent of the person alleged to be assaulted; pursuant to [WPIC 35.50](#).

Mutual combat: This is not a separate defense. It is mutual self-defense sometimes seen in bar fights or “let’s go outside and settle this” fights. It is something to consider when filing assault or declining to file assault.

Cyberstalking: [SMC 12A.06.045](#)

A. Definition

A person commits the crime of Cyberstalking when he or she, without lawful authority, knowingly and without consent installs, monitors or causes to be installed, placed, or used an electronic tracking device with the intent to track the location of another person and [knows or reasonably should know that knowledge of the installation or monitoring of the tracking device would cause the other person reasonable fear] or [has notice that the other person does not want to be contacted or monitored by him or her] or [the other person has a protective order in effect protecting him or her from the person]. SMC 12A.06.045. Cyberstalking is a gross misdemeanor.

B. Elements of Cyberstalking

The elements of cyberstalking are:

1. That on or about [date of incident], the defendant installed, monitored or caused to be installed, placed or used an electronic tracking device;
2. That the defendant knowingly installed, monitored or caused to be installed, placed or used the electronic tracking device;
3. That the defendant installed, monitored or caused to be installed, placed or used the electronic tracking device with the intent to track the location of another person;
4. That at the time the electronic monitoring device was installed, monitored or caused to be installed, placed or used either:
 - a. the defendant knew or reasonably should have known that knowledge of the installation or monitoring of the tracking device would cause the other person reasonable fear; or
 - b. the defendant had notice that the other person did not want to be contacted or monitored by him or her; or
 - c. the other person had a protective order in effect protecting him or her from the defendant;
5. That the defendant did not have consent to install, monitor or cause to be installed, placed or used the electronic tracking device;

6. That the defendant did not have lawful authority to install, monitor or cause to be installed, placed or used the electronic tracking device; and
7. That the electronic tracking device was installed, monitored or caused to be installed, placed or used in the City of Seattle.

C. Discussion

File only those alternative means which the evidence supports.

Cyberstalking is a gross misdemeanor unless one or more of the following circumstances applies in which it is a class "C" felony and may be referred to the Domestic Violence Unit supervisor or lead for felony referral review:

- The person has previously been convicted in this state or any other state of 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;
- There is a protective order in effect protecting the victim from contact with the person;
- The person has previously been convicted of a gross misdemeanor or felony stalking offense for stalking another person;
- The person has previously been convicted of a gross misdemeanor or felony cyberstalking offense for cyberstalking another person;
- The victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; community corrections officer; employee, contract staff person, or volunteer of a correctional agency; court employee, court clerk, or courthouse facilitator; or employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and the person cyberstalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or the victim is a current, former, or prospective witness in an adjudicative proceeding, and the person cyberstalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony. [RCW 9A.90.130\(3\)\(b\)](#).

"Electronic tracking device" means an electronic device that permits a person to remotely determine or monitor the position and movement of another person, vehicle, device, or other personal possession. As used in this instruction, "electronic device" includes computer code or other digital instructions that once installed on a digital device, allows a person to remotely track the position of that device. [SMC 12A.02.150](#).

All cyberstalking cases will be handled by the Domestic Violence Unit, regardless of the relationship between the defendant and the victim.

D. Defenses

It is not a defense to the crime of cyberstalking that the person was not given actual notice that the other person did not want the defendant to contact or monitor him or her. It is not a defense to the crime of cyberstalking that the defendant did not intend to frighten, intimidate, or harass the other person. [SMC 12A.06.045\(B\)](#).

Cyber Harassment: [SMC 12A.06.047A](#)

A. Definition

A person commits the crime of Cyber Harassment when he or she, with intent to harass or intimidate any other person, makes an electronic communication to such other person or a third party and the communication (a) uses any lewd, lascivious, indecent, or obscene words, images or language, or suggests the commission of any lewd or lascivious act or (b) contains a threat to inflict bodily injury, immediately or in the future, on the person threatened or any other person and either would cause a reasonable person, knowing of the defendant's history, to suffer emotional distress or fear for the safety of the person threatened or reasonably caused the threatened person to suffer emotional distress or fear for the threatened person's safety or (c) contains a threat to damage, immediately or in the future, the property of the person threatened or any other person and either would cause a reasonable person, knowing of the defendant's history, to suffer emotional distress or fear for the safety of the person threatened or reasonably caused the threatened person to suffer emotional distress or fear for the threatened person's safety. [SMC 12A.06.047A](#). Cyber harassment is a gross misdemeanor.

B. Elements of Cyber Harassment

1. That on or about the [date of incident], the defendant made an electronic communication to another person;
2. That the communication:
 - i. used any lewd, lascivious, indecent, or obscene words, images or language, or suggested the commission of any lewd or lascivious act; or
 - ii. contained a threat to inflict bodily injury, immediately or in the future, on the person threatened or any other person and either:
 - a. would cause a reasonable person, knowing of the defendant's history, to suffer emotional distress or fear for the safety of the person threatened; or
 - b. reasonably caused the threatened person to suffer emotional distress or fear for the threatened person's safety; or
3. contained a threat to damage, immediately or in the future, the property of the person threatened or any other person and either:
 - i. would cause a reasonable person, knowing of the defendant's history, to suffer emotional distress or fear for the safety of the person threatened; or

- ii. reasonably caused the threatened person to suffer emotional distress or fear for the threatened person's safety;
4. That at the time the defendant made the electronic communication the defendant intended to harass, intimidate, or torment the person called or another person; and
5. That the electronic communication was made from or received in the City of Seattle.

C. Discussion

File only those alternative means which the evidence supports.

Cyber Harassment is a gross misdemeanor unless one or more of the following circumstances applies, in which it is a class "C" felony and may be referred to a unit lead or supervisor for felony referral review:

- The person has previously been convicted of any crime of harassment 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;
- The person harasses another person under subsection [9A.90.120\(1\)\(a\)\(iii\)](#) of this section by threatening to kill the person threatened or any other person;
- The person commits cyber harassment in violation of any protective order protecting the victim.

A "threat" is a statement made in a context or under such circumstances that a reasonable speaker would foresee that it would be interpreted as a serious expression of an intention to inflict bodily injury upon or take the life of another person. A threat is not a statement made in jest, idle talk or political argument. *State v. Johnston*, 156 Wn.2d 355, 360-62, 127 P.3d 707 (2006).

Disclosing intimate images: [SMC 12A.10.150](#)

A. Definition

A person commits the crime of Disclosing Intimate Images when he or she knowingly discloses an intimate image of another person and the person disclosing the image obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private; knew or should have known that the depicted person has not consented to the disclosure; and knew or reasonably should know that disclosure would cause harm to the depicted person. [SMC 12A.10.150\(A\)](#) & [RCW 9A.86.010\(1\)](#). Disclosing Intimate Images is a gross misdemeanor.

B. Elements of Disclosing Intimate Images

The elements of disclosing intimate images are:

1. That on or about the (incident date), the defendant knowingly disclosed an intimate image of another person;
2. That the defendant obtained the intimate image under circumstances in which a reasonable person would know or understand that the image was to remain private;
3. That the defendant knew or should have known that the depicted person has not consented to the disclosure;
4. That the defendant knew or reasonably should know that disclosure would cause harm to the depicted person; and
5. That the disclosure occurred in the City of Seattle.

[WPIC 19.18](#)

C. Discussion

Disclosing Intimate Images is a gross misdemeanor unless the defendant has one or more prior convictions for disclosing intimate images in which it is a class “C” felony and may be referred to a unit lead or supervisor for felony referral review. RCW 9A.86.010.

“Disclosing” includes transferring, publishing, or disseminating, as well as making a digital depiction available for distribution or downloading through the facilities of a telecommunications network or through any other means of transferring computer programs or data to a computer.

SMC [12A.10.150](#)

"Intimate images" means any photograph, motion picture film, videotape, digital image, or any other recording or transmission of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts: (1) sexual activity, including sexual conduct as defined in Section 12A.02.150; or (2) a person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or post-pubescent female nipple. [SMC 12A.10.150\(E\)](#).

D. Affirmative Defense

It is an affirmative defense to disclosing intimate images that the defendant is a family member of a minor and did not intend any harm or harassment in disclosing the images of the minor to other family members or friends of defendant. [SMC 12A.10.150\(D\)](#).

Harassment: [RCW 9A.46.020](#) Incorporated by reference [SMC 12A.09.020](#)

A. Definition

There are multiple prongs to harassment, but the one we use the most is: knowingly threaten to cause bodily injury immediately or in the future to the person threatened or any other person. [RCW 9A.46.020\(1\)\(a\)\(i\)](#). Harassment is a gross misdemeanor.

B. Elements of Harassment

The elements of harassment are:

1. That on or about (date of incident) the defendant made a threat
 - a. to cause immediate bodily injury to another; or
 - b. to cause bodily injury in the future to another; or
 - c. to cause physical damage to the property of another; or
 - d. to subject another to physical confinement or restraint; or
 - e. to maliciously do any other act which is intended to substantially harm another with respect to his or her health or safety;
2. That the defendant made the threat knowingly;
3. That the words or conduct of the defendant placed another in reasonable fear that the threat would be carried out;
4. That the defendant acted without lawful authority; and
5. That the threat was made or received in Seattle.

[RCW 9A.46.020](#) and [WPIC 36.07](#).

C. Discussion

A speaker need not actually intend to carry out a threat in order for the communication to constitute a threat, as long as the speaker objectively knows that the communication constitutes a threat. *State v. Kilburn*, 151 Wn.2d 36, 48 (2004). The City has jurisdiction if the threats were made or received in the City. RCW 9A.46.030. If it is a case of third-party harassment, the intended target of the threat must find out about the threat and be placed in reasonable fear. *State v. J.M.*, 144 Wn.2d 472, 482 (2001).

D. Crime of Harassment v. Crimes Included in Harassment

“Harassment” is a term of art used in multiple ways in different parts of the RCW. For our purposes, there is the crime of harassment in [RCW 9A.46.020](#), and there is the list of crimes considered “harassment” in [RCW 9A.46.060](#). The list of crimes of harassment is used as a shorthand in other parts of the RCW to designate the list of crimes without needing to write out all the crimes. Examples include: any crime on the list of harassment crimes can get a written no contact order at arraignment, [RCW 9A.46.050](#); any crime on the list of harassment crimes can get a no contact order at sentencing, [RCW 9A.46.080](#); any crime on the list of harassment crimes is a “serious offense” for incompetency restoration and forced medication purposes for defendants who raise incompetency, [RCW 10.77.092\(1\)\(e\)](#).

E. Reasonableness of the Victim’s Fear

Factors to consider in determining whether there is sufficient evidence of the victim’s reasonable fear include: his or her immediate response to that threat, whether the victim took steps to protect herself or himself from the defendant, whether the police were called and whether the victim sought refuge with others or in a shelter. The defendant’s actions should

also be considered; did the defendant brandish a weapon or have one in his possession; did the defendant interfere with the victim's reporting the incident to the police, did the defendant engage in prior verbal, emotional or physical abuse of the victim.

Indecent Exposure: [RCW 9A.88.010](#) incorporated by reference [SMC 12A.09.020](#)

A. Definition

Indecent exposure is intentionally making an open and obscene exposure of yourself knowing that it will likely cause affront. It is a misdemeanor if the victim is 14 years of age or older. It is a gross misdemeanor if the victim is under 14 years of age. It is a class C felony on the second offense or if the defendant has a sex offense prior conviction.

B. Elements of Indecent Exposure

The elements of indecent exposure are:

1. That on or about (date of incident), the defendant made an open and obscene exposure of his or her person;
2. That the defendant acted intentionally;
3. That the defendant knew that such conduct was likely to cause reasonable affront or alarm; and
4. That the exposure occurred in Seattle.

[RCW 9A.88.010\(1\)](#) and [WPIC 47.02](#).

C. Discussion

“Open and obscene exposure” means the lascivious exhibition of those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others. *State v. Galbreath*, 69 Wn.2d 664, 668-69 (1966). It can happen in a public or private place. *State v. Dubois*, 58 Wn. App. 299, 304 (1990). A sexual motivation allegation may be added to this crime. *State v. Murray*, 190 Wn.2d 727, 736 (2018).

Multiple counts: one count should be filed for each crime/victim.

D. Defenses

Defendants regularly claim accident to try to defeat the *mens rea*, so look for facts that show the defendant's actions were not an accident.

Breastfeeding is excluded from this crime. [RCW 9A.88.010\(1\)](#).

Interfering with the Reporting of Domestic Violence: [SMC 12A.06.187](#)

A. Definition

A person commits the crime of Interfering with the Reporting of Domestic Violence when he or she commits a crime of domestic violence and prevents or attempts to prevent the victim of that domestic violence from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

B. Elements

The elements of interfering with the reporting of domestic violence are:

1. That on or about (date of incident), the defendant committed a crime of domestic violence;
2. That the defendant prevented or attempted to prevent the victim of that domestic violence from
 - a. calling a 911 emergency communication system;
 - b. obtaining medical assistance; or
 - c. making a report to any law enforcement official; and
3. That the prevention or attempted prevention occurred in the City of Seattle.

[WPIC 36.56](#)

C. Relevant Caselaw

Interfering with the reporting of domestic violence is a strict liability offense and does not require a culpable mental state. *State v. Christian*, 18 Wn. App. 2d 185, 209-24, 489 P.3d 657, review denied, 198 Wn.2d 1024 (2021)

D. Discussion

In order to be found guilty of interfering with the reporting of domestic violence, a crime of domestic violence must first have been committed. SMC 12A.06.187(C).

Reckless Endangerment: SMC 12A.06.050

Definitions

Reckless: A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation. [SMC 12A.04.030\(C\)](#); WPIC 10.03.

Bodily Injury: physical pain or injury, illness, or an impairment of physical condition. [SMC 12A.02.150\(4\)](#).

A. Elements of Reckless Endangerment

The elements of reckless endangerment are:

1. A person recklessly engages in conduct which creates a substantial risk of death or serious bodily injury to another person.
2. Reckless endangerment is a gross misdemeanor.

B. Discussion

Some examples of reckless endangerment include **dropping a rock off of an overpass onto a freeway, driving around and a child within the car has no child seat or seat belt, or shooting a gun through a wall in an apartment building. The defense will usually include some form of accident, so prepare your case to address that.**

Sexual Exploitation: [SMC 12A.09.020](#) and [RCW 9A.88.110](#)

A. Charge Selection

1. A person is guilty of Sexual Exploitation (Patronizing a Prostitute) if:
 - a. Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or
 - b. He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him or her; or
 - c. He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.
 - d. The crime of Patronizing a Prostitute may be committed in more than one location. The crime is deemed to have been committed in any location in which the defendant commits any act under subsection (1)(a), (b), or (c) of this section that constitutes part of the crime. A person who sends a communication to patronize a prostitute is considered to have committed the crime both at the place from which the contact was made pursuant to subsection (1)(a), (b), or (c) of this section and where the communication is received, provided that this section must be construed to prohibit anyone from being prosecuted twice for substantially the same crime.
2. For purposes of this section, "sexual conduct" has the meaning given in [RCW 9A.88.030](#).

Sexual Exploitation (Patronizing a Prostitute) is a misdemeanor.

B. Elements of Sexual Exploitation

The elements of interfering with the reporting of domestic violence are:

1. The defendant either:
 - a. (a) paid or agreed to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him or her, or
 - b. (b) solicited or requested another person to engage in sexual conduct with the defendant in return for a fee; and
2. That the acts occurred in the City of Seattle.

[WPIC 48.10](#)

C. Definitions

Sexual Conduct: “Sexual conduct” means sexual intercourse in its ordinary sense, which occurs upon any penetration, however slight, or contact between persons involving the sex organs of one person and mouth or anus of another, or masturbation, manual or instrumental, of one person by another. [RCW 9A.88.030](#)

D. Discussion

Seattle calls the crime “Sexual Exploitation,” although it incorporates by reference Patronizing a Prostitute under RCW 9A.88.110. See last paragraph of [SMC 12A.09.020](#).

Stalking: [RCW 9A.46.110](#) incorporated by reference in [SMC 12A.09.020](#)

A. Definition

A person commits the crime of Stalking when he or she, without lawful authority, intentionally and repeatedly harasses or follows another person, the other person is placed in reasonable fear that he or she intends to injure [the other person] or [a third person] or [the person’s property] or [a third person’s property], and he or she either intends to intimidate, harass or frighten the other person or knows or reasonably should know that the other person is intimidated, harassed or afraid. [RCW 9A.46. 110](#). Stalking is a gross misdemeanor.

B. Elements of Stalking

The elements of interfering with the stalking are:

1. That on or about [date of incident], the defendant intentionally and repeatedly harassed or followed [insert victim’s name];
2. That [insert victim’s name] was placed in fear that the defendant intended to injure him or her;
3. That a reasonable person in the same situation and under the same circumstances as [insert victim’s name] would feel fear that the defendant intended to injure him or her;
4. That the defendant either
 - a. intended to intimidate, harass or frighten [insert victim’s name]; or
 - b. knew or reasonably should have known that [insert victim’s name] was intimidated, harassed or afraid, even if the defendant did not intend to intimidate, harass or frighten him or her;
5. That the defendant acted without lawful authority; and
6. That the acts occurred in the City of Seattle.

[WPIC 36.21](#)

C. Discussion

File only those alternative means which the evidence supports.

Prior to filing, review all reports that our office has in REVIEW status with the same parties to determine if stalking charges are appropriate. If stalking charges are appropriate, the filer shall consolidate the reports for filing into a single complaint. The use of a date range is appropriate and accepted. For example, On or between January 1 and January 20, 2023, Is an acceptable form of language on a complaint.

Other crimes committed during the commission of the crime of stalking should be charged.

Stalking is a gross misdemeanor unless one or more of the following circumstances applies in which it is a class "B" felony and may be referred to a domestic violence unit lead or supervisor for felony referral review:

- The stalker has previously been convicted in this or any other state of any crime of harassment with the same victim or member of victim's family, household or person specifically named in a protection order;
- The stalking violates any protective order protecting the person being stalked;
- The stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person;
- The stalker was armed with a deadly weapon while stalking the person;
- The stalker's victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; community corrections' officer; an employee, contract staff person, or volunteer of a correctional agency; court employee, court clerk, or courthouse facilitator; or an employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties
- The stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

"Repeatedly" means on two or more separate occasions. [WPIC 36.24](#).

"Harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses or is detrimental to such person and which serves no legitimate purpose. This course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress and shall actually cause substantial emotional distress to the person or, when the course of conduct would cause a reasonable parent to fear for the well-being of his or her child. [WPIC 36.23](#).

"Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. Following may occur when one person repeatedly and deliberately appears at another person's home, school, place of employment, business or any other location to maintain visual or physical proximity to the person being followed. Following

does not require that one person follow another person while in transit from one location to another. [WPIC 36.22](#).

All stalking cases will be handled by the Domestic Violence Unit, regardless of the relationship between the defendant and the victim.

Telephone Harassment: [SMC 12A.06.100](#)

A. Definition

A person commits the crime of Telephone Harassment when, with intent to harass, intimidate, torment or embarrass another person, he or she makes a telephone call to such other person (a) using lewd, lascivious, indecent or obscene words or language or suggesting the commission of any lewd or lascivious act, (b) anonymously or repeatedly or at an extremely inconvenient hour or (c) threatening to inflict injury on the person or property of the person called or a member of the family of the person called. [SMC 12A.06.100A](#). Telephone harassment is a gross misdemeanor.

B. Elements of Telephone Harassment

The elements of telephone harassment are:

1. That on or about [date of incident], the defendant made a telephone call to another person;
2. That during such telephone call the defendant either:
 - a. used lewd, lascivious, indecent, or obscene words or language or suggested the commission of any lewd or lascivious act; or
 - b. called anonymously or repeatedly or at an extremely inconvenient hour; or
 - c. threatened to inflict injury on the person or property of the person called or a member of the family of the person called;
3. That the defendant made the telephone call with the intent to harass, intimidate, torment, or embarrass the person called; and
4. That the telephone call was made from or received in the City of Seattle.

[WPIC 36.72](#)

C. Discussion

File only those alternative means which the evidence supports.

Telephone Harassment is a gross misdemeanor unless one or more of the following circumstances applies in which it is a class "C" felony:

- The person has previously been convicted of any crime of harassment 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;

- The person harasses another person under subsection [RCW 9.61.231\(1\)\(c\)](#) by threatening to kill the person or any other person.

If either circumstance is present and the case meets the filing and disposition standards of the King County Prosecuting Attorney's Office, the case may be referred to a Domestic Violence Unit supervisor or lead for felony referral review.

The "intent to harass, intimidate, torment, or embarrass" must exist at the inception of the telephone call. *State v. Lilyblad*, 163 Wn.2d 1, 177 P.3d 686 (2008).

A "threat" is a statement made in a context or under such circumstances that a reasonable speaker would foresee that it would be interpreted as a serious expression of an intention to inflict bodily injury upon or take the life of another person. A threat is not a statement made in jest, idle talk or political argument. *State v. Johnston*, 156 Wn.2d 355, 360-62, 127 P.3d 707 (2006).

Telephone harassment may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received. [SMC 12A.06.100\(B\)](#).

Unlawful Use of Weapons to Intimidate: [SMC 12A.14.075](#)

A. Definition

Unlawful Use of Weapons to intimidate another occurs when a person carries, exhibits, displays or draws a firearm, dangerous knife, any knife with a blade that is open for use, other cutting or stabbing instrument or weapon apparently capable of producing bodily harm in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another person or warrants alarm for the safety of other persons. [SMC 12A.14.075](#). Unlawful Use of Weapons to Intimidate is a gross misdemeanor.

B. Elements of Unlawful Use of Weapons

The elements of Unlawful Use of Weapons to Intimidate are:

1. That on or about (date of incident), the defendant (carried) (exhibited) (displayed) (or) (drew) a (firearm) (dangerous knife) (knife with a blade that is open for use) (cutting or stabbing instrument) (or) (weapon apparently capable of producing bodily harm);
2. That the defendant (carried) (exhibited) (displayed) (or) (drew) the weapon in a manner, under circumstances, and at a time and place that (manifested an intent to intimidate another) (or) (warranted alarm for the safety of other persons); and
3. That this act occurred in Seattle.

[SMC 12A.14.075\(A\)](#) and [WPIC 133.41](#).

C. Discussion

For Unlawful Use of Weapons to Intimidate, the circumstances need only warrant the alarm for the safety of others, not actively cause such alarm. *State v. Workman*, 90 Wn.2d 443, 448 (1978).

D. Defenses

There are five affirmative defenses for Unlawful Use of Weapons to Intimidate:

1. law enforcement officer;
 - a. acting in self-defense or defense of others;
2. assisting in a felony arrest;
3. member of the military engaged in military activities: or
4. happened in your home or place of business.

[SMC 12A.14.075\(B\)](#).

Violation of a No Contact Order (Distance Restriction)

A. Definition

A person commits the crime of Violation of a No Contact Order when they know of a domestic violence protection order, a sexual assault protection order, a stalking protection order, a vulnerable adult protection order, an order granted under Revised Code of Washington Chapter 7.105, 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A or 26.26B, a valid foreign protection order as defined in RCW 26.52.020 or a valid Canadian domestic violence protection order as defined in RCW 26.55.010 and knowingly violates a provision of such order prohibiting him or her from knowingly coming within or knowingly remaining within a specified distance of a location.

B. Elements

The elements of violation of a no contact order are:

1. That on or about (Incident Date), the defendant knowingly violated a provision of an order prohibiting him or her from knowingly coming within or knowingly remaining within a specified distance of a location;
2. That the order was a domestic violence protection order, a sexual assault protection order, a stalking protection order, a vulnerable adult protection order, an order granted under Revised Code of Washington Chapter 7.105, 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A or 26.26B, a valid foreign protection order as defined in RCW 26.52.020 or a valid Canadian domestic violence protection order as defined in RCW 26.55.010;
3. That the defendant knew of the order; and
4. That the location was in the City of Seattle.

[WPIC 36.50](#)

C. Relevant Caselaw

Consent is **not** a defense to this crime. The obligation to arrest does not depend upon a complaint being made by the person protected under the order but only on the respondent's awareness of the existence of that order. *State v. Dejarlais*, 136 Wn.2d 939, (1998).

Validity of the underlying order is not an element of the crime. *State v. Miller*, 156 Wn.2d 23, (2005); *State v. Snapp*, 119 Wn. App. 614, 623-26, review denied, 152 Wn.2d 1028 (2004).

D. Discussion

A Violation of a DV Order may be filed as a felony if a defendant has two prior NCO/PO violation convictions. A violation of a DV Order may also be filed as a felony if the defendant committed an assault or engaged in conduct constituting a violation of the order which was reckless and created a substantial risk of death or serious physical injury to another.

If more than one order is in place at the time of the violation and the act violates the restriction provision on each, the City shall file a count for each. Simply because the charges will merge at sentencing does not prevent the City from filing multiple counts from one incident.

The number of charges filed is at the discretion of the filer. If there are multiple violations, consider whether the conduct is a continuing course of conduct.

Prior to filing a charge of violation of a court order, there must be competent evidence that the defendant was aware of the court order, and the order is valid. Competent evidence includes (1) a copy of the protection order, (2) a copy of the return of service, and (3) a police report when it contains sufficient information.

Crimes Against Property

Criminal Trespass 1° and 2°: [SMC 12A.08.040](#)

A. Definition

Criminal trespass 1° is committed when a person knowingly enters or remains unlawfully in a building. SMC 12A.08.040(A). Criminal trespass 1° is a gross misdemeanor.

Criminal trespass 2° is committed when a person enters or remains unlawfully in or upon the premises of another in circumstances not constituting criminal trespass 1°. [SMC 12A.08.040\(B\)](#). Criminal trespass 2° is a misdemeanor.

B. Elements of Criminal Trespass

The elements of criminal trespass 1° are:

1. That on or about (date of incident), the defendant knowingly entered or remained in a building;
2. That the defendant's entry or remaining in the building was unlawful;

3. That the defendant knew that the entry or remaining was unlawful; and
4. That the building was located in the City of Seattle.

[SMC 12A.08.040\(A\)\(1\)](#) and [WPIC 60.16](#).

The elements of criminal trespass 2° are:

1. That on or about (date of incident), the defendant knowingly entered or remained in or upon the premises of another under circumstances not constituting criminal trespass 1°;
2. That the defendant's entry or remaining in or upon the premises was unlawful;
3. That the defendant knew that the entry or remaining in or upon the premises was unlawful; and
4. That the premises was located in the City of Seattle.

[SMC 12A.08.040\(B\)\(1\)](#) and [WPIC 60.18](#).

C. Discussion

“Entered or remained unlawfully” in a building or premises happens when a person is not then licensed, invited, or otherwise privileged to so enter or remain. SMC 12A.08.010, WPIC 65.02. 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. SMC 12A.08.010, WPIC 65.02. “A person remains unlawfully when his privilege to be in a building or premises is revoked and he refuses to leave.” *State v. Douglas*, 128 Wn. App. 555, 567-68 (2005). The privilege to be in a building or on a premises may be revoked by any person with authority over the building or premises, and the testimony of the building owner is not required. *State v. J.P.*, 130 Wn. App. 887, 892-94 (2005).

“Building” means a building, dwelling, vehicle, any structure used of lodging persons (tent), any structure used for business, and each unit of a building consisting of two or more units separately secured or occupied is a separate building. [SMC 12A.08.010](#), [WPIC 2.05](#).

“Premises” means a building, dwelling, or any real property (in other words land). [SMC 12A.08.010](#), [WPIC 65.01](#).

Criminal Trespass 2° is generally not a lesser included offense of Criminal Trespass 1°, *State v. Brittain*, 38 Wn. App. 740, 746 (1984), but can be in some circumstances. *State v. Joseph*, 189 Wn.2d 645, 653 (2017).

D. Defenses

There are four statutory defenses:

1. abandoned property;
2. public premises;
3. subjective good faith belief;
4. service of process;

[SMC 12A.08.040\(C\)](#).

These defenses negate the unlawful presence element of criminal trespass, so when one of these defenses is placed in issue, the burden is upon the prosecution to prove its absence beyond a reasonable doubt. *City of Bremerton v. Widell*, 146 Wn.2d 561, 570 (2002); WPIC 19.07.

Possessing stolen property: [SMC 12A.08.090](#)

A. Definition

1. Knowingly possess property of another person and,
2. Knowing it to be stolen

Possessing stolen property is a gross misdemeanor.

B. Elements

The elements of possessing stolen property are:

1. That on or about (date of incident), the defendant knowingly received, retained, possessed, concealed, or disposed of property;
2. That the defendant knew that the property had been stolen;
3. That the defendant withheld and appropriated the property to the use of any person other than the true owner of person entitled thereto; and
4. That the acts occurred in the city of Seattle

[SMC 12A.08.090](#) [RCW 9A.56.140\(1\)](#) and [9A.56.170](#) [WPIC 77.10](#)

C. Discussion

Possession of stolen property over \$750 is eligible for felony filing under the RCW, but the KCPAO will not take it unless the value is over \$2000, so we, therefore, handle any cases with a value up to \$2000. SMC has no value threshold. There are several items that appear to have no value which could be a felony. Debit cards for example are “access devices” which is a felony. Possession of stolen public records is also a felony.

Knowledge that the property was stolen need not be actual and positive but may be constructive knowledge through notice of facts and circumstances from which guilty knowledge may fairly be inferred. *State v. Salle*, 34 Wn.2d 183, 194, (1949).

The prosecution is not required to prove that the defendant engaged in an unlawful initial taking. *State v. Rogers*, 30 Wn. App. 653, 656, (1981).

Possession may be actual or constructive; knowledge that the property is stolen may be actual or constructive. *State v. Jennings*, 35 Wn. App. 216, 219,, review denied, 100 Wn.2d 1024 (1983).

Received, possessed, concealed, or disposed of do not create alternative means to commit the crime. *State v. Makekau*, 194 Wn. App. 407, (2016).

D. Affirmative defense

It is an affirmative defense that the actor received, retained, or disposed of stolen property with intent to restore it to the owner. SMC 12A.08.090(B). If the defendant indicates this was their intent; analyze if the story make sense, the circumstances surrounding the incident. For example, if they were in the middle of selling stolen property, is their story reasonable that they were intending to return the property.

Property Destruction: [SMC 12A.08.020](#)

A. Definition

There are two prongs of Property Destruction:

1. Intentionally damage the property of another; or
2. Intentionally write, paint, or draw any inscription, figure, or mark of any type on any public or private property owned by another person unless you have the permission of the owner.

The second prong is known as Graffiti. Property Destruction is a gross misdemeanor.

B. Elements of Property Destruction

The elements of property destruction (damage the property of another) are:

1. That on or about (date of incident), the defendant damaged the property of another person;
2. That the defendant acted intentionally; and
3. That the property was in the City of Seattle.

[SMC 12A.08.020\(A\)\(1\)](#) and [WPIC 85.11](#).

*The elements of property destruction (graffiti) are:

1. That on or about (date of incident), the defendant wrote, painted, or drew 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;
2. That the defendant acted intentionally;

3. That the defendant had not obtained the express permission of the owner or operator of the building, structure, or property to write, paint, or draw the inscription, figure, or mark on the building, structure, or property; and
4. That the building, structure, or property was located in the City of Seattle.

[SMC 12A.08.020\(A\)\(2\)](#) and [WPIC 85.11](#).

C. Discussion

There is no minimum or maximum value for the crime of property destruction under the SMC, so we will have some cases that are felony declines with damage values in the thousands of dollars. There is no damage value to prove for the graffiti prong. Property of another includes property co-owned by the defendant, including any community property for DV cases. *State v. Coria*, 146 Wn.2d 631, 640 (2002).

Multiple counts: one count should be filed for each crime/victim.

*As of June 13, 2023, there is a federal injunction prohibiting the charging of graffiti cases. *See Tucson v. City of Seattle*, case 2:23-CV-00017, U.S. Dist. Ct., W.D. of Wash. As of February 23, 2024, a federal mandate lifts the injunction prohibited the filing of graffiti cases.

D. Affirmative defense

It is an affirmative defense that the defendant had a reasonable belief that they had a lawful right to damage the property. [SMC 12A.08.020\(B\)\(1\)](#). This would apply if the defendant were damaging his wholly owned property.

Reckless Burning: [SMC 12A.08.030](#)

A. Elements of Reckless Burning

The elements of reckless burning are:

1. The defendant caused a fire or explosion;
2. That the fire or explosion placed a building of another in danger of destruction or damage;
3. That the defendant intentionally caused the fire or explosion;
4. That the defendant recklessly caused the building of another to be in danger of destruction or damage; and
5. That the building was located in the City of Seattle.

B. Definitions

Building: In addition to its ordinary meaning, includes any dwelling, vehicle, railway car, cargo container, or any other structure used for lodging of persons, for carrying on business therein or for the use, sale or deposit of goods. [SMC 12A.08.010\(A\)](#) and [WPIC 2.05](#)

Damage: Damage means an injury or harm to property sufficient to lower its value or involving significant inconvenience or loss of efficiency. [SMC 12A.08.010](#) [WPIC 88.02](#)

Intent: A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime. [SMC 12A.04.030.A](#) & [WPIC 10.01](#)

Reckless: A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that the building of another may be in danger of destruction or damage and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation. [SMC 12A.04.030\(C\)](#)

Theft: [SMC 12A.08.060](#)

A. Definition

A person commits the crime of Theft when they steals the property of another. [SMC 12A.08.060](#). This is the definition of theft that we most often use, but there are three other definitions of theft in [SMC 12A.08.060](#). “Steal” means to knowingly obtain or exert unauthorized control over the property of another with intent to deprive him of such property. [SMC 12A.08.050](#). Theft is a gross misdemeanor.

B. Elements of Theft

The elements of theft are:

1. That on or about (date of incident), the defendant knowingly obtained or exerted unauthorized control over property of another;
2. That the defendant intended to deprive the other person of the property;
3. That the acts occurred in the City of Seattle.

[WPIC 70.11](#).

C. Discussion

There is no minimum or maximum value for the crime of theft under the SMC, so we will have some cases that are felony declines with theft values in the thousands of dollars.

Multiple counts: one count should be filed for each crime/victim.

D. Retail theft

Retail theft is theft from a store. Our general policy is that we do not file retail theft for theft values less than \$25. There are exceptions to this general policy, including, but not limited to, if:

1. There is a companion crime,
2. The theft was part of an organized retail theft,
3. Security tags were removed, or devices were used to thwart loss prevention detection systems,
4. The stolen items included alcohol or tobacco
5. The defendant is an employee of the victim store,
6. The CAO has multiple theft reports on the defendant in the last year, or
7. The defendant is part of the High Utilizer Initiative or other similar program.

E. Affirmative defense

It is an affirmative defense that the property or services were openly obtained under a claim of title made in good faith, even though the claim be untenable. SMC 12A.08.060(C).

F. Retail Theft Program

Most of our theft cases begin with an SPD police report. But the Retail Theft Program (RTP) cases are different. RTP reports are generated by loss prevention employees at retail stores that participate in the program. They detain shoplifters, identify them, call SPD to run a warrants check, release them, write a store report, and then send their report to the RTP officer at SPD who reviews them. The RTP officer then sends the store reports to us for filing. This program reduces the need for SPD officers to respond to shoplifting calls at participating stores.

Vehicle Prowling: [SMC 12A.08.120](#)

A. Elements of Vehicle Prowling

The elements of vehicle prowling are:

1. The defendant entered or remained unlawfully in a vehicle;
2. That the defendant's entry or remaining in the vehicle was with the intent to commit a crime against a person or property in the vehicle; and
3. That the vehicle was located in the City of Seattle.

B. Definitions

Enter: The word "enter" includes the entrance of the person, or the insertion of any part of his or her body, or any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person or to detach or remove property. [12A.08.010 \(D\)](#) and [WPIC 65.03](#)

Enters or Remains Unlawfully: A person “enters or remains unlawfully” in a building when he or she is not then licensed, invited or otherwise privileged to so enter or remain. [SMC 12A.08.010\(E\)](#) & [WPIC 65.02](#) Vehicle means every vehicle which is self-propelled, every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, any aircraft or any vessel equipped for propulsion by mechanical means or by sail. [SMC 12A.02.150\(25\)](#)

Intent: A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime. [SMC 12A.04.030.A](#) & [WPIC 10.01](#)

C. Discussion

If there is no evidence of intent to commit a crime in the vehicle, the act of being in a vehicle without permission could still constitute criminal trespass in the first degree. A vehicle is a building for purposes of criminal trespass. [SMC 12A.08.010\(A\)](#) and [WPIC 2.05](#)

Crimes Against Governmental Order

False Reporting: [SMC 12A.16.040](#)

A. Definition

There are multiple prongs to false reporting, but the one we use the most is: give a false oral identification to a Seattle Police Officer when such officer is investigating a crime or possible crime, or issuing a citation or notice of infraction, knowing that the identification is false. [SMC 12A.16.040\(A\)\(4\)](#). False reporting is a gross misdemeanor. [SMC 12A.02.070\(A\)](#).

B. Elements of False Reporting:

The elements of false reporting are:

1. That on or about (date of incident) the defendant
 - a. initiated or circulated a written or oral report or warning of an alleged or impending occurrence of a fire, explosion, crime, catastrophe, or emergency knowing that such report is likely to cause the evacuation of a building, to cause substantial public inconvenience or alarm, or to cause an emergency response; or
 - b. knowingly made a false or misleading material statement to a public servant; or
 - c. made a verbal statement relating to a crime, catastrophe, or emergency to a Seattle Police officer or 911 emergency operator, knowing that such a statement contains a misstatement of a material fact; or
 - d. gave a false written or oral identification to a Seattle Police officer when such officer was investigating a crime or possible crime, executing a search or arrest warrant, issuing a citation or notice of infraction, issuing a parks exclusion notice, or making an arrest, knowing that such identification is false; or
2. That the defendant acted knowingly; and

3. That the acts occurred in the City of Seattle.
[SMC 12A.16.040](#) and [WPIC 120.04](#).

C. Discussion

“Material statement” means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties. [SMC 12A.16.040\(2\)](#). This crime is deemed to have been committed at a) the place from which the false report was made, or b) the place where the false report was received by law enforcement, or c) the place where an evacuation, public inconvenience or alarm, or emergency response occurred. [SMC 12A.16.040\(C\)](#). Making a False or Misleading Statement to a Public Servant, [RCW 9A.76.175](#), is similar to subsection (A)(2) of [SMC 12A.16.040](#).

Obstructing a Public Officer: [SMC 12A.16.010](#)

A. Definition

There are multiple prongs to Obstructing a Public Officer (Obstructing), but the two we use the most are: with knowledge that the person obstructed is a public officer, the suspect a) intentionally and physically interferes with a public officer, or 2) intentionally hinders or delays a public officer by disobeying an order to stop given by such officer. [SMC 12A.16.010\(A\)\(1\) & \(2\)](#). Obstructing is a gross misdemeanor.

B. Elements of Obstructing

The elements of obstructing are:

1. That on or about (date of incident) the defendant
 - a. intentionally and physically interfered with a public officer; or
 - b. intentionally hindered or delayed a public officer by disobeying an order to stop given by such officer; or
 - c. intentionally refused to cease an activity or behavior that created a risk of injury to any person when ordered to do so by a public officer; or
 - d. intentionally destroyed, concealed, or altered or attempted to destroy, conceal, or alter any material that he or she knows the public officer is attempting to obtain, secure, or preserve during an investigation, search, or arrest; or
 - e. intentionally refused to leave the scene of an investigation of a crime while an investigation is in progress after being requested to leave by a public officer;
2. That the defendant’s conduct actually obstructed the public officer;
3. That the defendant knew that the person obstructed was a public officer; and
4. That the conduct occurred in Seattle.

[SMC 12A.16.010](#) and [WPIC 120.02](#) (but there are significant differences between obstructing under [SMC 12A.16.010](#) and [RCW 9A.76.020](#) for purposes of the pattern instruction).

C. Discussion

The focus of obstructing is on the defendant's conduct. Some conduct, as opposed to mere speech, is required to sustain a conviction for obstructing. *State v. Williams*, 171 Wn.2d 474, 485-86 (2011). Abusive verbal criticism, alone, is not enough for obstructing. *State v. E.J.J.*, 183 Wn.2d 497, 507 (2015). "Public officer" means a police officer, a deputy sheriff, a state trooper, a federal law enforcement officer, fire marshal, or a firefighter. [SMC 12A.16.010\(E\)](#).

Resisting Arrest: [SMC 12A.16.050](#)

A. Definition

Resisting arrest occurs when one intentionally prevents or attempts to prevent a peace officer from lawfully arresting them. [SMC 12A.16.050](#). Resisting arrest is a misdemeanor.

B. Elements of Resisting Arrest:

The elements of resisting arrest are:

1. That on or about (date of incident) the defendant prevented or attempted to prevent a peace officer from arresting him;
2. That the defendant acted intentionally;
3. That the arrest or attempt to arrest was lawful; and
4. That the acts occurred in the City of Seattle.

[SMC 12A.16.050](#). [WPIC 120.06](#).

C. Discussion

"Lawful arrest" for element three is defined in [WPIC 120.07](#). Our jury instructions also include multiple options to review to define lawful arrest. The defendant's knowledge that the arrest was lawful is not an element of the crime. *Seattle v. Cadigan*, 55 Wn. App. 30, 42 n.4 (1989). The defendant's knowledge that the person arresting him was a police officer is not an element of the crime. *State v. Belleman*, 70 Wn. App. 778, 782-83 (1993). The language of resisting arrest in [SMC 12A.16.050](#) is the same as that in the state statute, [RCW 9A.76.040](#).

Driving Offenses

[2022 DUI Bench Book](#)

Persons Under the Influence of Intoxicating Liquor, Marijuana or any other Drugs [SMC 11.56.020](#)

DRIVING WHILE INTOXICATED

A. Elements of Driving While Intoxicated

The elements of Driving While Intoxicated are as follows:

A person is guilty of driving while under the influence of intoxicating liquor, marijuana or any drug if the person drives a vehicle within the City:

- a. And the person has, within two (2) hours after driving, an alcohol concentration of 0.08 or higher, as shown by analysis of the person's breath or blood made under [RCW 46.61.506](#); or
- b. The person has, within two (2) hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under [RCW 46.61.506](#); or
- c. While the person is under the influence of or affected by intoxicating liquor, marijuana or any drug; or
- d. While the person is under the combined influence of or affected by intoxicating liquor, marijuana and any drug.

Driving While Intoxicated is a gross misdemeanor.

B. Definitions

Under the Influence: A person is under the influence of or affected by the use of intoxicating liquor if the person's ability to drive a motor vehicle is lessened in any appreciable degree.

Per Se: showing the person's blood alcohol concentration was at least 0.08 or the person's THC concentration was 5.00 or more within two hours of driving.

Refusal: A person refuses a law enforcement officer's request to submit to a test to determine the person's [breath alcohol concentration] [blood alcohol concentration] [blood drug content] when the person shows or expresses a positive unwillingness to do the request or to comply with the request. [WPIC 92.13](#)

Roadway: means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder even though such sidewalk or shoulder is used by persons riding bicycles. In the event a highway includes two or more separated roadways, "roadway" shall refer to any such roadways separately but shall not refer to all such roadways collectively. [SMC 11.14.530]. *Sulkosky v. Brisebois*, 49 Wn. App. 273, (1987) (a parking zone is included in the definition of "roadway").

C. Discussion

- **Filing Standards**
 - DUI charges will be filed if sufficient admissible evidence exists which, when considered with the most plausible, reasonably-foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective factfinder.

- In considering whether a case meets Criminal Division filing standards under the applicable 'affected or impaired' subsection, and to the extent that it provides guidance in any DUI or Physical Control filing decision, the prosecutor should consider factors which include: (1) the suspect's driving, (2) physical manifestations of impairment, (3) the suspect's performance on field-sobriety tests, (4) the suspect's statements or admissions, if any, and (5) other evidence of impairment.

D. Affirmative Defenses

1. Drinking/Smoking after Driving

- a. It is an affirmative defense to SMC 11.56.020(B)(1)(a) that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or higher within two (2) hours after driving. The defendant must prove subsequent consumption by a preponderance of the evidence. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.
- b. It is an affirmative defense to SMC 11.56.020(B)(1)(b), that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or higher within two (2) hours after driving. The defendant must prove by a preponderance of the evidence.

- 2. Corpus Delicti: prima facie proof the defendant operated or was in physical control of the vehicle prior to admission of defendant's confession. The corpus delicti can be proved by either direct or circumstantial evidence. *State v. Aten*, 130 Wn.2d 640, (1996). In *Bremerton v Corbett*, 106 Wn. 2d 569, 579-580 (1986), the court held that circumstantial evidence supported a finding that linked the four consolidated defendants as the vehicle drivers. The trial court takes the evidence and reasonable inferences from the evidence in the light most favorable to the state. *State v. Brockob*, 159 Wn.2d 311 (2006).

- a. Evidence that bears on Corpus:
 - i. Registered owner of the vehicle
 - ii. Personal belongings in the car
 - iii. Seat of car adjusted to D's height
 - iv. Witnesses identifying D as the driver

PHYSICAL CONTROL

A. Elements of Physical Control While Under the Influence

The elements of Physical Control While Under the Influence are as follows:

A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor, marijuana or any drug if the person has actual physical control of a vehicle within the City:

- a. And the person has, within two (2) hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher, as shown by analysis of the person's breath or blood made under [RCW 46.61.506](#); or
- b. The person has, within two (2) hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under [RCW 46.61.506](#); or
- c. While the person is under the influence of or affected by intoxicating liquor, marijuana or any drug;
- d. While the person is under the combined influence of or affected by intoxicating liquor, marijuana and any drug.

Physical Control While Under the Influence is a gross misdemeanor.

B. Definitions

Under the Influence: A person is under the influence of or affected by the use of intoxicating liquor if the person's ability to drive a motor vehicle is lessened in any appreciable degree.

Refusal: A person refuses a law enforcement officer's request to submit to a test to determine the person's [breath alcohol concentration] [blood alcohol concentration] [blood drug content] when the person shows or expresses a positive unwillingness to do the request or to comply with the request. [WPIC 92.13](#)

Roadway: means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder even though such sidewalk or shoulder is used by persons riding bicycles. In the event a highway includes two or more separated roadways, "roadway" shall refer to any such roadways separately but shall not refer to all such roadways collectively. [SMC 11.14.530](#). *Sulkosky v. Brisebois*, 49 Wn. App. 273 (1987) (a parking zone is included in the definition of "roadway").

C. Discussion

Filing Standards: Physical Control charges will be filed if sufficient admissible evidence exists which, when considered with the most plausible, reasonably-foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. In considering whether a case meets Criminal Division filing standards under the applicable 'affected or impaired' subsection, and to the extent that it provides guidance in any DUI or Physical Control filing decision, the prosecutor should consider factors which include: (1) the suspect's driving, (2) physical manifestations of impairment, (3) the suspect's performance on field-sobriety tests, (4) the suspect's statements or admissions, if any, and (5) other evidence of impairment.

Actual Physical Control: A person has “actual physical control” of a motor vehicle when that person has the ability to manage the motor vehicle which is reasonably capable of being made operable and that person is in a position to regulate the movement of the motor vehicle. [not a WPIC].

1. *Mount Vernon v. Quezada-Avila*, 77 Wn. App. 663 (1995) (implicitly approving this definition) (defendant was in actual physical control of car where he was behind the wheel of a car that could not be driven because it was high centered on a curb and two tires were flat and the keys were in the ignition).
2. *State v. Smelter*, 36 Wn. App. 439, 445-46 (1984) (defendant was in actual physical control of car where he was behind the wheel of a car that was out of gas).
3. *McGuire v. Seattle*, 31 Wn. App. 438, 442 (1982), review denied, 98 Wn.2d 1017 (1983) (defendant was in actual physical control of car where he was sitting behind wheel of parked car and keys were in the ignition).
4. *See also State v. McGary*, 37 Wn. App. 856, 858-59, (1984) (broken motorcycle being pushed down the street is still a motor vehicle as it was only temporarily incapable of self-propulsion).
5. Things that are helpful to consider when determining if a defendant is in physical control:
 - a. Is the car running? Either partially or fully.
 - b. Where are the keys?
 - c. Where is the defendant?
 - d. Is the car operable?

D. Affirmative Defenses

1. Drinking/Smoking after Driving
 - a. It is an affirmative defense to a violation of subsection B1a of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or higher within two (2) hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.
 - b. It is an affirmative defense to a violation of subsection B1b of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or higher within two (2) hours after driving.
2. Safely off the Roadway

- a. It is a defense to a charge of Being in Actual Physical Control While Under the Influence that, prior to being pursued by a law enforcement officer, the person causes the vehicle to be moved safely off the roadway. In determining whether a vehicle is safely off the roadway, a jury may consider the location of the vehicle, the extent to which the defendant maintained control over it and any other evidence bearing on the question. The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that a jury must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If a jury finds that the defendant has proved this defense, then it will be their duty to return a verdict of not guilty. [\[WPIC 92.15\]](#) [SMC 11.56.020\(B\)\(2\)](#).
- b. Considerations for Safely off the roadway include but are not limited to:
- c. (*see State v. Edgar*, 16 Wn. App. 2d 826)
 1. Where is the car parked? Is it legally parked? How close is the car to the roadway? Is it legally parked?
 2. How long has the defendant been there?
 3. Defendant's statements about sleeping it off or intention to drive in the future.
 4. Is the car on? Is it in drive? Where are the keys?

MINOR DRIVING OR BEING IN PHYSICAL CONTROL OF A MOTOR VEHICLE AFTER CONSUMING ALCOHOL OR CANNABIS

A. Elements of Minor Driving or Being in Physical Control of a Motor Vehicle after Consuming Alcohol or Cannabis

The elements of Minor Driving or Being in Physical Control after Consuming Alcohol or Cannabis are as follows:

1. Notwithstanding any other provision of this [Title 11](#), a person is guilty of minor driving or being in actual physical control of a motor vehicle after consuming alcohol or marijuana if the person:
 - a. Operates or is in actual physical control of a motor vehicle in the City;
 - b. Is under the age of 21; and
 - c. Has, within two hours after operating or being in actual physical control of the motor vehicle, either an alcohol concentration of at least 0.02 but less than 0.08, as shown by an analysis of the person's breath or blood made under RCW 46.61.506; or a THC concentration above 0.00 but less than the concentration specified in subsection [11.56.020.A.1.b](#), as shown by analysis of the person's blood made under [RCW 46.61.506](#).

Minor Driving or Being in Physical Control of a Motor Vehicle is a misdemeanor.

B. Discussion

Filing Standards: DUI or Physical Control charges will be filed if sufficient admissible evidence exists which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective factfinder.

In considering whether a case meets Criminal Division filing standards under the applicable 'affected or impaired' subsection, and to the extent that it provides guidance in any DUI or Physical Control filing decision, the prosecutor should consider factors which include: (1) the suspect's driving, (2) physical manifestations of impairment, (3) the suspect's performance on field-sobriety tests, (4) the suspect's statements or admissions, if any, and (5) other evidence of impairment.

The City may choose to file Driving Under the Influence rather than Minor Driving Under the Influence on someone under the age of 21 if the level of impairment and/or public safety considerations merit the filing.

C. Affirmative Defenses

1. Drinking/Smoking after Driving

- a. It is an affirmative defense to a violation of subsection B1a of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or higher within two (2) hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.
- b. It is an affirmative defense to a violation of subsection B1b of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or higher within two (2) hours after driving.

2. Corpus Delicti: prima facie proof the defendant operated or was in physical control of the vehicle prior to admission of defendant's confession. The corpus delicti can be proved by either direct or circumstantial evidence. *State v. Aten*, 130 Wn.2d 640 (1996). In *Bremerton v Corbett*, 106 Wn. 2d 569, 579-580 (1986), the court held that circumstantial evidence supported a finding that linked the four consolidated

defendants as the vehicle drivers. The trial court takes the evidence and reasonable inferences from the evidence in the light most favorable to the state. *State v. Brockob*, 159 Wn.2d 311 (2006).

3. Safely off the Roadway

- a. It is a defense to a charge of Being in Actual Physical Control While Under the Influence that, prior to being pursued by a law enforcement officer, the person causes the vehicle to be moved safely off the roadway. In determining whether a vehicle is safely off the roadway, a jury may consider the location of the vehicle, the extent to which the defendant maintained control over it and any other evidence bearing on the question. The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that a jury must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If a jury finds that the defendant has proved this defense, then it will be their duty to return a verdict of not guilty. [WPIC 92.15](#).
- b. Things to consider for Safely off the Roadway:
 1. Where is the car parked? Is it legally parked? How close is the car to the roadway? Is it legally parked?
 2. How long has the defendant been there?
 3. Defendant's statements about sleeping it off or intention to drive in the future.
 4. Is the car on? Is it in drive? Where are the keys?

[OPERATING MOTOR VEHICLE IN A NEGLIGENT MANNER 11.58.005](#)

A. Elements of Negligent Driving

The elements of Negligent Driving are as follows:

A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor, marijuana or any drug or exhibits the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects.

Negligent Driving in the First Degree is a misdemeanor.

B. Definitions

Negligent: the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

Exhibiting the effects of having consumed liquor, cannabis, or any drug: the person has the odor of liquor, cannabis, or any drug on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, cannabis, or any drug, and either:

- a. Is in possession of or in close proximity to a container that has or recently had liquor, cannabis, or any drug in it; or
- b. Is shown by other evidence to have recently consumed liquor, cannabis, or any drug.

C. Affirmative Defenses

It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed any drug, that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed and has been consuming it according to the prescription directions and warnings.

[RECKLESS DRIVING 11.56.120](#)

Elements of Reckless Driving

The elements of Reckless Driving are as follows:

1. Any person who drives any vehicle in the City in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.
2. No person or persons may race any motor vehicle or motor vehicles upon any street, alley or way open to the public of the City.
3. Reckless Driving is a Gross Misdemeanor.

[DRIVING WHILE LICENSE IS SUSPENDED OR REVOKED 11.56.320](#)

A. Elements of Driving While License is Suspended or Revoked

1. It is unlawful for any person to drive a motor vehicle within the City while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state.
2. A person found to be an habitual offender under Chapter [46.65 RCW](#), who violates this section while an order of revocation issued under Chapter [46.65 RCW](#) prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree.
3. Driving While License Suspended or Revoked in the First Degree is a gross misdemeanor.
4. A person who violates this [Section 11.56.320](#) while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate the person's driver's license or driving privilege, other than for a suspension for the reasons described in subsection [11.56.320.D](#), is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. For the purposes of this subsection [11.56.320.C](#), a person is not considered to be eligible to reinstate the person's driver's license or driving

privilege if the person is eligible to obtain an ignition interlock driver's license but did not obtain such a license. This subsection [11.56.320.C](#) applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

- a. A conviction of a felony in the commission of which a motor vehicle was used;
 - b. A previous conviction under this [Section 11.56.320](#);
 - c. A notice received by the Washington Department of Licensing from a court or diversion unit as provided by [RCW 46.20.265](#), relating to a minor who has committed, or who has entered a diversion agreement concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;
 - d. A conviction relating to the violation of restrictions of an occupational driver's license, a temporary restricted driver's license, or an ignition interlock driver's license;
 - e. A conviction relating to the operation of a motor vehicle with a suspended or revoked license;
 - f. A conviction relating to duty in case of injury to or death of a person or damage to an attended vehicle;
 - g. A conviction relating to attempting to elude pursuing police vehicles;
 - h. A conviction relating to reckless driving;
 - i. A conviction relating to a person under the influence of intoxicating liquor or drugs;
 - j. A conviction relating to vehicular homicide;
 - k. A conviction relating to vehicular assault;
 - l. A conviction relating to reckless endangerment of roadway workers;
 - m. A conviction relating to reckless endangerment of emergency zone workers;
 - n. A conviction relating to racing of vehicles on highways;
 - o. A conviction relating to leaving children in an unattended vehicle with motor running;
 - p. A conviction relating to theft of motor vehicle fuel;
 - q. A conviction relating to attempting, aiding, abetting, coercing, and committing crimes;
 - r. An administrative action taken by the Washington Department of Licensing under chapter [46.20 RCW](#); or
 - s. A finding that a person has committed a traffic infraction under [RCW 46.61.526](#) and suspension of driving privileges pursuant to [RCW 46.61.526\(4\)\(b\) or \(7\)\(a\)\(ii\)](#).
5. A person who violates this [Section 11.56.320](#) when that person's driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (1) the person must furnish proof of satisfactory progress in a required

alcoholism or drug treatment program, (2) the person must furnish proof of financial responsibility for the future as provided by chapter [46.29 RCW](#), (3) the person has failed to comply with the provisions of chapter [46.29 RCW](#) relating to uninsured accidents, (4) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, (5) the person has been suspended or revoked by reason of one or more of the items listed in subsection [11.56.320.C](#), but was eligible to reinstate the person's driver's license or driving privilege at the time of the violation, (6) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in [RCW 46.20.289](#), (7) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under [RCW 46.20.267](#) relating to intermediate drivers' licenses, or (8) the person has been certified by the Washington Department of Social and Health Services as a person who is not in compliance with a child support order as provided in [RCW 74.20A.320](#), or any combination of (1) through (8) of this subsection [11.56.320.D](#), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor. For the purposes of this subsection [11.56.320.D](#), a person is not considered to be eligible to reinstate the person's driver's license or driving privilege if the person is eligible to obtain an ignition interlock driver's license but did not obtain such a license.

B. Discussion

It is the policy of the Seattle City Attorney's office to obtain in hand the CCDR prior to filing DWLS charges.

Operation of Motor Vehicle without Required Ignition Interlock or Other Biological or Technical Device: [SMC 11.56.350](#)

A. Elements of Operating a Vehicle without Required Ignition Interlock

The elements of Operating a Vehicle Without the Required Ignition Interlock are:

No person whose driving record includes a notation, pursuant to [RCW 46.20.740](#), that the person may operate only a motor vehicle equipped with a functioning ignition interlock device shall operate a motor vehicle that is not so equipped, unless the notation resulted from a restriction imposed as a condition of release and the restriction has been released by the court prior to driving.

Operating a Vehicle Without a Required Ignition Interlock device is a gross misdemeanor.

B. Discussion

Charges will be filed when there is evidence including statements that officers looked inside the vehicle and did not observe a working ignition interlock device.

Hit and Run SMC [11.56.410](#)

A. Definitions

1. Accident: a collision between two (2) or more vehicles, or between a vehicle and property, or between a vehicle and a person. "Accident" also means the operation of a vehicle in such a manner as to cause the driver of another vehicle, or a pedestrian, or a person on a device propelled by human power to take evasive action which results in damage to property or injury to a person.

Device propelled by human power: includes but is not limited to a scooter, skateboard, tricycle, wagon, and any other similar device.

[HIT AND RUN ATTENDED 11.56.420](#)

A. Elements

The elements of hit and run of an attended vehicle are:

The operator of any vehicle involved in an accident resulting in damage to a vehicle which is operated or occupied by any person shall do the following:

1. Move the vehicle as soon as possible off the roadway or freeway main lanes, shoulders, medians, and adjacent areas to a location on an exit ramp shoulder, the frontage road, the nearest suitable cross street, or other suitable location and remain at the suitable location until he or she has done the following; and
2. Give his or her name, address, insurance company, insurance policy number, and vehicle license number, and exhibit his or her vehicle operator's license to the operator or any occupant of the other vehicle; and
3. Render to any person involved in such accident reasonable assistance including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment may be necessary or if such carrying is requested by the person involved in the accident or on his or her behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this [Section 11.56.420](#) be evidence of the liability of any operator for such accident.

[HIT AND RUN UNATTENDED VEHICLE 11.56.430](#)

A. Elements

The elements of hit and run of an unattended vehicle are:

The operator of any vehicle involved in an accident resulting in damage to another vehicle which is unattended shall do the following:

1. Immediately stop such vehicle at the scene of the accident, or as close thereto as possible; and
2. Then and there:
 - a. Locate and notify the operator or owner of such vehicle of the name and address of the operator and of the owner of the vehicle striking the unattended vehicle; or
 - b. Leave in a conspicuous place in the vehicle struck a written notice, giving the name and address of the operator and of the owner of the vehicle striking such other vehicle.

HIT AND RUN PROPERTY DAMAGE 11.56.440

A. Elements

The elements of hit and run property damage are:

The operator of any vehicle involved in an accident resulting in damage to property other than a vehicle shall do the following:

1. Immediately stop such vehicle at the scene of the collision, or as close thereto as possible; and
2. Then and there:
 - a. Locate and notify the owner or person in charge of such property of the name and address of the operator and of the owner of the vehicle striking the property; or
 - b. Leave in a conspicuous place upon the property struck a written notice, giving the name and address of the operator and of the owner of the vehicle so striking the property.

HIT AND RUN PEDESTRIAN OR PERSON ON A DEVICE PROPELLED BY HUMAN POWER

11.56.450

A. Elements

The elements of hit and run of a pedestrian or person are:

The operator of any vehicle involved in an accident with a pedestrian, or with a device propelled by human power operated by any person, or on which a person is seated, shall do the following:

1. Immediately stop such vehicle at the scene of such accident, or as close thereto as possible, and forthwith return to and remain at the scene of such accident until he has done the following;
2. Give his or her name, address, insurance company, insurance policy number, and vehicle license number, and exhibit his or her operator's license to the pedestrian or person operating the device propelled by human power, or, if they are unconscious or incompetent, to another person whom he or she reasonably believes is acting on their behalf; and

Render to any person involved in such accident reasonable assistance including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the person involved in the accident or on his or her behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this section be evidence of the liability of any operator for such accident.

Driver's License Required (NO VALID OPERATOR'S LICENSE): [SMC 11.20.010](#)

A. Elements of No Valid Operator's License

The elements of no valid operator's license are:

1. A person is guilty of NVOL if they did not have a valid driver's license issued under Revised Code of Washington Chapter [46.20](#) and was operating a motor vehicle within the City of Seattle.
2. No person, except those expressly exempted by RCW Chapter [46.20](#), shall operate a motor vehicle within the City unless such person has a valid driver's license issued under the provisions of RCW Chapter [46.20](#).

No Valid Operator's License is a misdemeanor.

B. Definitions

[RCW 46.20](#) includes the requirements for completing a driver's license form.

C. Discussion

Filing Standards (Driving While License Suspended 3 and No Valid Operator's License):

1. We will no longer file DWLS 3 under any circumstances when the reason for the suspension is for failure to pay or failure to appear.
2. **DWLS 3 Filing Criteria.** The Seattle City Attorney's Office will file under the following circumstances:
 - i. Companion to Moving/DUI related or criminal code (SMC 12A) offense: DWLS 3 charge that is a companion charge to a moving/DUI related or criminal code offense will be filed at filing prosecutor's discretion unless the suspension reason is FTA/FTP.
 - ii. Chemical Dependency related suspension and open DUI/Physical Control case: DWLS 3 charge will be filed when reason for suspension is chemical dependency related or suspect is not compliant with chemical dependency assessment/treatment and the suspect has an open DUI/Physical Control case.
 - Notated on Abstract Driving Record (ADR) as:
 - a. Reinstatement/Requirements Section: alcohol report; alcohol treatment; alcohol treatment/assessment; alcohol compliance or

- b. Assessment History Section: Not Compliant
 - Does not include Alcohol Reissue fee—those are subject to Decline policy.
- 3. **DWLS 3 Decline Criteria**
 - i. All DWLS 3 charges that do not fall into one of the exceptions laid out above, will be declined.
 - ii. Recognizing the importance of supporting re-licensing, SCAO will continue to partner with the Finance and Administrative Services Division to offer preventative re-licensing support in partnership with a community non-profit agency working on re-licensing.
- 4. **NVOL:** The above filing criteria for DWLS 3 shall apply to NVOLs.
- 5. **Exceptions:** The prosecutors maintain ultimate discretion to deviate from this policy in cases of public safety or based on particularized facts supporting a need to file charges.

Animal Offenses

Animal Cruelty: [SMC 9.25.081](#)

A. Types of Animal Cruelty

Animal Cruelty is a gross misdemeanor. .

According to [SMC 9.25.081](#), it is unlawful for any person to:

- A. Injure, kill, or physically mistreat any animal under circumstances not amounting to first degree animal cruelty as defined in [RCW 16.52.205](#), except as is expressly permitted by law;
- B. Lay out to expose or leave exposed any kind of poison or poisoned food or drink where it is accessible to an animal, or place such poisoned materials in a stream or other body of water, endangering fish or shellfish; provided, that nothing shall prevent the reasonable use of rodent poison, insecticides, fungicides or slug bait for their intended purposes; and provided, further, that nothing in this subsection shall prohibit any governmental agency acting in the course of its governmental duties;
- C. Set or bait any trap, except for rats or mice, unless a permit to do so has been issued as provided for in [Section 9.25.030](#);
- D. Confine, without adequate ventilation, any animal in any box, container or vehicle;
- E. Tease, tantalize or provoke any animal with the intent to cause destructive behavior, fear or hostility;
- F. Tether or confine any animal in such a manner or in such a place as to cause injury or pain not amounting to first degree animal cruelty defined in [RCW 16.52.205](#), or to endanger an animal ; or to keep an animal in quarters that are

- injurious to the animal due to inadequate protection from heat or cold, or that are of insufficient size to permit the animal to move about freely;
- G. Keep an animal in an unsanitary condition or fail to provide sufficient food, water, shelter, or ventilation necessary for the good health of that animal;
 - H. Fail to provide his/her animal the medical care that is necessary for its health or to alleviate its pain;
 - I. Permit any animal to fight or injure any other animal, or permit any animal to be fought or injured by any other animal; or to train or keep for the purpose of training any animal for the exhibition of such animal in combat with any other animal, whether for amusement of him/herself or others, or for financial gain; or permit such conduct on premises under his/her control, or to be present as a spectator at such exhibition;
 - J. Possess cock spurs, slashers, gaffs, or other tools, equipment, devices or training facilities for the purpose of training and/or engaging an animal in combat with another animal;
 - K. Abandon any animal.

B. Elements of Animal Cruelty

The elements of animal cruelty are:

1. That on or about [date of incident], the defendant
 - a. Injured, killed or physically mistreated any animal under circumstances not amounting to first degree animal cruelty as defined in [RCW 16.52.205](#), except as is expressly authorized by law; or
 - b. Laid out to expose or left exposed any kind of poison or poisoned food or drink where it was accessible to an animal, or placed such poisoned materials in a stream or other body of water, endangering fish or shellfish; provided that nothing shall prevent the reasonable use of rodent poison, insecticides, fungicides or slug bait for their intended purposes; and provided, further, that shall prohibit any governmental agency acting in the course of its governmental duties; or
 - c. Set or baited any trap, except for rats or mice, unless a permit to do so has been issued as provided for in [SMC 9.25.030](#); or
 - d. Confined, without adequate ventilation, any animal in any box, container, or vehicle; or
 - e. Teased, tantalized, or provoked any animal with the intent to cause destructive behavior, fear or hostility; or
 - f. Tethered or confined any animal in such a manner or in such a place to cause injury or pain not amounting to first degree animal cruelty defined in [RCW 16.25.205](#), or endangered an animal; or kept an animal in quarters that were of insufficient size to permit the animal to move about freely; or

- g. Kept an animal in an unsanitary condition or failed to provide sufficient food, water shelter, or ventilation necessary for the good health of that animal; or
 - h. Failed to provide his/her animal the medical care that was necessary for its health or to alleviate its pain; or
 - i. Permitted any animal to fight or injure any other animal, or permitted any animal to be fought or injured by any other animal; or trained or kept for the purpose of training any animal for the exhibition of such animal in combat with any other animal, whether for amusement of him/herself or others, or for financial gain; or permitted such conduct on premises under his/her control, or to be present as a spectator at such exhibition; or
 - j. Possessed cock spurs, slasher, gaffs or other tools, equipment, devices or training facilities for the purpose of training and/or engaging an animal in combat with another animal; or
 - k. Abandoning any animal; and
2. That the conduct occurred in the City of Seattle.

C. Definitions

Abandon: Abandon means the act of leaving an animal 1) without food, water, or care for 24 hours or more; or 2) in a situation where the conditions present an immediate, direct and serious threat to the life, safety, or health of the animal. [SMC 9.25.020.A](#).

Animal: Animal means any living nonhuman mammal, bird, reptile, or amphibian. [SMC 9.25.020.C](#); WPIC 135.25.

Intent: A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime. [SMC 12A.04.030.A](#) & WPIC 10.01

Owner: Owner means a person who harbors, keeps, causes or permits an animal to be harbored or kept, or who has an animal in his/her possession or custody, or who permits an animal to remain on or about his/her premises, or who has legal title to an animal. [SMC 9.25.022.B](#).

Permit: Permit means human conduct in relation to an owned animal which is intentional, deliberate, careless, inadvertent or negligent. [SMC 9.25.023.A](#).

Reckless: A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that the building of another may be in danger of destruction or damage and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation. [SMC 12A.04.030](#)

Unprovoked: Unprovoked means that an animal is not “provoked.” An animal is “provoked” if the animal was being tormented physically abused or hurt at the time of the

incident. An animal also is “provoked” if a reasonable person would conclude that the animal was defending itself, its owner or an immediate family member of its owner, or another person within its immediate vicinity from an actual assault or was defending real property belonging to its owner or an immediate family member of its owner from a crime being committed on its owner’s property at that time. An animal is not “provoked” if the victim is alleged to have provoked the animal and the victim is less than six (6) years old. [SMC 9.25.024.A](#).

Vehicle: Vehicle means a "motor vehicle" as defined in [Chapter 11.14](#), any aircraft, or any vessel equipped for propulsion by mechanical means or by sail. [SMC 12A.02.150](#).

D. Discussion

File only those alternative means which the evidence supports.

Weapons

Unlawful Use of Weapons-Dangerous Knife: [SMC 12A.14.080](#)

A. Definition

Unlawful use of weapons-possess dangerous knife occurs when a person knowingly carries concealed or unconcealed on his person a dangerous knife. [SMC 12A.14.080\(B\)](#). Unlawful use of weapons-possess dangerous knife is a gross misdemeanor.

B. Elements of Unlawful Use of Weapons

The elements of unlawful use of weapons-possess dangerous knife are:

1. That on or about (date of incident), the defendant carried a dangerous knife on his or her person;
2. That the defendant acted knowingly; and
3. That the carrying occurred in Seattle.

[SMC 12A.14.080](#).

C. Discussion

For unlawful use of weapons-possess dangerous knife, “carry” means to hold, wear, have on one’s person, or move while support, it is not limited to holding in one’s hand. *State v. Myles*, 127 Wn.2d 807, 813 (1995). “Dangerous knife” means any fixed-blade knife and any other knife having a blade more than 3.5 inches in length. [SMC 12A.14.080](#) “Fixed-blade knife” means any knife with a blade which is permanently open and includes any dagger, sword, hatchet, straight-edged razor, or razor blade. [SMC 12A.14.010](#).

D. Defenses

There are three affirmative defenses for unlawful use of weapons-possess dangerous knife:

1. a licensed hunter or fisherman actively engaged in that sport;
2. actively engaged in an occupation that commonly requires such a knife, and the knife must be unconcealed or carried in a sheath on the waist;
3. carrying the knife in a secure wrapper or toolbox from the place of purchase, to or from a place of repair, to or from the person's home or business, moving from one home or business to another, or while inside the person's home or business.

[SMC 12A.14.100](#).

Controlled Substances

Possession/ Use of a Controlled Substance: [SMC 12A.09.020](#)/ [RCW 69.50.4013\(a\)\(1\)](#)

A. Definition

A person commits the crime of Possession/ Use of a Controlled Substance in a public place when they knowingly possess an identifiable controlled substance or knowingly uses an identifiable controlled substance in a public place. Cannabis is not a controlled substance. Possession/ Use of a controlled substance is a gross misdemeanor with special penalties: a maximum of 180 days in jail and a \$1000 fine.

B. Elements of Possession/ Use of a Controlled Substance:

The elements of possession/use of a controlled substance in a public place are:

4. That on or about (date of incident) the defendant
 - e. Unlawfully possessed [a controlled substance] (fill in the name of the controlled substance)
 - or
 - f. Unlawfully used [a controlled substance] (fill in the name of the controlled substance)
5. That the defendant acted knowingly; and
6. That the acts occurred in the City of Seattle.

[SMC 12A.09.020](#)/ [RCW 69.50.4013 \(1\)\(a\)&\(b\)](#) and [WPIC 50.02](#) WPIC 50.50

C. Discussion

[RCW 69.50.4013\(1\)](#) creates the crimes of Possession of a Controlled Substance and Use of a Controlled Substance in a Public Place. Both require the mens rea of knowingly.

The definition of controlled substance comes from the controlled substances schedules: schedule I, [RCW 69.50.204](#); schedule II, [RCW 69.50.206](#); schedule III, [RCW 69.50.208](#); schedule IV, [RCW 69.50.210](#); schedule V, [RCW 69.50.212](#). The Council adopted all of the controlled substances, except marijuana, which is exempt and not considered a controlled.

substance.

There is a defense in [RCW 69.50.4013\(1\)](#) related to possession of the controlled substance pursuant to a prescription, which is the reason for the use of the term “unlawfully” in the charging language.

Within the police report narrative, it should be clear that the substance is a controlled substance and identified by name.

The statute requires that we note the identity of the specific drug being used. In virtually all instances, we can identify in one of two ways:

- 1) Laboratory testing of a recoverable amount of the drug.
- 2) A confession from the suspect in addition to your observations in the field.

Incident reports for Use or Possession of a Controlled Substance involving drug paraphernalia only, with no testable amount of drugs, and no admission, are insufficient for filing under the law and City Attorney filing standards.

The Seattle Police Department (SPD) maintains internal policies that guide its officers in various aspects of law enforcement, including, handcuffing, report writing, uniforms, or similar procedural aspects. As it relates to possession and use of controlled substance SPD has policies about when to make an arrest and the implementation of diversion programs. It is important to note that when making decisions regarding whether to file charges, prosecutors should not consider SPD policies. These internal policies do not form a basis for the prosecutorial decision to file charges, which is instead grounded in the evaluation of the evidence and adherence to the law. The focus of prosecutorial decision-making is on the merits of the case and the applicable legal standards, independent of SPD's internal administrative procedures.

The CAO Filing Standards adhere to Seattle Municipal Code, and they provide reference to pertinent case law and general reference information.

These Standards are not intended to, and they do not, and they may not be relied upon to create a right or benefit enforceable at law by a party in litigation with the city or state.

ANN DAVISON
SEATTLE CITY
ATTORNEY

September 05, 2023