

**Sentencing Guidelines Commission
Criminal Code Review Committee’s Recommendations on Unranked Offenses**

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Cases = number of cases filed;

Charges = number of charges filed; can have multiple charges per case

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RCW	Offense Title	Class	FY00-20 Count	Cases Filed	Charges	Effective Date
70.155.140	Shipping or Transporting Tobacco Products Ordered Through Mail or Internet	C	0	0	0	7/26/2009

Recommendation: **Reduce to misdemeanor**

Discussion:

- Regulatory

Recommendation: **Leave as unranked class C felony**

Discussion:

- Not duplicative

RCW [70.155.140](#)

Shipping or transporting tobacco products ordered or purchased by mail or through the internet prohibited—Penalty.

(1) A person may not:

(a) Ship or transport, or cause to be shipped or transported, any tobacco product ordered or purchased by mail or through the internet to anyone in this state other than a licensed wholesaler or retailer; or

(b) With knowledge or reason to know of the violation, provide substantial assistance to a person who is in violation of this section.

(2)(a) A person who knowingly violates subsection (1) of this section is guilty of a class C felony, except that the maximum fine that may be imposed is five thousand dollars.

(b) In addition to or in lieu of any other civil or criminal remedy provided by law, a person who has violated subsection (1) of this section is subject to a civil penalty of up to five thousand dollars for each violation. The attorney general, acting in the name of the state, may seek recovery of the penalty in a civil action in superior court. For purposes of this subsection, each shipment or transport of tobacco products constitutes a separate violation.

(3) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of subsection (1) of this section and to compel compliance with subsection (1) of this section.

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(4) Any violation of subsection (1) of this section is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW [19.86.020](#). Standing to bring an action to enforce RCW [19.86.020](#) for violation of subsection (1) of this section lies solely with the attorney general. Remedies provided by chapter [19.86](#) RCW are cumulative and not exclusive.

(5)(a) In any action brought under this section, the state is entitled to recover, in addition to other relief, the costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees.

(b) If a court determines that a person has violated subsection (1) of this section, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the general fund.

(6) Unless otherwise expressly provided, the penalties or remedies, or both, under this section are in addition to any other penalties and remedies available under any other law of this state.

[[2009 c 278 § 2.](#)]

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RCW	Offense Title	Class	FY00-20 Count	Cases Filed	Charges	Effective Date
9.91.170(5)	Intentional Infliction, Injury or Death to a Dog Guide or Service Animal	C	0	1	1	7/22/2001

Recommendation: **Repeal**

Discussion:

- Duplicated under Harming a Policy Dog (RCW 9A.76.200) [*proposed recommendation is to leave as unranked offense*] and Animal Cruelty 1 (RCW 16.52.205) [*accepted recommendation to rank at SL 3*]
- However, this statute also applies where one merely "disables" a dog. But disabling the dog is not defined in the statute and one wonders whether, as a practical matter, it is possible to do without injuring the dog.
- Seems like an anachronistic law.
- Not sure why this statute is necessary in light of the fact it has never been charged and could almost always be charged under the other two listed crimes.

Recommendation: **Rank at seriousness level 3**

Discussion:

- To make commensurate to proposed recommendation for Animal Cruelty 1 (RCW 16.52.205).

RCW [9.91.170](#)

Interfering with dog guide or service animal.

(1)(a) Any person who has received notice that his or her behavior is interfering with the use of a dog guide or service animal who continues with reckless disregard to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(2)(a) Any person who, with reckless disregard, allows his or her dog to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(3) Any person who, with reckless disregard, injures, disables, or causes the death of a dog guide or service animal is guilty of a gross misdemeanor.

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(4) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of a dog guide or service animal is guilty of a gross misdemeanor.

(5) Any person who intentionally injures, disables, or causes the death of a dog guide or service animal is guilty of a class C felony punishable according to chapter [9A.20](#) RCW.

(6) Any person who wrongfully obtains or exerts unauthorized control over a dog guide or service animal with the intent to deprive the dog guide or service animal user of his or her dog guide or service animal is guilty of theft in the first degree, RCW [9A.56.030](#).

(7)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the dog guide or service animal user and the dog guide or service animal which arise out of or are related to the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog guide or service animal, the training of a replacement dog guide or service animal, or retraining of the affected dog guide or service animal and all related veterinary and care expenses; and

(ii) Medical expenses of the dog guide or service animal user, training of the dog guide or service animal user, and compensation for wages or earned income lost by the dog guide or service animal user.

(8) Nothing in this section shall affect any civil remedies available for violation of this section.

(9) For purposes of this section, the following definitions apply:

(a) "Dog guide" means a dog that is trained or in training for the purpose of guiding blind persons or a dog trained or in training for the purpose of assisting hearing impaired persons.

(b) "Service animal" means an animal that is trained or in training for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability.

(c) "Notice" means a verbal or otherwise communicated warning prescribing the behavior of another person and a request that the person stop their behavior.

(d) "Value" means the value to the dog guide or service animal user and does not refer to cost or fair market value.

[[2017 c 170 § 1](#); [2003 c 53 § 52](#); [2001 c 112 § 2](#).]

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RCW	Offense Title	Class	FY00-20 Count	Cases Filed	Charges	Effective Date
9.91.175(3)	Intentionally Injures, Disables or Causes Death of an On-Duty Search and Rescue Dog	C	0	0	0	7/24/2005

Recommendation: **Repeal**

Discussion:

- Duplicated under Harming a Policy Dog (RCW 9A.76.200) [*proposed recommendation is to leave as unranked offense*] and Animal Cruelty 1 (RCW 16.52.205) [*accepted recommendation to rank at SL 3*]
- However, this statute also applies where one merely "disables" a dog. But disabling the dog is not defined in the statute and one wonders whether, as a practical matter, it is possible to do without injuring the dog.
- Seems like an anachronistic law.
- Not sure why this statute is necessary in light of the fact it has never been charged and could almost always be charged under the other two listed crimes.

Recommendation: **Rank at seriousness level 3**

Discussion:

- To make commensurate to proposed recommendation for Animal Cruelty 1 (RCW 16.52.205).

RCW [9.91.175](#)

Interfering with search and rescue dog.

(1)(a)(i) Any person who has received notice that his or her behavior is interfering with the use of an on-duty search and rescue dog who continues with reckless disregard to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or his or her search and rescue dog is guilty of a misdemeanor punishable according to chapter [9A.20](#) RCW, except when (a)(ii) of this subsection applies.

(ii) A second or subsequent violation of (a)(i) of this subsection is a gross misdemeanor punishable according to chapter [9A.20](#) RCW.

(b)(i) Any person who, with reckless disregard, allows his or her dog to interfere with the use of an on-duty search and rescue dog by obstructing, intimidating, or otherwise jeopardizing the safety of the search and rescue dog user or his or her search and rescue dog is guilty of a misdemeanor punishable according to chapter [9A.20](#) RCW, except when (b)(ii) of this subsection applies.

(ii) A second or subsequent violation of (b)(i) of this subsection is a gross misdemeanor punishable according to chapter [9A.20](#) RCW.

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(2)(a) Any person who, with reckless disregard, injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter [9A.20](#) RCW.

(b) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of an on-duty search and rescue dog is guilty of a gross misdemeanor punishable according to chapter [9A.20](#) RCW.

(3) Any person who intentionally injures, disables, or causes the death of an on-duty search and rescue dog is guilty of a class C felony.

(4) Any person who wrongfully obtains or exerts unauthorized control over an on-duty search and rescue dog with the intent to deprive the dog user of his or her search and rescue dog is guilty of theft in the first degree under RCW [9A.56.030](#).

(5)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the search and rescue dog user and the dog that arise out of, or are related to, the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog, the training of a replacement search and rescue dog, or retraining of the affected dog and all related veterinary and care expenses; and

(ii) Medical expenses of the search and rescue dog user, training of the dog user, and compensation for any wages or earned income lost by the search and rescue dog user as a result of a violation of subsection (1), (2), (3), or (4) of this section.

(6) Nothing in this section affects any civil remedies available for violation of this section.

(7) For purposes of this section, "search and rescue dog" means a dog that is trained for the purpose of search and rescue of persons lost or missing.

[[2005 c 212 § 1](#).]

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RCW	Offense Title	Class	FY00-20 Count	Cases Filed	Charges	Effective Date
19.210.040	Unused Property, Merchants – Prohibited Sales (Third or Subsequent Offense within 5 Years)	C	0	0	0	7/22/2001

Recommendation: **Repeal if zero convictions in 20 years (check 2021 convictions)**

Discussion:

- This bill requires registration with the state for the sale of baby food, infant formula, cosmetics, nonprescription drugs, and medical devices at flea markets.
- Was this bill passed at the behest of regular merchants to protect their business?
- Was there an actual threat posed by these sales?
- Designed to regulate competition. How does it increase public safety?

Recommendation: **Leave as unranked class C felony**

Discussion:

- Unknown if this is being charged elsewhere or being plead down to gross misdemeanor.
- Someone must have thought it was a risk to public safety in 2001.

RCW [19.210.040](#)

Penalties.

- (1) A first violation of this chapter is a misdemeanor.
- (2) A second violation of this chapter within five years is a gross misdemeanor.
- (3) A third or subsequent violation of this chapter within five years is a class C felony.

[[2001 c 160 § 4.](#)]

RCW [19.210.020](#)

Prohibited sales.

No unused property merchant shall offer at an unused property market for sale or knowingly permit the sale of baby food, infant formula, cosmetics, nonprescription drugs, or medical devices. This section does not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of such product, as long as the authorization is not false, fraudulent, or fraudulently obtained.

[[2001 c 160 § 2.](#)]

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RCW	Offense Title	Class	FY00-20 Count	Cases Filed	Charges	Effective Date
38.42.050	False Affidavit under Service Member Civil Relief Act	C	0	0	0	5/3/2005

Recommendation: **Repeal**

Discussion:

- Repeal if applied under Perjury statute since it's never been charged or convicted.

Recommendation: **Leave as unranked class C felony**

Discussion:

- Leave as unranked if not applied under Perjury.

RCW [38.42.050](#)

Protection of service members and their dependents against default judgments.

(1) This section applies to any civil action or proceeding in which a service member or his or her dependent is a defendant and does not make an appearance under applicable court rules or by law.

(2) In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit:

(a) Stating whether the defendant is in military service, or is a dependent of a service member in military service, and showing necessary facts to support the affidavit; or

(b) If the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service, stating that the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service.

(3)(a) To determine whether or not a defendant is a dependent of a service member in the military service under this chapter, the plaintiff may serve on or mail via first-class mail to the defendant a written notice in substantially the following form:

"NOTICE: State and federal law provide protections to defendants who are in the military service, and to their dependents. Dependents of a service member are the service member's spouse, the service member's minor child, or an individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief.

One protection provided is the protection against the entry of a default judgment in certain circumstances. This notice pertains only to a defendant who is a dependent of a member of the national guard or a military **reserve**

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component under a call to active service, or a national guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days. Other defendants in military service also have protections against default judgments not covered by this notice. If you are the dependent of a member of the national guard or a military reserve component under a call to active service, or a national guard member under a call to service authorized by the governor of the state of Washington, for a period of more than thirty consecutive days, you should notify the plaintiff or the plaintiff's attorneys in writing of your status as such within twenty days of the receipt of this notice. If you fail to do so, then a court or an administrative tribunal may presume that you are not a dependent of an active duty member of the national guard or reserves, or a national guard member under a call to service authorized by the governor of the state of Washington, and proceed with the entry of an order of default and/or a default judgment without further proof of your status. Your response to the plaintiff or plaintiff's attorneys about your status does not constitute an appearance for jurisdictional purposes in any pending litigation nor a waiver of your rights."

(b) If the notice is either served on the defendant twenty or more days prior to an application for an order of default or a default judgment, or mailed to the defendant more than twenty-three days prior to such application, and the defendant fails to timely respond, then for purposes of entry of an order of default or default judgment, the court or administrative tribunal may presume that the defendant is not a dependent of a service member in the military service under this chapter.

(c) Nothing prohibits the plaintiff from allowing a defendant more than twenty days to respond to the notice, or from amending the notice to so provide.

(4) If in an action covered by this section it appears that the defendant is in military service or is a dependent of a service member in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a service member or his or her dependent cannot locate the service member or dependent, actions by the attorney in the case do not waive any defense of the service member or dependent or otherwise bind the service member or dependent.

(5) In an action covered by this section in which the defendant is in military service or is a dependent of a service member in military service, the court shall grant a stay of proceedings until one hundred eighty days after termination of or release from military service, upon application of defense counsel, or on the court's own motion, if the court determines that:

(a) There may be a defense to the action and a defense cannot be presented without presence of the defendant;
or

(b) After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists. The defendant's failure to communicate or cooperate with counsel after having been contacted is not grounds to find that counsel has been unable to contact the defendant or that counsel has been unable to determine if a meritorious defense exists.

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(6) No bar to entry of judgment under subsection (4) of this section or requirement for grant of stay under subsection (5) of this section precludes the entry of temporary orders in domestic relations cases. If a court or administrative tribunal enters a temporary order as allowed under this subsection, it shall include a finding that failure to act, despite the absence of the service member, would result in manifest injustice to the other interested parties. Temporary orders issued without the service member's participation shall not set any precedent for the final disposition of the matters addressed therein.

(7) If a service member or dependent who is a defendant in an action covered by this section receives actual notice of the action, the service member or dependent may request a stay of proceedings pursuant to RCW [38.42.060](#).

(8) A person who makes or uses an affidavit permitted under this section knowing it to be false, is guilty of a class C felony.

(9) If a default judgment is entered in an action covered by this section against a service member or his or her dependent during the service member's period of military service or within one hundred eighty days after termination of or release from military service, the court entering the judgment shall, upon application by or on behalf of the service member or his or her dependent, reopen the judgment for the purpose of allowing the service member or his or her dependent to defend the action if it appears that:

(a) The service member or dependent was materially affected by reason of that military service in making a defense to the action; and

(b) The service member or dependent has a meritorious or legal defense to the action or some part of it.

(10) If a court vacates, sets aside, or reverses a default judgment against a service member or his or her dependent and the vacating, setting aside, or reversing is because of a provision of this chapter, that action does not impair a right or title acquired by a bona fide purchaser for value.

[[2012 c 24 § 2](#); [2006 c 80 § 1](#); [2005 c 254 § 5](#).]

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RCW	Offense Title	Class	FY00-20 Count	Cases Filed	Charges	Effective Date
9A.44.132(1)*	Failure to Register as a Sex Offender (1 st Viol)	C	7,576	0	0	6/10/2010*

* Includes 9A.44.130 and 9A.44.130(10) unranked offenses.

Recommendation: **Leave as unranked class C felony**

Discussion:

- Statute not duplicative.

RCW [9A.44.132](#)

Failure to register as sex offender or kidnapping offender.

(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW [9A.44.130](#) for a felony sex offense and knowingly fails to comply with any of the requirements of RCW [9A.44.130](#).

(a) The failure to register as a sex offender pursuant to this subsection is a class C felony if:

(i) It is the person's first conviction for a felony failure to register; or

(ii) The person has previously been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state, or pursuant to federal law.

(b) If a person has been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state, or pursuant to federal law, on two or more prior occasions, the failure to register under this subsection is a class B felony.

(2) A person is guilty of failure to register as a sex offender if the person has a duty to register under RCW [9A.44.130](#) for a sex offense other than a felony and knowingly fails to comply with any of the requirements of RCW [9A.44.130](#). The failure to register as a sex offender under this subsection is a gross misdemeanor.

(3) A person commits the crime of failure to register as a kidnapping offender if the person has a duty to register under RCW [9A.44.130](#) for a kidnapping offense and knowingly fails to comply with any of the requirements of RCW [9A.44.130](#).

(a) If the person has a duty to register for a felony kidnapping offense, the failure to register as a kidnapping offender is a class C felony.

(b) If the person has a duty to register for a kidnapping offense other than a felony, the failure to register as a kidnapping offender is a gross misdemeanor.

(4) Unless relieved of the duty to register pursuant to RCW [9A.44.141](#) and [9A.44.142](#), a violation of this section is an ongoing offense for purposes of the statute of limitations under RCW [9A.04.080](#).

[[2019 c 443 § 4](#); [2015 c 261 § 5](#); [2011 c 337 § 5](#); [2010 c 267 § 3](#).]

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Sex Offender Policy Board recommendation:

No. 15 (failure to register) The SOPB recommends that the offense of Failure to Register, pursuant to RCW 9A.44.132, be reduced from a Seriousness Level II offense to an Unranked Felony for the purposes of sentencing. This would result in a presumed sentencing range of 0 – 12 months.

No. 16 (failure to register) The SOPB recommends that for the crime of Failure to Register, defendants shall be given one year of community custody regardless of risk level for a first offense and two years of community custody for subsequent offenses.

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If/Where to rank these felonies?

RCW 9A.76.023(2)(a) – Disarming a Law Enforcement or Corrections Officer

Judge Wiggs noted it seems inconsistent to engage in conduct that is equivalent to Assault 4 (misd) but the offense becomes Assault 3 when the victim is a law enforcement officer and is ranked at seriousness level 3.

MOTION #22-53: ACCEPT COMMITTEE'S RECOMMENDATION TO RANK RCW 9A.76.023(2)(a) AT SERIOUSNESS LEVEL 3 OR HIGHER TO MAKE IT AT LEAST EQUAL TO ASSAULT OF LAW ENFORCEMENT OFFICER RCW 9A.36.031(3)(g)

RCW 9A.76.023(2)(b) – Disarming a LE or Corrections Officer and Firearm is Discharged

Keri-Anne explained that she discovered several convictions for this offense and informed members that this offense had been included in the blanket motion made on 11/12/21 to repeal any offenses with zero offenses in the past 20 years.

Keri-Anne noted that the SGC did vote to rank RCW 9A.76.023(2)(a) at a SL 3 or higher to make it equal with RCW 9A.36.031(3)(g) (Assault 3). The difference between (2)(a) and (2)(b) is the discharge of the weapon. Judge Wiggs felt it is important for the SGC's recommendations to be consistent. Members reviewed the offenses at SL 4 and 5.

Since the SGC ranked (2)(a), Judge Saint Clair would like the SGC to also discuss ranking (2)(b) but at another time.

MOTION #22-71: ACCEPT COMMITTEE'S RECOMMENDATION TO RANK THIS FELONY

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