

CHAPTER 10.01

GENERAL PROVISIONS

SECTION:

- 10.01.010: Short Title - Severability
- 10.01.020: Purposes - Principles of Construction
- 10.01.030: Criminal Jurisdiction
- 10.01.040: Classification of Crime
- 10.01.050: People Capable of Committing Crimes - Capability of Children
- 10.01.060: Common Law to Supplement Ordinance
- 10.01.070: Who Amenable to Criminal Ordinances
- 10.01.080: Limitation of Actions
- 10.01.090: Application of General Provisions to the Code
- 10.01.100: Proof Beyond a Reasonable Doubt
- 10.01.110: Definitions
- 10.01.120: General Requirements of Culpability
- 10.01.130: Liability for Conduct of Another - Complicity
- 10.01.140: Criminal Liability of Corporations and Persons Acting or Under a Duty to Act in Their Behalf
- 10.01.150: Insanity
- 10.01.160: Definition of Necessary
- 10.01.170: Use of Force - When Lawful
- 10.01.180: Duress
- 10.01.190: Entrapment
- 10.01.200: Action for Being Detained on Mercantile Establishment Premises for Investigation - "Reasonable Grounds" As Defense
- 10.01.202: Arrest Without a Warrant - When Authorized
- 10.01.204: Stopping and Detaining - When Authorized
- 10.01.206: Citation and Notice to Appear or Arrest - Considerations
- 10.01.210: Intoxication
- 10.01.230: Criminal Attempt
- 10.01.240: Criminal Solicitation
- 10.01.250: Criminal Conspiracy
- 10.01.260: Seizure of Property
- 10.01.270: RCW Section Adopted - Seizure and Forfeiture Under the Uniform Controlled Substances Act

10.01.010: Short Title - Severability:

- (1) This title shall be referred to and known as the "Kennewick Criminal Code."
- (2) If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected and to that end the provisions of this title are declared to be severable. (Ord. 2385 Sec. 1 (part), 1979; Ord. 2089 Sec. 2 (part), 1977)

10.01.020: Purposes - Principles of Construction:

- (1) The general purposes of the provisions governing the definition of offenses are:

- (a) To forbid and prevent conduct that inflicts or threatens substantial harm to individual or public interests;
 - (b) To safeguard conduct that is without culpability from condemnation as criminal;
 - (c) To give fair warning of the nature of the conduct declared to constitute an offense;
- (2) The provisions of this title shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this title. (Ord. 2385 Sec. 1 (part), 1979)

10.01.030: Criminal Jurisdiction: The following persons are liable for punishment:

- (1) A person who commits in the City any crime, in whole or in part.
- (2) A person who commits out of the City any act which, if committed within it, would be a theft and is afterward found in the City with any of the stolen property.
- (3) A person who being out of the City, counsels, causes, procures, aids or abets another to commit a crime in this City.
- (4) A person who commits an act without the City which affects persons or property within the City, which, if committed within the City, would be a crime.
- (5) A person who commits a crime toward any municipal property or concerning any municipal utility which, if committed, within the City, would be a crime. (Ord. 2385 Sec. 1 (part), 1979)

10.01.040: Classification of Crime:

- (1) A crime is a gross misdemeanor when so designated in this title. A gross misdemeanor is punishable, upon conviction thereof, by a fine of not more than \$5,000.00, or by imprisonment for not more than one year, or by both such fine and imprisonment.
- (2) A crime is a misdemeanor when so designated in this title. A misdemeanor is punishable upon conviction thereof by a fine of not more than \$1,000.00, or by imprisonment for not more than ninety days, or by both such fine and imprisonment. Any offense not designated a gross misdemeanor or an infraction is a misdemeanor.
- (3) An unlawful act designated an infraction is a civil offense punishable only by a civil penalty not exceeding \$500.00. (Ord. 2944 Sec. 2, 1985; Ord. 2858 Sec. 2, 1984; Ord. 2385 Sec. 1 (part), 1979)

10.01.050: People Capable of Committing Crimes - Capability of Children: Children under the age of eight years are incapable of committing crime. Children of eight, and under twelve years of age, are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his examination by one or more physicians, whose opinion shall be competent evidence upon the question of his age. (Ord. 2385 Sec. 1 (part), 1979)

10.01.060: Common Law to Supplement Ordinance: The provisions of the common law relating to the commission of crime and punishment thereof, insofar as not inconsistent with the Constitution and statutes of the State of Washington, shall supplement all the penal ordinances of this City and all persons offending against the same shall be tried in municipal court of the City of Kennewick. (Ord. 2385 Sec. 1 (part), 1979)

10.01.070: Who Amenable to Criminal Ordinances: Every person, regardless of whether or not he is an inhabitant of this City, may be tried and punished under the laws of this City for an offense committed by him therein, except when such offense is cognizable exclusively in the courts in the United States or State of Washington. (Ord. 2385 Sec. 1 (part), 1979)

10.01.080: Limitation of Actions: The prosecutions for gross misdemeanors not commenced within two years after the commission of the offense shall be barred. The prosecution for misdemeanors not commenced within one year after the commission of the offense shall be barred. Where a complaint has been filed within the time limit for the commencement of a criminal action, either a misdemeanor or a gross misdemeanor, if the complaint be set aside, the time limitation provided in this section shall be extended by the length of time from the time of filing such complaint to the time such complaint was set aside. (Ord. 3947 Sec. 1, 2000; Ord. 2385 Sec. 1 (part), 1979)

10.01.090: Application of General Provisions to the Code: The provisions of this chapter are applicable to offenses defined by this title or other ordinances unless this title or such other ordinance specifically provides otherwise. (Ord. 2385 Sec. 1 (part), 1979)

10.01.100: Proof Beyond a Reasonable Doubt:

(1) Every person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt.

(2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest degree.

(3) Unlawful acts designated as infractions need only be proved by a preponderance of the evidence. They are not crimes but civil wrongs. (Ord. 2858 Sec. 3, 1984; Ord. 2385 Sec. 1 (part), 1979)

10.01.110: Definitions: In this title, unless a different meaning plainly is required:

- (1) "Acted" includes, where relevant, omitted to act;
- (2) "Actor" includes, where relevant, a person failing to act;
- (3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;
- (4)
 - (a) "Bodily Injury" or "Physical Injury" means physical pain, illness, or an impairment of physical condition;
 - (b) "Substantial Bodily Harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;
- (5) "Building," in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;
- (6) "Deadly Weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle"

as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Detention Facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020 as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court, except an order under Chapter 13.34 RCW or Chapter 13.32A RCW, or (e) in any work release, furlough, or other such facility or program.

(8) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(9) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local government unit;

(10) "Governmental Function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(11) "Indicted" and "Indictment" include "informed against" and "information," and "informed against" and "information" include "indicted" and "indictment";

(12) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(13) "Lawful" means any thing or act not prohibited by law, custom or usage. "Unlawful" means any thing or act prohibited by law, custom or usage and includes all civil wrongs.

(14) "Legal" means any thing or act not prohibited by law. "Illegal" means any thing or act prohibited by law.

(15) "Malice" and "Maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;

(16) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this title, written statements shall be treated as if made under oath if:

- (a) The statement was made on or pursuant to instructions of an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;
- (b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or
- (c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is certified or declared to be true under penalty of perjury.

(17) "Officer" and "Public Officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistant, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(18) "Omission" means a failure to act;

(19) "Peace Officer" means a duly appointed city, county, or state law enforcement officer;

(20) "Pecuniary Benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain;

(21) "Person," "he," and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(22) "Place of Work" includes but is not limited to all the lands and other real property of a farm or ranch in case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(23) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(24) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(25) "Property" means anything of value, whether tangible or intangible, real or personal;

(26) "Public Servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(27) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(28) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(29) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened, or another, with respect to his health, safety, business, financial condition, or personal relationships.

(30) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or sail;

(31) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and

in the plural shall include the singular. (Ord. 5057 Sec. 1, 2004: Ord. 2876 Sec. 1, 1984: Ord. 2641 Sec. 1, 1981: Ord. 2385 Sec. 1 (part), 1979)

10.01.120: General Requirements of Culpability:

- (1) Kinds of Culpability Defined.
 - (a) Intent. A person acts with intent or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.
 - (b) Knowledge. A person knows or acts knowingly or with knowledge when:
 - (i) He is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
 - (ii) He has information which would lead a reasonable man in the same situation to believe that facts exist, which facts are described by a statute defining an offense.
 - (c) Recklessness. A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.
 - (d) Criminal Negligence. A person is criminally negligent or acts with criminal negligence when he fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.
- (2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting suffices to establish an element, such element also is established if a person acts intentionally.
- (3) Culpability as Determinant Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.
- (4) Requirement of Willfulness Satisfied by Acting Knowingly. A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears. (Ord. 2385 Sec. 1 (part), 1979)

10.01.130: Liability for Conduct of Another - Complicity:

- (1) A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable.
- (2) A person is legally accountable for the conduct of another person when:
 - (a) Acting with the kind of culpability that is sufficient for the commission of the crime, he causes an innocent or irresponsible person to engage in such conduct; or
 - (b) He is made accountable for the conduct of such other person by this title or by the law defining the crime; or
 - (c) He is an accomplice of such other person in the commission of the crime.
- (3) A person is an accomplice of another person in the commission of a crime if:

- (a) With knowledge that it will promote or facilitate the commission of the crime, he
 - (i) Solicits, commands, encourages, or requests such other person to commit it; or
 - (ii) Aids or agrees to aid such other person in planning or committing it; or
- (b) His conduct is expressly declared by law to establish his complicity.
- (4) A person who is legally incapable of committing a particular crime himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.
 - (5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:
 - (a) He is a victim of that crime; or
 - (b) He terminates his complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.
 - (6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted. (Ord. 2385 Sec. 1 (part), 1979)

10.01.140: Criminal Liability of Corporations and Persons Acting or under a Duty to Act in Their Behalf:

- (1) As used in this section:
 - (a) "Agent" means any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation;
 - (b) "Corporation" includes a joint stock association;
 - (c) "High Managerial Agent" means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.
- (2) A corporation is guilty of an offense when:
 - (a) The conduct constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law; or
 - (b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and on behalf of the corporation; or
 - (c) The conduct constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his employment and in behalf of the corporation and (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.
- (3) A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

(4) Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows he has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent. (Ord. 2385 Sec. 1 (part), 1979)

10.01.150: Insanity: To establish the defense of insanity, it must be shown that:

(1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(a) He was unable to perceive the nature and quality of the act with which he is charged; or

(b) He was unable to tell right from wrong with reference to the particular act charged.

(2) The defense of insanity must be established by a preponderance of the evidence. (Ord. 2385 Sec. 1 (part), 1979)

10.01.160: Definition of Necessary: In Sections 10.01.170 - .210, unless a different meaning is plainly required:

"Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended. (Ord. 2385 Sec. 1 (part), 1979)

10.01.170: Use of Force - When Lawful: The use, attempt, or offer to use force upon or toward the person of another shall not be unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of legal duty, or a person assisting him and acting under his direction;

(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him to a public officer competent to receive him into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him, in preventing or attempting to prevent an offense against his person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his possession, in case the force is not more than shall be necessary;

(4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

(5) Whenever used in a reasonable and moderate manner by a parent, teacher or guardian for the purpose of restraining or correcting the child. Any use of force not otherwise lawful on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for the purpose of restraining or correcting the child. It is presumptively unreasonable to restrain or correct a child by throwing, kicking, burning or hitting him; striking him with a closed fist; shaking him if he is under the age of three; interfering with his breathing; threatening him with a deadly weapon; or doing any other act likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks;

(6) Whenever used by a carrier of passengers or his authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or

other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than shall be necessary to expel the offender with reasonable regard to his personal safety;

(7) Whenever used by any person to prevent a mentally retarded person or a mentally ill person from committing an act dangerous to himself or another, or in enforcing necessary restraint for the protection of his person, or his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person. (Ord. 2641 Sec. 2, 1981; Ord. 2385 Sec. 1 (part), 1979)

10.01.180: Duress:

- (1) In any prosecution for a crime, it is a defense that:
 - (a) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or another would be liable to immediate death or immediate grievous bodily injury; and
 - (b) That such apprehension was reasonable upon the part of the actor; and
 - (c) That the actor would not have participated in the crime except for the duress involved.
- (2) The defense of duress is not available if the crime charged is murder, manslaughter, or homicide by abuse.
- (3) The defense of duress is not available if the actor intentionally or recklessly places himself in a situation in which it is probable that he will be subject to duress.
- (4) The defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse. (Ord. 5057 Sec. 2, 2004; Ord. 2385 Sec. 1 (part), 1979)

10.01.190: Entrapment:

- (1) In any prosecution for a crime, it is a defense that:
 - (a) The criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and
 - (b) The actor was lured or induced to commit a crime which the actor had not otherwise intended to commit.
- (2) The defense of entrapment is not established by a showing only that the law enforcement officials merely afforded the actor an opportunity to commit a crime. (Ord. 2385 Sec. 1 (part), 1979)

10.01.200: Action for Being Detained on Mercantile Establishment Premises for Investigation - "Reasonable Grounds" as Defense: In any criminal action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer, by the owner of the mercantile establishment, or by the owner's authorized employee or agent, and that such peace officer, owner, employee, or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft or shoplifting on such premises of such merchandise. As used in this Section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a

"reasonable time" shall mean the time necessary to permit the statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise. (Ord. 2385 Sec. 1 (part), 1979)

10.01.202: Arrest Without a Warrant - When Authorized: A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided below.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty one (21) years under RCW 66.44.270 or KMC 10.16.080 or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, or KMC 10.10.060 or KMC 10.10.070, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

- (a) An order has been issued of which the person has knowledge under RCW 10.99, 26.09, 26.10, 26.44.063, 26.26, 26.50, or 74.34 restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or
- (b) The person is eighteen (18) years or older and within the preceding four (4) hours has assaulted that person's spouse, former spouse, or a person eighteen (18) years or older with whom the person resides or has formerly resided and the officer believes: 1) a felonious assault has occurred; 2) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or 3) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: 1) the intent to protect victims of domestic violence under RCW 10.99.010; 2) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and 3) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

- (a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

- (b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;
 - (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;
 - (d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;
 - (e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;
 - (f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.
- (4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.12.025 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the State.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) Any police officer having probable cause to believe that a person has, within twenty four (24) hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(10) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1)(c) through (e).

(11) Except as specifically provided in subsections (2), (3), (4), and (6) of this Section, nothing in this Section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(12) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) or (8) if the police officer acts in good faith and without malice. (Ord. 5057 Sec. 3, 2004; Ord. 3641 Sec. 1, 1995; Ord. 3473 Sec. 1, 1993; Ord. 3159 Sec. 1, 1988; Ord. 3112 Sec. 1, 1987; Ord. 3107 Sec. 1, 1987; Ord. 2914 Sec. 1, 1985; Ord. 2655 Sec. 3 (part), 1982)

10.01.204: Stopping and Detaining - When Authorized:

(1) A police officer may stop and detain a person under the following circumstances:

- (a) When he has probable cause to believe that the person he is stopping and detaining has committed, is committing or is about to commit a crime or other violation of law, ordinance or regulation;
 - (b) When he has a reasonable suspicion, based upon specific, articulable facts known to him at the time, that the individual has committed, is committing or is about to commit a crime;
 - (c) When he has a reasonable cause to believe that the person he is stopping and detaining is wanted and there is a warrant outstanding for his arrest; and
 - (d) When he has a reasonable suspicion, based upon specific, articulable facts that the person he is stopping and detaining has information concerning a crime or has information concerning any person involved in a crime.
- (2) In the event that a police officer stops and detains a person, he shall, in all cases, have the right to take any reasonable precautions to ensure his own safety or the safety of others.
- (3) Should the person detained refuse to cooperate with the police officer, except for taking steps necessary to ensure his or the safety of others, the officer must, before proceeding further, inform the detainee of his authority, if he is not in uniform and has not already done so; the reason he is being detained; and the reason the officer desires the information. If the detainee is suspected of having committed, committing or being about to commit a crime, the officer will inform him of his right to remain silent.
- (4) The continued detention or ultimate arrest of a detainee shall not continue longer than is reasonably necessary under the circumstances.
- (a) If a person is detained because the officer believes he is wanted, the detention shall continue no longer than reasonably necessary to determine his identity and make inquiry into the records of local police agencies, the Washington Crime Information Center, the National Crime Information Center or other source where the officer reasonably believes information of the detainee's status will be found.
 - (i) If the detainee has an outstanding warrant issued by a court of the State of Washington, the officer will arrest the person and either allow him to post bail, if authorized, or notify the jurisdiction which issued the warrant and request that they take the arrestee into custody. If the issuing jurisdiction fails or refuses to accept custody of the arrestee within a reasonable time, he shall be released.
 - (ii) If the officer learns that the detainee stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year, he shall arrest him and take him before a judge or magistrate not later than the next judicial day and make complaint against him, under oath, setting forth the grounds for the arrest. The officer shall also notify the prosecuting attorney as soon as practical following the arrest.
 - (b) If the detainee is sought as a witness in a criminal case which is set for trial or is under investigation by a grand jury, the police officer may detain him long enough to consult with the prosecutor or defense counsel, as the case may be, to determine whether he should be required to appear before a magistrate or judge to ensure his appearance or testimony. Should the prosecutor or defense counsel determine that the detainee's testimony is material and should it appear that he might not appear in response to a subpoena, he may, not later than the next judicial day, be brought before a judge or magistrate.

- (c) If the person is detained because there is a reasonable suspicion that he has committed, was committing or is about to commit a crime, the officer may continue the detention as long as necessary and reasonable in light of the circumstances.
- (d) If a detainee is sought because he has information concerning a crime or persons involved in a crime, the officer, after having informed him of his office and purpose, may continue the detention for a reasonable period of time in order to obtain the desired information.
 - (i) If the person detained as a material witness, states that he does not have the information desired, he shall be released; provided, that nothing herein shall preclude his being charged with a criminal violation in the event his answer is false.
 - (ii) If the person detained as a material witness refuses to give information and the police officer has probable cause to believe that the detainee is a material witness, the officer may continue his detention not longer than the next judicial day and bring him before a judge or magistrate. If the judge or magistrate determines that there is reasonable cause to believe that the person detained has information concerning a crime or the whereabouts of a person who has committed a crime, that the information is material, that the information is not privileged and that the information is reasonably necessary in the interests of justice, the court may continue the detention until such time as the detainee gives the information; or the court may recognize him on such terms and conditions as appear just and equitable. The further detention of a person shall not continue beyond the time he has given such information or stated under oath that he does not have such information. (Ord. 2655 Sec. 3 (part), 1982)

10.01.206: Citation and Notice to Appear or Arrest - Considerations: Whenever a person is arrested, except in the case of a felony, the arresting officer will normally issue a citation and notice to appear, but in considering whether he should issue such a citation and notice to appear or continue the custody of the person arrested, the officer shall consider the following factors:

- (1) Whether the person has identified himself satisfactorily;
- (2) Whether the detention appears reasonably necessary to prevent imminent harm to himself or another, injury to property, or breach of the peace;
- (3) Whether the person has ties to the community reasonably sufficient to assure his appearance or whether there is substantial likelihood that he will refuse to respond to the citation; and
- (4) Whether the person previously has failed to appear in response to a citation or other lawful process. (Ord. 2655 Sec. 3 (part), 1982)

10.01.210: Intoxication: No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining such mental state. (Ord. 2385 Sec. 1 (part), 1979)

10.01.230: Criminal Attempt:

- (1) A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he does an act which is a substantial step toward the commission of that crime.
- (2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution for such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.
- (3) An attempt to commit a crime is a:
 - (a) Gross misdemeanor when the crime attempted is a Class C felony;
 - (b) Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor. (Ord. 5057 Sec. 4, 2004: Ord. 2385 Sec. 1 (part), 1979)

10.01.240: Criminal Solicitation:

- (1) A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.
- (2) Criminal solicitation shall be punished in the same manner as criminal attempt in Section 10.01.230. (Ord. 2385 Sec. 1 (part), 1979)

10.01.250: Criminal Conspiracy:

- (1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.
- (2) It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:
 - (a) Has not been prosecuted or convicted; or
 - (b) Has been convicted of a different offense; or
 - (c) Is not amenable to justice; or
 - (d) Has been acquitted; or
 - (e) Lacked the capacity to commit an offense.
- (3) Criminal conspiracy is a:
 - (a) Gross misdemeanor when the object of the conspiratorial agreement is a Class C felony;
 - (b) Misdemeanor when the object of the conspiratorial agreement is a gross misdemeanor or misdemeanor. (Ord. 5057 Sec. 5, 2004: Ord. 2385 Sec. 1 (part), 1979)

10.01.260: Seizure of Property:

- (1) The following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there

has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.

A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if at the time the security interest was created, the secured party neither had knowledge of nor consented to the commission of the felony.

(2) Personal property subject to forfeiture under this chapter may be seized by the Kennewick Police Department upon process issued by any superior court having jurisdiction over the property. Seizure of personal property without process may be made if:

- (a) The seizure is incident to an arrest or a search under a search warrant;
- (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;
- (c) A law enforcement officer has probable cause to believe that the property is directly dangerous to health or safety; or
- (d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in the commission of a felony.

(3) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The Police Department shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. The notice of seizure may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9 RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(4) If no person notifies the Police Department in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure, the item seized shall be deemed forfeited.

(5) If a person notifies the Police Department in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of the seizure, the Department shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the Chief of Police or his designee, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process on the City and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the Police Department of his ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. Any appeal from the hearing before the Chief of Police or his designee shall be to the Benton County Superior Court in accord with Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. The Department shall promptly return the property to the claimant upon a determination by the Chief or a court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

- (6) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the Police Department may:
- (a) Retain it for official use or upon application by another law enforcement agency release such property to such agency for the exclusive use of enforcing the criminal law;
 - (b) Sell that which is not required to be destroyed by law and which is not harmful to the public.
- (7) By January 31st of each year, the City Treasurer shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the public safety and education account.
- (a) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.
 - (b) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. The Police Department may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.
 - (c) Retained property and net proceeds not required to be paid to the state treasurer, or otherwise required to be spent under this section, shall be retained by the Police Department exclusively for the expansion and improvement of law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources. (Ord. 5264 Sec. 2, 2009; Ord. 3474 Sec. 1, 1993)

10.01.270: RCW Section Adopted - Seizure and Forfeiture Under the Uniform Controlled Substances Act: Section 69.50.505 of the Revised Code of Washington pertaining to seizure and forfeiture of real and personal property and expenditure of any funds resulting from forfeiture as now or hereafter amended, is hereby adopted by reference as a part of this chapter in all respects as though this section was set forth herein in full. (Ord. 3911 Sec. 1, 2000)