

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1142

56th Legislature
1999 Regular Session

Passed by the House February 12, 1999
Yeas 94 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 15, 1999
Yeas 38 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1142** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1142

Passed Legislature - 1999 Regular Session

State of Washington

56th Legislature

1999 Regular Session

By Representatives Constantine and McDonald; by request of Statute Law Committee

Read first time 01/15/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to technical corrections to various criminal laws;
2 amending RCW 9.04.070, 9.41.042, 9.41.185, 9.44.080, 9.46.0351,
3 9.46.070, 9.46.198, 9.68A.120, 9.91.060, 9.94A.050, 9.94A.127,
4 9.94A.130, 9.94A.160, 9.94A.170, 9.94A.180, 9.94A.370, 9.95.030,
5 9.95.060, 9.95.070, 9.95.090, 9.95.110, 9.95.120, 9.95.122, 9.95.123,
6 9.95.124, 9.95.150, 9.95.160, 9.95.170, 9.95.260, 9.95.265, 9.95.280,
7 9.95.300, 9.98.010, 9A.44.060, 9A.46.110, 9A.56.010, 9A.56.110,
8 9A.60.010, 9A.64.020, 9A.83.010, 10.05.030, 10.05.150, 10.05.160,
9 10.22.010, 10.66.050, 10.66.100, 10.73.040, 10.77.010, 10.98.030,
10 10.98.040, 10.98.110, and 10.98.160; and reenacting and amending RCW
11 9A.82.010.

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

13 **Sec. 1.** RCW 9.04.070 and 1961 c 189 s 3 are each amended to read
14 as follows:

15 Any person who violates any order or injunction issued pursuant to
16 RCW 9.04.050 through 9.04.080 shall be subject to a fine of not more
17 than five thousand dollars or imprisonment for not more than ninety
18 days or both.

1 ((RCW 9.01.090 shall not be applicable to the terms of RCW 9.04.050
2 through 9.04.080 and no penalty or remedy shall result from a violation
3 of RCW 9.04.050 through 9.04.080 except as expressly provided herein.))

4 EXPLANATORY NOTE:

5 RCW 9.01.090 was repealed by 1975 1st ex.s. c 260 s 9A.92.010.

6 **Sec. 2.** RCW 9.41.042 and 1994 sp.s. c 7 s 403 are each amended to
7 read as follows:

8 RCW 9.41.040(1)((+e+)) (b)(iii) shall not apply to any person under
9 the age of eighteen years who is:

10 (1) In attendance at a hunter's safety course or a firearms safety
11 course;

12 (2) Engaging in practice in the use of a firearm or target shooting
13 at an established range authorized by the governing body of the
14 jurisdiction in which such range is located or any other area where the
15 discharge of a firearm is not prohibited;

16 (3) Engaging in an organized competition involving the use of a
17 firearm, or participating in or practicing for a performance by an
18 organized group that uses firearms as a part of the performance;

19 (4) Hunting or trapping under a valid license issued to the person
20 under Title 77 RCW;

21 (5) In an area where the discharge of a firearm is permitted, is
22 not trespassing, and the person either: (a) Is at least fourteen years
23 of age, has been issued a hunter safety certificate, and is using a
24 lawful firearm other than a pistol; or (b) is under the supervision of
25 a parent, guardian, or other adult approved for the purpose by the
26 parent or guardian;

27 (6) Traveling with any unloaded firearm in the person's possession
28 to or from any activity described in subsection (1), (2), (3), (4), or
29 (5) of this section;

30 (7) On real property under the control of his or her parent, other
31 relative, or legal guardian and who has the permission of the parent or
32 legal guardian to possess a firearm;

33 (8) At his or her residence and who, with the permission of his or
34 her parent or legal guardian, possesses a firearm for the purpose of
35 exercising the rights specified in RCW 9A.16.020(3); or

36 (9) Is a member of the armed forces of the United States, national
37 guard, or organized reserves, when on duty.

38 EXPLANATORY NOTE:

1 RCW 9.41.040 was amended by 1995 c 129 s 16, changing
2 subsection (1)(e) to subsection (1)(b)(iv); and was
3 subsequently amended by 1996 c 295 s 2, changing subsection
4 (1)(b)(iv) to subsection (1)(b)(iii).

5 **Sec. 3.** RCW 9.41.185 and 1988 c 36 s 3 are each amended to read as
6 follows:

7 The use of "coyote getters" or similar spring-triggered shell
8 devices shall not constitute a violation of any of the laws of the
9 state of Washington when the use of such "coyote getters" is authorized
10 by the state department of agriculture and/or the state department of
11 fish and wildlife in cooperative programs with the United States Fish
12 and Wildlife Service, for the purpose of controlling or eliminating
13 coyotes harmful to livestock and game animals on range land or forest
14 areas.

15 EXPLANATORY NOTE:

16 Powers, duties, and functions of the department of fisheries
17 and the department of wildlife were transferred to the
18 department of fish and wildlife by 1993 sp.s. c 2, effective
19 July 1, 1994.

20 **Sec. 4.** RCW 9.44.080 and 1909 c 249 s 337 are each amended to read
21 as follows:

22 In a situation not covered by RCW 29.79.440, 29.79.490, 29.82.170,
23 or 29.82.220, every person who shall wilfully sign the name of another
24 person or of a fictitious person, or for any consideration, gratuity or
25 reward shall sign his own name to or withdraw his name from any
26 referendum or other petition circulated in pursuance of any law of this
27 state or any municipal ordinance; or in signing his name to such
28 petition shall wilfully subscribe to any false statement concerning his
29 age, citizenship, residence or other qualifications to sign the same;
30 or knowing that any such petition contains any such false or wrongful
31 signature or statement, shall file the same, or put the same off with
32 intent that it should be filed, as a true and genuine petition, shall
33 be guilty of a misdemeanor.

34 EXPLANATORY NOTE:

35 RCW 29.79.440 and 29.79.490 specifically apply to state
36 initiative and referendum petitions. RCW 29.82.170 and
37 29.82.220 specifically apply to recall petitions.

38 **Sec. 5.** RCW 9.46.0351 and 1987 c 4 s 34 are each amended to read
39 as follows:

1 (1) The legislature hereby authorizes any bona fide charitable or
2 nonprofit organization which is licensed pursuant to RCW 66.24.400, and
3 its officers and employees, to allow the use of the premises,
4 furnishings, and other facilities not gambling devices of such
5 organization by members of the organization, and members of a chapter
6 or unit organized under the same state, regional, or national charter
7 or constitution, who engage as players in the following types of
8 gambling activities only:

9 (a) Social card games (~~as defined in RCW 9.46.0281 (1) through~~
10 ~~(4)~~); and

11 (b) Social dice games, which shall be limited to contests of
12 chance, the outcome of which are determined by one or more rolls of
13 dice.

14 (2) Bona fide charitable or nonprofit organizations shall not be
15 required to be licensed by the commission in order to allow use of
16 their premises in accordance with this section. However, the following
17 conditions must be met:

18 (a) No organization, corporation, or person shall collect or obtain
19 or charge any percentage of or shall collect or obtain any portion of
20 the money or thing of value wagered or won by any of the players:
21 PROVIDED, That a player may collect his or her winnings; and

22 (b) No organization, corporation, or person shall collect or obtain
23 any money or thing of value from, or charge or impose any fee upon, any
24 person which either enables him or her to play or results in or from
25 his or her playing: PROVIDED, That this subsection shall not preclude
26 collection of a membership fee which is unrelated to participation in
27 gambling activities authorized under this section.

28 EXPLANATORY NOTE:

29 RCW 9.46.0281 was repealed by 1997 c 118 s 3. Later enactment
30 of the definition in RCW 9.46.0282 applies to chapter 9.46
31 generally, and makes the reference back unnecessary.

32 **Sec. 6.** RCW 9.46.070 and 1993 c 344 s 1 are each amended to read
33 as follows:

34 The commission shall have the following powers and duties:

35 (1) To authorize and issue licenses for a period not to exceed one
36 year to bona fide charitable or nonprofit organizations approved by the
37 commission meeting the requirements of this chapter and any rules and
38 regulations adopted pursuant thereto permitting said organizations to
39 conduct bingo games, raffles, amusement games, and social card games,

1 to utilize punch boards and pull-tabs in accordance with the provisions
2 of this chapter and any rules and regulations adopted pursuant thereto
3 and to revoke or suspend said licenses for violation of any provisions
4 of this chapter or any rules and regulations adopted pursuant thereto:
5 PROVIDED, That the commission shall not deny a license to an otherwise
6 qualified applicant in an effort to limit the number of licenses to be
7 issued: PROVIDED FURTHER, That the commission or director shall not
8 issue, deny, suspend, or revoke any license because of considerations
9 of race, sex, creed, color, or national origin: AND PROVIDED FURTHER,
10 That the commission may authorize the director to temporarily issue or
11 suspend licenses subject to final action by the commission;

12 (2) To authorize and issue licenses for a period not to exceed one
13 year to any person, association, or organization operating a business
14 primarily engaged in the selling of items of food or drink for
15 consumption on the premises, approved by the commission meeting the
16 requirements of this chapter and any rules and regulations adopted
17 pursuant thereto permitting said person, association, or organization
18 to utilize punch boards and pull-tabs and to conduct social card games
19 as a commercial stimulant in accordance with the provisions of this
20 chapter and any rules and regulations adopted pursuant thereto and to
21 revoke or suspend said licenses for violation of any provisions of this
22 chapter and any rules and regulations adopted pursuant thereto:
23 PROVIDED, That the commission shall not deny a license to an otherwise
24 qualified applicant in an effort to limit the number of licenses to be
25 issued: PROVIDED FURTHER, That the commission may authorize the
26 director to temporarily issue or suspend licenses subject to final
27 action by the commission;

28 (3) To authorize and issue licenses for a period not to exceed one
29 year to any person, association, or organization approved by the
30 commission meeting the requirements of this chapter and meeting the
31 requirements of any rules and regulations adopted by the commission
32 pursuant to this chapter as now or hereafter amended, permitting said
33 person, association, or organization to conduct or operate amusement
34 games in such manner and at such locations as the commission may
35 determine;

36 (4) To authorize, require, and issue, for a period not to exceed
37 one year, such licenses as the commission may by rule provide, to any
38 person, association, or organization to engage in the selling,
39 distributing, or otherwise supplying or in the manufacturing of devices

1 for use within this state for those activities authorized by this
2 chapter;

3 (5) To establish a schedule of annual license fees for carrying on
4 specific gambling activities upon the premises, and for such other
5 activities as may be licensed by the commission, which fees shall
6 provide to the commission not less than an amount of money adequate to
7 cover all costs incurred by the commission relative to licensing under
8 this chapter and the enforcement by the commission of the provisions of
9 this chapter and rules and regulations adopted pursuant thereto:
10 PROVIDED, That all licensing fees shall be submitted with an
11 application therefor and such portion of said fee as the commission may
12 determine, based upon its cost of processing and investigation, shall
13 be retained by the commission upon the withdrawal or denial of any such
14 license application as its reasonable expense for processing the
15 application and investigation into the granting thereof: PROVIDED
16 FURTHER, That if in a particular case the basic license fee established
17 by the commission for a particular class of license is less than the
18 commission's actual expenses to investigate that particular
19 application, the commission may at any time charge to that applicant
20 such additional fees as are necessary to pay the commission for those
21 costs. The commission may decline to proceed with its investigation
22 and no license shall be issued until the commission has been fully paid
23 therefor by the applicant: AND PROVIDED FURTHER, That the commission
24 may establish fees for the furnishing by it to licensees of
25 identification stamps to be affixed to such devices and equipment as
26 required by the commission and for such other special services or
27 programs required or offered by the commission, the amount of each of
28 these fees to be not less than is adequate to offset the cost to the
29 commission of the stamps and of administering their dispersal to
30 licensees or the cost of administering such other special services,
31 requirements or programs;

32 (6) To prescribe the manner and method of payment of taxes, fees
33 and penalties to be paid to or collected by the commission;

34 (7) To require that applications for all licenses contain such
35 information as may be required by the commission: PROVIDED, That all
36 persons (a) having a managerial or ownership interest in any gambling
37 activity, or the building in which any gambling activity occurs, or the
38 equipment to be used for any gambling activity, or (b) participating as
39 an employee in the operation of any gambling activity, shall be listed

1 on the application for the license and the applicant shall certify on
2 the application, under oath, that the persons named on the application
3 are all of the persons known to have an interest in any gambling
4 activity, building, or equipment by the person making such application:
5 PROVIDED FURTHER, That the commission may require fingerprinting and
6 background checks on any persons seeking licenses under this chapter or
7 of any person holding an interest in any gambling activity, building,
8 or equipment to be used therefor, or of any person participating as an
9 employee in the operation of any gambling activity;

10 (8) To require that any license holder maintain records as directed
11 by the commission and submit such reports as the commission may deem
12 necessary;

13 (9) To require that all income from bingo games, raffles, and
14 amusement games be recorded and reported as established by rule or
15 regulation of the commission to the extent deemed necessary by
16 considering the scope and character of the gambling activity in such a
17 manner that will disclose gross income from any gambling activity,
18 amounts received from each player, the nature and value of prizes, and
19 the fact of distributions of such prizes to the winners thereof;

20 (10) To regulate and establish maximum limitations on income
21 derived from bingo. In establishing limitations pursuant to this
22 subsection the commission shall take into account (i) the nature,
23 character, and scope of the activities of the licensee; (ii) the source
24 of all other income of the licensee; and (iii) the percentage or extent
25 to which income derived from bingo is used for charitable, as
26 distinguished from nonprofit, purposes. However, the commission's
27 powers and duties granted by this subsection are discretionary and not
28 mandatory;

29 (11) To regulate and establish the type and scope of and manner of
30 conducting the gambling activities authorized by this chapter,
31 including but not limited to, the extent of wager, money, or other
32 thing of value which may be wagered or contributed or won by a player
33 in any such activities;

34 (12) To regulate the collection of and the accounting for the fee
35 which may be imposed by an organization, corporation, or person
36 licensed to conduct a social card game on a person desiring to become
37 a player in a social card game in accordance with RCW ((~~9.46.0281(4)~~)
38 9.46.0282;

1 (13) To cooperate with and secure the cooperation of county, city,
2 and other local or state agencies in investigating any matter within
3 the scope of its duties and responsibilities;

4 (14) In accordance with RCW 9.46.080, to adopt such rules and
5 regulations as are deemed necessary to carry out the purposes and
6 provisions of this chapter. All rules and regulations shall be adopted
7 pursuant to the administrative procedure act, chapter 34.05 RCW;

8 (15) To set forth for the perusal of counties, city-counties,
9 cities and towns, model ordinances by which any legislative authority
10 thereof may enter into the taxing of any gambling activity authorized
11 by this chapter;

12 (16) To establish and regulate a maximum limit on salaries or wages
13 which may be paid to persons employed in connection with activities
14 conducted by bona fide charitable or nonprofit organizations and
15 authorized by this chapter, where payment of such persons is allowed,
16 and to regulate and establish maximum limits for other expenses in
17 connection with such authorized activities, including but not limited
18 to rent or lease payments. However, the commissioner's powers and
19 duties granted by this subsection are discretionary and not mandatory.

20 In establishing these maximum limits the commission shall take into
21 account the amount of income received, or expected to be received, from
22 the class of activities to which the limits will apply and the amount
23 of money the games could generate for authorized charitable or
24 nonprofit purposes absent such expenses. The commission may also take
25 into account, in its discretion, other factors, including but not
26 limited to, the local prevailing wage scale and whether charitable
27 purposes are benefited by the activities;

28 (17) To authorize, require, and issue for a period not to exceed
29 one year such licenses or permits, for which the commission may by rule
30 provide, to any person to work for any operator of any gambling
31 activity authorized by this chapter in connection with that activity,
32 or any manufacturer, supplier, or distributor of devices for those
33 activities in connection with such business. The commission shall not
34 require that persons working solely as volunteers in an authorized
35 activity conducted by a bona fide charitable or bona fide nonprofit
36 organization, who receive no compensation of any kind for any purpose
37 from that organization, and who have no managerial or supervisory
38 responsibility in connection with that activity, be licensed to do such
39 work. The commission may require that licensees employing such

1 unlicensed volunteers submit to the commission periodically a list of
2 the names, addresses, and dates of birth of the volunteers. If any
3 volunteer is not approved by the commission, the commission may require
4 that the licensee not allow that person to work in connection with the
5 licensed activity;

6 (18) To publish and make available at the office of the commission
7 or elsewhere to anyone requesting it a list of the commission
8 licensees, including the name, address, type of license, and license
9 number of each licensee;

10 (19) To establish guidelines for determining what constitutes
11 active membership in bona fide nonprofit or charitable organizations
12 for the purposes of this chapter; and

13 (20) To perform all other matters and things necessary to carry out
14 the purposes and provisions of this chapter.

15 EXPLANATORY NOTE:

16 RCW 9.46.0281 was repealed by 1997 c 118 s 3. Later enactment,
17 see RCW 9.46.0282.

18 **Sec. 7.** RCW 9.46.198 and 1977 ex.s. c 326 s 14 are each amended to
19 read as follows:

20 Any person who works as an employee or agent or in a similar
21 capacity for another person in connection with the operation of an
22 activity for which a license is required under this chapter or by
23 commission rule without having obtained the applicable license required
24 by the commission under RCW 9.46.070(~~(+16+)~~) (17) shall be guilty of a
25 gross misdemeanor and shall, upon conviction, be punished by not more
26 than one year in the county jail or a fine of not more than five
27 thousand dollars, or both.

28 EXPLANATORY NOTE:

29 RCW 9.46.070 was amended by 1981 c 139 s 3, renumbering
30 subsection (16) as (17).

31 **Sec. 8.** RCW 9.68A.120 and 1984 c 262 s 11 are each amended to read
32 as follows:

33 The following are subject to seizure and forfeiture:

34 (1) All visual or printed matter that depicts a minor engaged in
35 sexually explicit conduct.

36 (2) All raw materials, equipment, and other tangible personal
37 property of any kind used or intended to be used to manufacture or
38 process any visual or printed matter that depicts a minor engaged in

1 sexually explicit conduct, and all conveyances, including aircraft,
2 vehicles, or vessels that are used or intended for use to transport, or
3 in any manner to facilitate the transportation of, visual or printed
4 matter in violation of RCW 9.68A.050 or 9.68A.060, but:

5 (a) No conveyance used by any person as a common carrier in the
6 transaction of business as a common carrier is subject to forfeiture
7 under this section unless it appears that the owner or other person in
8 charge of the conveyance is a consenting party or privy to a violation
9 of this chapter;

10 (b) No property is subject to forfeiture under this section by
11 reason of any act or omission established by the owner of the property
12 to have been committed or omitted without the owner's knowledge or
13 consent;

14 (c) A forfeiture of property encumbered by a bona fide security
15 interest is subject to the interest of the secured party if the secured
16 party neither had knowledge of nor consented to the act or omission;
17 and

18 (d) When the owner of a conveyance has been arrested under this
19 chapter the conveyance may not be subject to forfeiture unless it is
20 seized or process is issued for its seizure within ten days of the
21 owner's arrest.

22 (3) All personal property, moneys, negotiable instruments,
23 securities, or other tangible or intangible property furnished or
24 intended to be furnished by any person in exchange for visual or
25 printed matter depicting a minor engaged in sexually explicit conduct,
26 or constituting proceeds traceable to any violation of this chapter.

27 (4) Property subject to forfeiture under this chapter may be seized
28 by any law enforcement officer of this state upon process issued by any
29 superior court having jurisdiction over the property. Seizure without
30 process may be made if:

31 (a) The seizure is incident to an arrest or a search under a search
32 warrant or an inspection under an administrative inspection warrant;

33 (b) The property subject to seizure has been the subject of a prior
34 judgment in favor of the state in a criminal injunction or forfeiture
35 proceeding based upon this chapter;

36 (c) A law enforcement officer has probable cause to believe that
37 the property is directly or indirectly dangerous to health or safety;
38 or

1 (d) The law enforcement officer has probable cause to believe that
2 the property was used or is intended to be used in violation of this
3 chapter.

4 (5) In the event of seizure under subsection (4) of this section,
5 proceedings for forfeiture shall be deemed commenced by the seizure.
6 The law enforcement agency under whose authority the seizure was made
7 shall cause notice to be served within fifteen days following the
8 seizure on the owner of the property seized and the person in charge
9 thereof and any person having any known right or interest therein, of
10 the seizure and intended forfeiture of the seized property. The notice
11 may be served by any method authorized by law or court rule including
12 but not limited to service by certified mail with return receipt
13 requested. Service by mail shall be deemed complete upon mailing
14 within the fifteen day period following the seizure.

15 (6) If no person notifies the seizing law enforcement agency in
16 writing of the person's claim of ownership or right to possession of
17 seized items within forty-five days of the seizure, the item seized
18 shall be deemed forfeited.

19 (7) If any person notifies the seizing law enforcement agency in
20 writing of the person's claim of ownership or right to possession of
21 seized items within forty-five days of the seizure, the person or
22 persons shall be afforded a reasonable opportunity to be heard as to
23 the claim or right. The hearing shall be before an administrative law
24 judge appointed under chapter 34.12 RCW, except that any person
25 asserting a claim or right may remove the matter to a court of
26 competent jurisdiction if the aggregate value of the article or
27 articles involved is more than five hundred dollars. The hearing
28 before an administrative law judge and any appeal therefrom shall be
29 under Title 34 RCW. In a court hearing between two or more claimants
30 to the article or articles involved, the prevailing party shall be
31 entitled to a judgment for costs and reasonable attorney's fees. The
32 burden of producing evidence shall be upon the person claiming to be
33 the lawful owner or the person claiming to have the lawful right to
34 possession of the seized items. The seizing law enforcement agency
35 shall promptly return the article or articles to the claimant upon a
36 determination by the administrative law judge or court that the
37 claimant is lawfully entitled to possession thereof of the seized
38 items.

1 (8) If property is sought to be forfeited on the ground that it
2 constitutes proceeds traceable to a violation of this chapter, the
3 seizing law enforcement agency must prove by a preponderance of the
4 evidence that the property constitutes proceeds traceable to a
5 violation of this chapter.

6 (9) When property is forfeited under this chapter the seizing law
7 enforcement agency may:

8 (a) Retain it for official use or upon application by any law
9 enforcement agency of this state release the property to that agency
10 for the exclusive use of enforcing this chapter;

11 (b) Sell that which is not required to be destroyed by law and
12 which is not harmful to the public. The proceeds and all moneys
13 forfeited under this chapter shall be used for payment of all proper
14 expenses of the investigation leading to the seizure, including any
15 money delivered to the subject of the investigation by the law
16 enforcement agency, and of the proceedings for forfeiture and sale,
17 including expenses of seizure, maintenance of custody, advertising,
18 actual costs of the prosecuting or city attorney, and court costs.
19 Fifty percent of the money remaining after payment of these expenses
20 shall be deposited in the ~~((criminal justice training))~~ public safety
21 and education account established under RCW ~~((43.101.210 which shall be~~
22 ~~appropriated by law to the Washington state criminal justice training~~
23 ~~commission))~~ 43.08.250 and fifty percent shall be deposited in the
24 general fund of the state, county, or city of the seizing law
25 enforcement agency; or

26 (c) Request the appropriate sheriff or director of public safety to
27 take custody of the property and remove it for disposition in
28 accordance with law.

29 EXPLANATORY NOTE:

30 The collection and distribution of fines and forfeitures was
31 extensively revised by 1984 c 258 ss 301 through 340. RCW
32 43.101.210 was repealed by section 339 of that act, and various
33 criminal justice-related accounts were consolidated in the
34 public safety and education account.

35 **Sec. 9.** RCW 9.91.060 and 1951 c 270 s 17 are each amended to read
36 as follows:

37 Every person having the care and custody, whether temporary or
38 permanent, of minor children under the age of twelve years, who shall
39 leave such children in a parked automobile unattended by an adult while

1 such person enters a tavern or other premises where vinous(~~(+7)~~),
2 spirituous(~~(+7)~~), or malt liquors are dispensed for consumption on the
3 premises shall be guilty of a gross misdemeanor.

4 EXPLANATORY NOTE:

5 The bracketed commas had been omitted in the 1951 enactment.

6 **Sec. 10.** RCW 9.94A.050 and 1982 c 192 s 3 are each amended to read
7 as follows:

8 The commission shall appoint a research staff of sufficient size
9 and with sufficient resources to accomplish its duties. The commission
10 may request from the office of financial management, the indeterminate
11 sentence review board (~~(of prison terms and paroles)~~), administrator
12 for the courts, the department of corrections, and the department of
13 social and health services such data, information, and data processing
14 assistance as it may need to accomplish its duties, and such services
15 shall be provided without cost to the commission. The commission shall
16 adopt its own bylaws.

17 The salary for a full-time executive officer, if any, shall be
18 fixed by the governor pursuant to RCW 43.03.040.

19 EXPLANATORY NOTE:

20 The "board of prison terms and paroles" was redesignated the
21 "indeterminate sentence review board" by 1986 c 224, effective
22 July 1, 1986.

23 **Sec. 11.** RCW 9.94A.127 and 1990 c 3 s 601 are each amended to read
24 as follows:

25 (1) The prosecuting attorney shall file a special allegation of
26 sexual motivation in every criminal case other than sex offenses as
27 defined in RCW 9.94A.030(~~(+29)~~) (33) (a) or (c) when sufficient
28 admissible evidence exists, which, when considered with the most
29 plausible, reasonably foreseeable defense that could be raised under
30 the evidence, would justify a finding of sexual motivation by a
31 reasonable and objective fact-finder.

32 (2) In a criminal case wherein there has been a special allegation
33 the state shall prove beyond a reasonable doubt that the accused
34 committed the crime with a sexual motivation. The court shall make a
35 finding of fact of whether or not a sexual motivation was present at
36 the time of the commission of the crime, or if a jury trial is had, the
37 jury shall, if it finds the defendant guilty, also find a special
38 verdict as to whether or not the defendant committed the crime with a

1 sexual motivation. This finding shall not be applied to sex offenses
2 as defined in RCW 9.94A.030(~~((+29))~~) (33) (a) or (c).

3 (3) The prosecuting attorney shall not withdraw the special
4 allegation of sexual motivation without approval of the court through
5 an order of dismissal of the special allegation. The court shall not
6 dismiss this special allegation unless it finds that such an order is
7 necessary to correct an error in the initial charging decision or
8 unless there are evidentiary problems which make proving the special
9 allegation doubtful.

10 EXPLANATORY NOTE:

11 RCW 9.94A.030 was amended by 1994 c 1 s 3, changing subsection
12 (29) to subsection (31). RCW 9.94A.030 was subsequently
13 amended by 1995 c 108 s 1, changing subsection (31) to
14 subsection (33).

15 **Sec. 12.** RCW 9.94A.130 and 1984 c 209 s 7 are each amended to read
16 as follows:

17 The power to defer or suspend the imposition or execution of
18 sentence is hereby abolished in respect to sentences prescribed for
19 felonies committed after June 30, 1984, except for offenders sentenced
20 under RCW 9.94A.120(~~((+7))~~) (8)(a), the special sexual offender
21 sentencing alternative, whose sentence may be suspended.

22 EXPLANATORY NOTE:

23 RCW 9.94A.120 was amended by 1995 c 108 s 3, changing
24 subsection (7) to subsection (8).

25 **Sec. 13.** RCW 9.94A.160 and 1984 c 246 s 1 are each amended to read
26 as follows:

27 If the governor finds that an emergency exists in that the
28 population of a state residential correctional facility exceeds its
29 reasonable, maximum capacity, then the governor may do any one or more
30 of the following:

31 (1) Call the sentencing guidelines commission into an emergency
32 meeting for the purpose of evaluating the standard ranges and other
33 standards. The commission may adopt any revision or amendment to the
34 standard ranges or other standards that it believes appropriate to deal
35 with the emergency situation. The revision or amendment shall be
36 adopted in conformity with chapter 34.05 RCW and shall take effect on
37 the date prescribed by the commission. The legislature shall approve
38 or modify the commission's revision or amendment at the next

1 the offender has been placed. A term of partial confinement shall be
2 tolled during any period of time spent in total confinement pursuant to
3 a new conviction or pursuant to sanctions for violation of sentence
4 conditions on a separate felony conviction.

5 (2) A term of supervision, including postrelease supervision
6 ordered in a sentence pursuant to this chapter shall be tolled by any
7 period of time during which the offender has absented himself or
8 herself from supervision without prior approval of the entity under
9 whose supervision the offender has been placed.

10 (3) Any period of supervision shall be tolled during any period of
11 time the offender is in confinement for any reason. However, if an
12 offender is detained pursuant to RCW 9.94A.207 or 9.94A.195 and is
13 later found not to have violated a condition or requirement of
14 supervision, time spent in confinement due to such detention shall not
15 toll (~~to [the]~~) the period of supervision.

16 (4) For confinement or supervision sentences, the date for the
17 tolling of the sentence shall be established by the entity responsible
18 for the confinement or supervision.

19 EXPLANATORY NOTE:

20 Corrects erroneous wording.

21 **Sec. 15.** RCW 9.94A.180 and 1991 c 181 s 4 are each amended to read
22 as follows:

23 (1) An offender sentenced to a term of partial confinement shall be
24 confined in the facility for at least eight hours per day or, if
25 serving a work crew sentence shall comply with the conditions of that
26 sentence as set forth in RCW 9.94A.030(~~(+23)~~) (26) and 9.94A.135. The
27 offender shall be required as a condition of partial confinement to
28 report to the facility at designated times. An offender may be
29 required to comply with crime-related prohibitions during the period of
30 partial confinement.

31 (2) An offender in a county jail ordered to serve all or part of a
32 term of less than one year in work release, work crew, or a program of
33 home detention who violates the rules of the work release facility,
34 work crew, or program of home detention or fails to remain employed or
35 enrolled in school may be transferred to the appropriate county
36 detention facility without further court order but shall, upon request,
37 be notified of the right to request an administrative hearing on the
38 issue of whether or not the offender failed to comply with the order

1 and relevant conditions. Pending such hearing, or in the absence of a
2 request for the hearing, the offender shall serve the remainder of the
3 term of confinement as total confinement. This subsection shall not
4 affect transfer or placement of offenders committed to the state
5 department of corrections.

6 EXPLANATORY NOTE:

7 RCW 9.94A.030 was amended by 1994 c 1 s 3, changing subsection
8 (23) to subsection (24). RCW 9.94A.030 was subsequently
9 amended by 1995 c 108 s 1, changing subsection (24) to
10 subsection (26).

11 **Sec. 16.** RCW 9.94A.370 and 1996 c 248 s 1 are each amended to read
12 as follows:

13 (1) The intersection of the column defined by the offender score
14 and the row defined by the offense seriousness score determines the
15 presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The
16 additional time for deadly weapon findings or for those offenses
17 enumerated in RCW 9.94A.310(4) that were committed in a state
18 correctional facility or county jail shall be added to the entire
19 presumptive sentence range. The court may impose any sentence within
20 the range that it deems appropriate. All presumptive sentence ranges
21 are expressed in terms of total confinement.

22 (2) In determining any sentence, the trial court may rely on no
23 more information than is admitted by the plea agreement, or admitted,
24 acknowledged, or proved in a trial or at the time of sentencing.
25 Acknowledgement includes not objecting to information stated in the
26 presentence reports. Where the defendant disputes material facts, the
27 court must either not consider the fact or grant an evidentiary hearing
28 on the point. The facts shall be deemed proved at the hearing by a
29 preponderance of the evidence. Facts that establish the elements of a
30 more serious crime or additional crimes may not be used to go outside
31 the presumptive sentence range except upon stipulation or when
32 specifically provided for in RCW 9.94A.390(2) (~~(c), (d), (f), and~~
33 ~~(g)~~) (d), (e), (g), and (h).

34 EXPLANATORY NOTE:

35 RCW 9.94A.390 was amended by 1996 c 248 s 2 and by 1996 c 121
36 s 1, changing subsection (2)(c), (d), (f), and (g) to
37 subsection (2)(d), (e), (g), and (h), respectively.

38 **Sec. 17.** RCW 9.95.030 and 1984 c 114 s 2 are each amended to read
39 as follows:

1 At the time the convicted person is transported to the custody of
2 the department of corrections, the indeterminate sentence review board
3 (~~(of prison terms and paroles)~~) shall obtain from the sentencing judge
4 and the prosecuting attorney, a statement of all the facts concerning
5 the convicted person's crime and any other information of which they
6 may be possessed relative to him, and the sentencing judge and the
7 prosecuting attorney shall furnish the board (~~(of prison terms and~~
8 ~~paroles)~~) with such information. The sentencing judge and prosecuting
9 attorney shall indicate to the board (~~(of prison terms and paroles)~~),
10 for its guidance, what, in their judgment, should be the duration of
11 the convicted person's imprisonment.

12 EXPLANATORY NOTE:

13 The "board of prison terms and paroles" was redesignated the
14 "indeterminate sentence review board" by 1986 c 224, effective
15 July 1, 1986. See RCW 9.95.001.

16 **Sec. 18.** RCW 9.95.060 and 1988 c 202 s 15 are each amended to read
17 as follows:

18 When a convicted person seeks appellate review of his or her
19 conviction and is at liberty on bond pending the determination of the
20 proceeding by the supreme court or the court of appeals, credit on his
21 or her sentence will begin from the date such convicted person is
22 returned to custody. The date of return to custody shall be certified
23 to the department of corrections, the (~~Washington state~~)
24 indeterminate sentence review board (~~(of prison terms and paroles)~~),
25 and the prosecuting attorney of the county in which such convicted
26 person was convicted and sentenced, by the sheriff of such county. If
27 such convicted person does not seek review of the conviction, but is at
28 liberty for a period of time subsequent to the signing of the judgment
29 and sentence, or becomes a fugitive, credit on his sentence will begin
30 from the date such convicted person is returned to custody. The date
31 of return to custody shall be certified as provided in this section.
32 In all other cases, credit on a sentence will begin from the date the
33 judgment and sentence is signed by the court.

34 EXPLANATORY NOTE:

35 The "board of prison terms and paroles" was redesignated the
36 "indeterminate sentence review board" by 1986 c 224, effective
37 July 1, 1986.

1 Any parolee arrested and detained in physical custody by the
2 authority of a state probation and parole officer, or upon the written
3 order of the board (~~(of prison terms and paroles)~~), shall not be
4 released from custody on bail or personal recognizance, except upon
5 approval of the board (~~(of prison terms and paroles)~~) and the issuance
6 by the board of an order of reinstatement on parole on the same or
7 modified conditions of parole.

8 All chiefs of police, marshals of cities and towns, sheriffs of
9 counties, and all police, prison, and peace officers and constables
10 shall execute any such order in the same manner as any ordinary
11 criminal process.

12 Whenever a paroled prisoner is accused of a violation of his
13 parole, other than the commission of, and conviction for, a felony or
14 misdemeanor under the laws of this state or the laws of any state where
15 he may then be, he shall be entitled to a fair and impartial hearing of
16 such charges within thirty days from the time that he is served with
17 charges of the violation of conditions of his parole after his arrest
18 and detention. The hearing shall be held before one or more members of
19 the (~~parole~~) board at a place or places, within this state,
20 reasonably near the site of the alleged violation or violations of
21 parole.

22 In the event that the board (~~(of prison terms and paroles)~~)
23 suspends a parole by reason of an alleged parole violation or in the
24 event that a parole is suspended pending the disposition of a new
25 criminal charge, the board (~~(of prison terms and paroles)~~) shall have
26 the power to nullify the order of suspension and reinstate the
27 individual to parole under previous conditions or any new conditions
28 that the board (~~(of prison terms and paroles)~~) may determine advisable.
29 Before the board (~~(of prison terms and paroles)~~) shall nullify an order
30 of suspension and reinstate a parole they shall have determined that
31 the best interests of society and the individual shall best be served
32 by such reinstatement rather than a return to a penal institution.

33 EXPLANATORY NOTE:

34 The "board of prison terms and paroles" was redesignated the
35 "indeterminate sentence review board" by 1986 c 224, effective
36 July 1, 1986.

37 **Sec. 23.** RCW 9.95.122 and 1969 c 98 s 4 are each amended to read
38 as follows:

1 At any on-site parole revocation hearing the alleged parole
2 violator shall be entitled to be represented by an attorney of his own
3 choosing and at his own expense, except, upon the presentation of
4 satisfactory evidence of indigency and the request for the appointment
5 of an attorney by the alleged parole violator, the board may cause the
6 appointment of an attorney to represent the alleged parole violator to
7 be paid for at state expense, and, in addition, the board may assume
8 all or such other expenses in the presentation of evidence on behalf of
9 the alleged parole violator as it may have authorized: PROVIDED, That
10 funds are available for the payment of attorneys' fees and expenses.
11 Attorneys for the representation of alleged parole violators in on-site
12 hearings shall be appointed by the superior courts for the counties
13 wherein the on-site parole revocation hearing is to be held and such
14 attorneys shall be compensated in such manner and in such amount as
15 shall be fixed in a schedule of fees adopted by rule of the board ((of
16 ~~prison terms and paroles~~)).

17 EXPLANATORY NOTE:

18 The "board of prison terms and paroles" was redesignated the
19 "indeterminate sentence review board" by 1986 c 224, effective
20 July 1, 1986.

21 **Sec. 24.** RCW 9.95.123 and 1969 c 98 s 5 are each amended to read
22 as follows:

23 In conducting on-site parole revocation hearings, the board ((of
24 ~~prison terms and paroles~~)) shall have the authority to administer oaths
25 and affirmations, examine witnesses, receive evidence, and issue
26 subpoenas for the compulsory attendance of witnesses and the production
27 of evidence for presentation at such hearings. Subpoenas issued by the
28 board shall be effective throughout the state. Witnesses in attendance
29 at any on-site parole revocation hearing shall be paid the same fees
30 and allowances, in the same manner and under the same conditions as
31 provided for witnesses in the courts of the state in accordance with
32 chapter 2.40 RCW as now or hereafter amended. If any person fails or
33 refuses to obey a subpoena issued by the board, or obeys the subpoena
34 but refuses to testify concerning any matter under examination at the
35 hearing, the board ((of ~~prison terms and paroles~~)) may petition the
36 superior court of the county where the hearing is being conducted for
37 enforcement of the subpoena: PROVIDED, That an offer to pay statutory
38 fees and mileage has been made to the witness at the time of the
39 service of the subpoena. The petition shall be accompanied by a copy

1 of the subpoena and proof of service, and shall set forth in what
2 specific manner the subpoena has not been complied with, and shall ask
3 an order of the court to compel the witness to appear and testify
4 before the board. The court, upon such petition, shall enter an order
5 directing the witness to appear before the court at a time and place to
6 be fixed in such order and then and there to show cause why he has not
7 responded to the subpoena or has refused to testify. A copy of the
8 order shall be served upon the witness. If it appears to the court
9 that the subpoena was properly issued and that the particular questions
10 which the witness refuses to answer are reasonable and relevant, the
11 court shall enter an order that the witness appear at the time and
12 place fixed in the order and testify or produce the required papers,
13 and on failing to obey said order, the witness shall be dealt with as
14 for contempt of court.

15 EXPLANATORY NOTE:

16 The "board of prison terms and paroles" was redesignated the
17 "indeterminate sentence review board" by 1986 c 224, effective
18 July 1, 1986.

19 **Sec. 25.** RCW 9.95.124 and 1983 c 196 s 2 are each amended to read
20 as follows:

21 At all on-site parole revocation hearings the probation and parole
22 officers of the department of corrections, having made the allegations
23 of the violations of the conditions of parole, may be represented by
24 the attorney general. The attorney general may make independent
25 recommendations to the board about whether the violations constitute
26 sufficient cause for the revocation of the parole and the return of the
27 parolee to a state correctional institution for convicted felons. The
28 hearings shall be open to the public unless the board for specifically
29 stated reasons closes the hearing in whole or in part. The hearings
30 shall be recorded either manually or by a mechanical recording device.
31 An alleged parole violator may be requested to testify and any such
32 testimony shall not be used against him in any criminal prosecution.
33 The board (~~(of prison terms and paroles)~~) shall adopt rules governing
34 the formal and informal procedures authorized by this chapter and make
35 rules of practice before the board in on-site parole revocation
36 hearings, together with forms and instructions.

37 EXPLANATORY NOTE:

1 The "board of prison terms and paroles" was redesignated the
2 "indeterminate sentence review board" by 1986 c 224, effective
3 July 1, 1986.

4 **Sec. 26.** RCW 9.95.150 and 1955 c 133 s 16 are each amended to read
5 as follows:

6 The board (~~(of prison terms and paroles)~~) shall make all necessary
7 rules and regulations to carry out the provisions of this chapter not
8 inconsistent therewith, and may provide the forms of all documents
9 necessary therefor.

10 EXPLANATORY NOTE:

11 The "board of prison terms and paroles" was redesignated the
12 "indeterminate sentence review board" by 1986 c 224, effective
13 July 1, 1986.

14 **Sec. 27.** RCW 9.95.160 and 1955 c 133 s 17 are each amended to read
15 as follows:

16 This chapter shall not limit or circumscribe the powers of the
17 governor to commute the sentence of, or grant a pardon to, any
18 convicted person, and the governor may cancel or revoke the parole
19 granted to any convicted person by the board (~~(of prison terms and~~
20 ~~paroles)~~). The written order of the governor canceling or revoking
21 such parole shall have the same force and effect and be executed in
22 like manner as an order of the board (~~(of prison terms and paroles)~~).

23 EXPLANATORY NOTE:

24 The "board of prison terms and paroles" was redesignated the
25 "indeterminate sentence review board" by 1986 c 224, effective
26 July 1, 1986.

27 **Sec. 28.** RCW 9.95.170 and 1981 c 136 s 40 are each amended to read
28 as follows:

29 To assist it in fixing the duration of a convicted person's term of
30 confinement, and in fixing the condition for release from custody on
31 parole, it shall not only be the duty of the board (~~(of prison terms~~
32 ~~and paroles)~~) to thoroughly inform itself as to the facts of such
33 convicted person's crime but also to inform itself as thoroughly as
34 possible as to such convict as a personality. The department of
35 corrections and the institutions under its control shall make available
36 to the board (~~(of prison terms and paroles)~~) on request its case
37 investigations, any file or other record, in order to assist the board
38 in developing information for carrying out the purpose of this section.

1 EXPLANATORY NOTE:

2 The "board of prison terms and paroles" was redesignated the
3 "indeterminate sentence review board" by 1986 c 224, effective
4 July 1, 1986.

5 **Sec. 29.** RCW 9.95.260 and 1981 c 136 s 44 are each amended to read
6 as follows:

7 ~~((It shall be the duty of))~~ The board ~~((of prison terms and
8 paroles))~~ shall, when requested by the governor, ~~((to))~~ pass on the
9 representations made in support of applications for pardons for
10 convicted persons and ~~((to))~~ make recommendations thereon to the
11 governor.

12 It will be the duty of the secretary of corrections to exercise
13 supervision over such convicted persons as have been conditionally
14 pardoned by the governor, to the end that such persons shall faithfully
15 comply with the conditions of such pardons. The board ~~((of prison
16 terms and paroles))~~ shall also pass on any representations made in
17 support of applications for restoration of civil rights of convicted
18 persons, and make recommendations to the governor. The department of
19 corrections shall prepare materials and make investigations requested
20 by the board ~~((of prison terms and paroles))~~ in order to assist the
21 board in passing on the representations made in support of applications
22 for pardon or for the restoration of civil rights.

23 EXPLANATORY NOTE:

24 The "board of prison terms and paroles" was redesignated the
25 "indeterminate sentence review board" by 1986 c 224, effective
26 July 1, 1986.

27 **Sec. 30.** RCW 9.95.265 and 1977 c 75 s 5 are each amended to read
28 as follows:

29 The board ~~((of prison terms and paroles))~~ shall transmit to the
30 governor and to the legislature, as often as the governor may require
31 it, a report of its work, in which shall be given such information as
32 may be relevant.

33 EXPLANATORY NOTE:

34 The "board of prison terms and paroles" was redesignated the
35 "indeterminate sentence review board" by 1986 c 224, effective
36 July 1, 1986.

37 **Sec. 31.** RCW 9.95.280 and 1955 c 183 s 1 are each amended to read
38 as follows:

1 custody of the prisoner, stating the term of commitment under which the
2 prisoner is being held, the time already served, the time remaining to
3 be served on the sentence, the amount of good time earned, the time of
4 parole eligibility of the prisoner, and any decisions of the
5 indeterminate sentence review board (~~(of prison terms and paroles)~~)
6 relating to the prisoner.

7 (2) The written notice and request for final disposition referred
8 to in subsection (1) hereof shall be given or sent by the prisoner to
9 the superintendent having custody of him, who shall promptly forward it
10 together with the certificate to the appropriate prosecuting attorney
11 and superior court by (~~(registered)~~) certified mail, return receipt
12 requested.

13 (3) The superintendent having custody of the prisoner shall
14 promptly inform him in writing of the source and contents of any
15 untried indictment, information, or complaint against him concerning
16 which the superintendent has knowledge and of his right to make a
17 request for final disposition thereof.

18 (4) Escape from custody by the prisoner subsequent to his execution
19 of the request for final disposition referred to in subsection (1)
20 hereof shall void the request.

21 EXPLANATORY NOTE:

22 The "board of prison terms and paroles" was redesignated the
23 "indeterminate sentence review board" by 1986 c 224, effective
24 July 1, 1986.

25 RCW 1.12.060 provides that whenever the use of registered mail
26 is authorized, certified mail may be used instead.

27 **Sec. 34.** RCW 9A.44.060 and 1979 ex.s. c 244 s 3 are each amended
28 to read as follows:

29 (1) A person is guilty of rape in the third degree when, under
30 circumstances not constituting rape in the first or second degrees,
31 such person engages in sexual intercourse with another person, not
32 married to the perpetrator:

33 (a) Where the victim did not consent as defined in RCW
34 9A.44.010(~~(+6)~~) (7), to sexual intercourse with the perpetrator and
35 such lack of consent was clearly expressed by the victim's words or
36 conduct, or

37 (b) Where there is threat of substantial unlawful harm to property
38 rights of the victim.

39 (2) Rape in the third degree is a class C felony.

EXPLANATORY NOTE:

The reference to subsection (6) of RCW 9A.44.010 is erroneous. As a result of the amendment by 1988 c 146 s 3, "consent" is defined in subsection (7) of that section.

Sec. 35. RCW 9A.46.110 and 1994 c 271 s 801 are each amended to read as follows:

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private (~~detective~~) investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person.

(5) A person who stalks another person is guilty of a gross misdemeanor except that the person is guilty of a class C felony if any of the following applies: (a) The stalker has previously been

1 convicted in this state or any other state of any crime of harassment,
2 as defined in RCW 9A.46.060, of the same victim or members of the
3 victim's family or household or any person specifically named in a
4 protective order; (b) the stalking violates any protective order
5 protecting the person being stalked; (c) the stalker has previously
6 been convicted of a gross misdemeanor or felony stalking offense under
7 this section for stalking another person; (d) the stalker was armed
8 with a deadly weapon, as defined in RCW 9.94A.125, while stalking the
9 person; (e) the stalker's victim is or was a law enforcement officer,
10 judge, juror, attorney, victim advocate, legislator, or community
11 correction's officer, and the stalker stalked the victim to retaliate
12 against the victim for an act the victim performed during the course of
13 official duties or to influence the victim's performance of official
14 duties; or (f) the stalker's victim is a current, former, or
15 prospective witness in an adjudicative proceeding, and the stalker
16 stalked the victim to retaliate against the victim as a result of the
17 victim's testimony or potential testimony.

18 (6) As used in this section:

19 (a) "Follows" means deliberately maintaining visual or physical
20 proximity to a specific person over a period of time. A finding that
21 the alleged stalker repeatedly and deliberately appears at the person's
22 home, school, place of employment, business, or any other location to
23 maintain visual or physical proximity to the person is sufficient to
24 find that the alleged stalker follows the person. It is not necessary
25 to establish that the alleged stalker follows the person while in
26 transit from one location to another.

27 (b) "Harasses" means unlawful harassment as defined in RCW
28 10.14.020.

29 (c) "Protective order" means any temporary or permanent court order
30 prohibiting or limiting violence against, harassment of, contact or
31 communication with, or physical proximity to another person.

32 (d) "Repeatedly" means on two or more separate occasions.

33 EXPLANATORY NOTE:

34 "Private detective" redesignated "private investigator" by 1995
35 c 277.

36 **Sec. 36.** RCW 9A.56.010 and 1998 c 236 s 1 are each amended to read
37 as follows:

1 The following definitions are applicable in this chapter unless the
2 context otherwise requires:

3 (1) "Access device" means any card, plate, code, account number, or
4 other means of account access that can be used alone or in conjunction
5 with another access device to obtain money, goods, services, or
6 anything else of value, or that can be used to initiate a transfer of
7 funds, other than a transfer originated solely by paper instrument;

8 (2) "Appropriate lost or misdelivered property or services" means
9 obtaining or exerting control over the property or services of another
10 which the actor knows to have been lost or mislaid, or to have been
11 delivered under a mistake as to identity of the recipient or as to the
12 nature or amount of the property;

13 ~~((2))~~ (3) "Beverage crate" means a plastic or metal box-like
14 container used by a manufacturer or distributor in the transportation
15 or distribution of individually packaged beverages to retail outlets,
16 and affixed with language stating "property of," "owned by
17," or other markings or words identifying ownership;

18 (4) "By color or aid of deception" means that the deception
19 operated to bring about the obtaining of the property or services; it
20 is not necessary that deception be the sole means of obtaining the
21 property or services;

22 ~~((3) "Access device" means any card, plate, code, account number,~~
23 ~~or other means of account access that can be used alone or in~~
24 ~~conjunction with another access device to obtain money, goods,~~
25 ~~services, or anything else of value, or that can be used to initiate a~~
26 ~~transfer of funds, other than a transfer originated solely by paper~~
27 ~~instrument;~~

28 ~~(4))~~ (5) "Deception" occurs when an actor knowingly:

29 (a) Creates or confirms another's false impression which the actor
30 knows to be false; or

31 (b) Fails to correct another's impression which the actor
32 previously has created or confirmed; or

33 (c) Prevents another from acquiring information material to the
34 disposition of the property involved; or

35 (d) Transfers or encumbers property without disclosing a lien,
36 adverse claim, or other legal impediment to the enjoyment of the
37 property, whether that impediment is or is not valid, or is or is not
38 a matter of official record; or

1 (e) Promises performance which the actor does not intend to perform
2 or knows will not be performed.

3 ~~((5))~~ (6) "Deprive" in addition to its common meaning means to
4 make unauthorized use or an unauthorized copy of records, information,
5 data, trade secrets, or computer programs;

6 ~~((6))~~ (7) "Merchandise pallet" means a wood or plastic carrier
7 designed and manufactured as an item on which products can be placed
8 before or during transport to retail outlets, manufacturers, or
9 contractors, and affixed with language stating "property of . . .,"
10 "owned by . . .," or other markings or words identifying ownership;

11 (8) "Obtain control over" in addition to its common meaning, means:

12 (a) In relation to property, to bring about a transfer or purported
13 transfer to the obtainer or another of a legally recognized interest in
14 the property; or

15 (b) In relation to labor or service, to secure performance thereof
16 for the benefits of the obtainer or another;

17 ~~((7) "Wrongfully obtains" or "exerts unauthorized control" means:~~

18 ~~(a) To take the property or services of another;~~

19 ~~(b) Having any property or services in one's possession, custody or~~
20 ~~control as bailee, factor, lessee, pledgee, renter, servant, attorney,~~
21 ~~agent, employee, trustee, executor, administrator, guardian, or officer~~
22 ~~of any person, estate, association, or corporation, or as a public~~
23 ~~officer, or person authorized by agreement or competent authority to~~
24 ~~take or hold such possession, custody, or control, to secrete,~~
25 ~~withhold, or appropriate the same to his or her own use or to the use~~
26 ~~of any person other than the true owner or person entitled thereto; or~~

27 ~~(c) Having any property or services in one's possession, custody,~~
28 ~~or control as partner, to secrete, withhold, or appropriate the same to~~
29 ~~his or her use or to the use of any person other than the true owner or~~
30 ~~person entitled thereto, where such use is unauthorized by the~~
31 ~~partnership agreement;~~

32 ~~(8) "Merchandise pallet" means a wood or plastic carrier designed~~
33 ~~and manufactured as an item on which products can be placed prior to or~~
34 ~~during transport to retail outlets, manufacturers, or contractors, and~~
35 ~~affixed with language stating "property of . . .," "owned by . . .," or~~
36 ~~other markings or words identifying ownership;~~

37 ~~(9) "Beverage crate" means a plastic or metal box-like container~~
38 ~~used by a manufacturer or distributor in the transportation or~~
39 ~~distribution of individually packaged beverages to retail outlets, and~~

1 ~~affixed with language stating "property of," "owned by~~
2 ~~.," or other markings or words identifying ownership;~~

3 ~~((10))~~ (9) "Owner" means a person, other than the actor, who has
4 possession of or any other interest in the property or services
5 involved, and without whose consent the actor has no authority to exert
6 control over the property or services;

7 (10) "Parking area" means a parking lot or other property provided
8 by retailers for use by a customer for parking an automobile or other
9 vehicle;

10 (11) "Receive" includes, but is not limited to, acquiring title,
11 possession, control, or a security interest, or any other interest in
12 the property;

13 (12) "Services" includes, but is not limited to, labor,
14 professional services, transportation services, electronic computer
15 services, the supplying of hotel accommodations, restaurant services,
16 entertainment, the supplying of equipment for use, and the supplying of
17 commodities of a public utility nature such as gas, electricity, steam,
18 and water;

19 (13) "Shopping cart" means a basket mounted on wheels or similar
20 container generally used in a retail establishment by a customer for
21 the purpose of transporting goods of any kind;

22 (14) "Stolen" means obtained by theft, robbery, or extortion;

23 ~~((14))~~ (15) "Subscription television service" means cable or
24 encrypted video and related audio and data services intended for
25 viewing on a home television by authorized members of the public only,
26 who have agreed to pay a fee for the service. Subscription services
27 include but are not limited to those video services presently delivered
28 by coaxial cable, fiber optic cable, terrestrial microwave, television
29 broadcast, and satellite transmission;

30 ~~((15))~~ (16) "Telecommunication device" means (a) any type of
31 instrument, device, machine, or equipment that is capable of
32 transmitting or receiving telephonic or electronic communications; or
33 (b) any part of such an instrument, device, machine, or equipment, or
34 any computer circuit, computer chip, electronic mechanism, or other
35 component, that is capable of facilitating the transmission or
36 reception of telephonic or electronic communications;

37 ~~((16))~~ (17) "Telecommunication service" includes any service
38 other than subscription television service provided for a charge or

1 compensation to facilitate the transmission, transfer, or reception of
2 a telephonic communication or an electronic communication;

3 ~~((17))~~ (18) Value. (a) "Value" means the market value of the
4 property or services at the time and in the approximate area of the
5 criminal act.

6 (b) Whether or not they have been issued or delivered, written
7 instruments, except those having a readily ascertained market value,
8 shall be evaluated as follows:

9 (i) The value of an instrument constituting an evidence of debt,
10 such as a check, draft, or promissory note, shall be deemed the amount
11 due or collectible thereon or thereby, that figure ordinarily being the
12 face amount of the indebtedness less any portion thereof which has been
13 satisfied;

14 (ii) The value of a ticket or equivalent instrument which evidences
15 a right to receive transportation, entertainment, or other service
16 shall be deemed the price stated thereon, if any; and if no price is
17 stated thereon, the value shall be deemed the price of such ticket or
18 equivalent instrument which the issuer charged the general public;

19 (iii) The value of any other instrument that creates, releases,
20 discharges, or otherwise affects any valuable legal right, privilege,
21 or obligation shall be deemed the greatest amount of economic loss
22 which the owner of the instrument might reasonably suffer by virtue of
23 the loss of the instrument.

24 (c) Whenever any series of transactions which constitute theft,
25 would, when considered separately, constitute theft in the third degree
26 because of value, and said series of transactions are a part of a
27 common scheme or plan, then the transactions may be aggregated in one
28 count and the sum of the value of all said transactions shall be the
29 value considered in determining the degree of theft involved.

30 (d) Whenever any person is charged with possessing stolen property
31 and such person has unlawfully in his possession at the same time the
32 stolen property of more than one person, then the stolen property
33 possessed may be aggregated in one count and the sum of the value of
34 all said stolen property shall be the value considered in determining
35 the degree of theft involved.

36 (e) Property or services having value that cannot be ascertained
37 pursuant to the standards set forth above shall be deemed to be of a
38 value not exceeding two hundred and fifty dollars;

1 (1) "Written instrument" means: (a) Any paper, document, or other
2 instrument containing written or printed matter or its equivalent; or
3 (b) any access device, (~~as defined in RCW 9A.56.010(3),~~) token,
4 stamp, seal, badge, trademark, or other evidence or symbol of value,
5 right, privilege, or identification;

6 (2) "Complete written instrument" means one which is fully drawn
7 with respect to every essential feature thereof;

8 (3) "Incomplete written instrument" means one which contains some
9 matter by way of content or authentication but which requires
10 additional matter in order to render it a complete written instrument;

11 (4) To "falsely make" a written instrument means to make or draw a
12 complete or incomplete written instrument which purports to be
13 authentic, but which is not authentic either because the ostensible
14 maker is fictitious or because, if real, he did not authorize the
15 making or drawing thereof;

16 (5) To "falsely complete" a written instrument means to transform
17 an incomplete written instrument into a complete one by adding or
18 inserting matter, without the authority of anyone entitled to grant it;

19 (6) To "falsely alter" a written instrument means to change,
20 without authorization by anyone entitled to grant it, a written
21 instrument, whether complete or incomplete, by means of erasure,
22 obliteration, deletion, insertion of new matter, transposition of
23 matter, or in any other manner;

24 (7) "Forged instrument" means a written instrument which has been
25 falsely made, completed, or altered.

26 EXPLANATORY NOTE:

27 The reference to the definition of "access device" is outdated
28 and unnecessary.

29 **Sec. 39.** RCW 9A.64.020 and 1985 c 53 s 1 are each amended to read
30 as follows:

31 (1) A person is guilty of incest in the first degree if he engages
32 in sexual intercourse with a person whom he knows to be related to him,
33 either legitimately or illegitimately, as an ancestor, descendant,
34 brother, or sister of either the whole or the half blood.

35 (2) A person is guilty of incest in the second degree if he engages
36 in sexual contact with a person whom he knows to be related to him,
37 either legitimately or illegitimately, as an ancestor, descendant,
38 brother, or sister of either the whole or the half blood.

1 (3) As used in this section, "descendant" includes stepchildren and
2 adopted children under eighteen years of age.

3 (4) As used in this section, "sexual contact" has the same meaning
4 as in RCW (~~9A.44.100(2)~~) 9A.44.010.

5 (5) As used in this section, "sexual intercourse" has the same
6 meaning as in RCW 9A.44.010(~~(1)~~).

7 (6) Incest in the first degree is a class B felony.

8 (7) Incest in the second degree is a class C felony.

9 EXPLANATORY NOTE:

10 Corrects outdated definition reference; removes unnecessary
11 subsection reference.

12 **Sec. 40.** RCW 9A.82.010 and 1995 c 285 s 34 and 1995 c 92 s 5 are
13 each reenacted and amended to read as follows:

14 Unless the context requires the contrary, the definitions in this
15 section apply throughout this chapter.

16 (1)(a) "Beneficial interest" means:

17 (i) The interest of a person as a beneficiary under a trust
18 established under Title 11 RCW in which the trustee for the trust holds
19 legal or record title to real property;

20 (ii) The interest of a person as a beneficiary under any other
21 trust arrangement under which a trustee holds legal or record title to
22 real property for the benefit of the beneficiary; or

23 (iii) The interest of a person under any other form of express
24 fiduciary arrangement under which one person holds legal or record
25 title to real property for the benefit of the other person.

26 (b) "Beneficial interest" does not include the interest of a
27 stockholder in a corporation or the interest of a partner in a general
28 partnership or limited partnership.

29 (c) A beneficial interest is considered to be located where the
30 real property owned by the trustee is located.

31 (2) "Control" means the possession of a sufficient interest to
32 permit substantial direction over the affairs of an enterprise.

33 (3) "Creditor" means a person making an extension of credit or a
34 person claiming by, under, or through a person making an extension of
35 credit.

36 (~~(2)~~) (4) "Criminal profiteering" means any act, including any
37 anticipatory or completed offense, committed for financial gain, that
38 is chargeable or indictable under the laws of the state in which the

1 act occurred and, if the act occurred in a state other than this state,
2 would be chargeable or indictable under the laws of this state had the
3 act occurred in this state and punishable as a felony and by
4 imprisonment for more than one year, regardless of whether the act is
5 charged or indicted, as any of the following:

6 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

7 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

8 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

9 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

10 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
11 9A.56.080;

12 (f) Unlawful sale of subscription television services, as defined
13 in RCW 9A.56.230;

14 (g) Theft of telecommunication services or unlawful manufacture of
15 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

16 (h) Child selling or child buying, as defined in RCW 9A.64.030;

17 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
18 9A.68.050;

19 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

20 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

21 (l) Extortionate extension of credit, as defined in RCW 9A.82.020;

22 (m) Advancing money for use in an extortionate extension of credit,
23 as defined in RCW 9A.82.030;

24 (n) Collection of an extortionate extension of credit, as defined
25 in RCW 9A.82.040;

26 (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;

27 (p) Delivery or manufacture of controlled substances or possession
28 with intent to deliver or manufacture controlled substances under
29 chapter 69.50 RCW;

30 (q) Trafficking in stolen property, as defined in RCW 9A.82.050;

31 (r) Leading organized crime, as defined in RCW 9A.82.060;

32 (s) Money laundering, as defined in RCW 9A.83.020;

33 (t) Obstructing criminal investigations or prosecutions in
34 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
35 9A.76.070, or 9A.76.180;

36 (u) Fraud in the purchase or sale of securities, as defined in RCW
37 21.20.010;

38 (v) Promoting pornography, as defined in RCW 9.68.140;

1 (w) Sexual exploitation of children, as defined in RCW 9.68A.040,
2 9.68A.050, and 9.68A.060;
3 (x) Promoting prostitution, as defined in RCW 9A.88.070 and
4 9A.88.080;
5 (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
6 (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
7 (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
8 (bb) A pattern of equity skimming, as defined in RCW 61.34.020;
9 (cc) Commercial telephone solicitation in violation of RCW
10 19.158.040(1);
11 (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;
12 (ee) Unlawful practice of law, as defined in RCW 2.48.180;
13 (ff) Commercial bribery, as defined in RCW 9A.68.060;
14 (gg) Health care false claims, as defined in RCW 48.80.030; or
15 (hh) Unlicensed practice of a profession or business, as defined in
16 RCW 18.130.190(7).
17 (5) "Dealer in property" means a person who buys and sells property
18 as a business.
19 (6) "Debtor" means a person to whom an extension of credit is made
20 or a person who guarantees the repayment of an extension of credit or
21 in any manner undertakes to indemnify the creditor against loss
22 resulting from the failure of a person to whom an extension is made to
23 repay the same.
24 ((+3)) (7) "Documentary material" means any book, paper, document,
25 writing, drawing, graph, chart, photograph, phonograph record, magnetic
26 tape, computer printout, other data compilation from which information
27 can be obtained or from which information can be translated into usable
28 form, or other tangible item.
29 (8) "Enterprise" includes any individual, sole proprietorship,
30 partnership, corporation, business trust, or other profit or nonprofit
31 legal entity, and includes any union, association, or group of
32 individuals associated in fact although not a legal entity, and both
33 illicit and licit enterprises and governmental and nongovernmental
34 entities.
35 (9) "Extortionate extension of credit" means an extension of credit
36 with respect to which it is the understanding of the creditor and the
37 debtor at the time the extension is made that delay in making repayment
38 or failure to make repayment could result in the use of violence or

1 other criminal means to cause harm to the person, reputation, or
2 property of any person.

3 ~~((4))~~ (10) "Extortionate means" means the use, or an express or
4 implicit threat of use, of violence or other criminal means to cause
5 harm to the person, reputation, or property of any person.

6 ~~((5))~~ (11) "Financial institution" means any bank, trust company,
7 savings and loan association, savings bank, mutual savings bank, credit
8 union, or loan company under the jurisdiction of the state or an agency
9 of the United States.

10 (12) "Pattern of criminal profiteering activity" means engaging in
11 at least three acts of criminal profiteering, one of which occurred
12 after July 1, 1985, and the last of which occurred within five years,
13 excluding any period of imprisonment, after the commission of the
14 earliest act of criminal profiteering. In order to constitute a
15 pattern, the three acts must have the same or similar intent, results,
16 accomplices, principals, victims, or methods of commission, or be
17 otherwise interrelated by distinguishing characteristics including a
18 nexus to the same enterprise, and must not be isolated events.
19 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
20 any person other than the attorney general or county prosecuting
21 attorney in which one or more acts of fraud in the purchase or sale of
22 securities are asserted as acts of criminal profiteering activity, it
23 is a condition to civil liability under RCW 9A.82.100 that the
24 defendant has been convicted in a criminal proceeding of fraud in the
25 purchase or sale of securities under RCW 21.20.400 or under the laws of
26 another state or of the United States requiring the same elements of
27 proof, but such conviction need not relate to any act or acts asserted
28 as acts of criminal profiteering activity in such civil action under
29 RCW 9A.82.100.

30 (13) "Real property" means any real property or interest in real
31 property, including but not limited to a land sale contract, lease, or
32 mortgage of real property.

33 (14) "Records" means any book, paper, writing, record, computer
34 program, or other material.

35 (15) "Repayment of an extension of credit" means the repayment,
36 satisfaction, or discharge in whole or in part of a debt or claim,
37 acknowledged or disputed, valid or invalid, resulting from or in
38 connection with that extension of credit.

1 (16) "Stolen property" means property that has been obtained by
2 theft, robbery, or extortion.

3 (17) "To collect an extension of credit" means to induce in any way
4 a person to make repayment thereof.

5 ~~((6))~~ (18) "To extend credit" means to make or renew a loan or to
6 enter into an agreement, tacit or express, whereby the repayment or
7 satisfaction of a debt or claim, whether acknowledged or disputed,
8 valid or invalid, and however arising, may or shall be deferred.

9 ~~((7) "Repayment of an extension of credit" means the repayment,~~
10 ~~satisfaction, or discharge in whole or in part of a debt or claim,~~
11 ~~acknowledged or disputed, valid or invalid, resulting from or in~~
12 ~~connection with that extension of credit.~~

13 ~~(8) "Dealer in property" means a person who buys and sells property~~
14 ~~as a business.~~

15 ~~(9) "Stolen property" means property that has been obtained by~~
16 ~~theft, robbery, or extortion.~~

17 ~~(10))~~ (19) "Traffic" means to sell, transfer, distribute,
18 dispense, or otherwise dispose of stolen property to another person, or
19 to buy, receive, possess, or obtain control of stolen property, with
20 intent to sell, transfer, distribute, dispense, or otherwise dispose of
21 the property to another person.

22 ~~((11) "Control" means the possession of a sufficient interest to~~
23 ~~permit substantial direction over the affairs of an enterprise.~~

24 ~~(12) "Enterprise" includes any individual, sole proprietorship,~~
25 ~~partnership, corporation, business trust, or other profit or nonprofit~~
26 ~~legal entity, and includes any union, association, or group of~~
27 ~~individuals associated in fact although not a legal entity, and both~~
28 ~~illicit and licit enterprises and governmental and nongovernmental~~
29 ~~entities.~~

30 ~~(13) "Financial institution" means any bank, trust company, savings~~
31 ~~and loan association, savings bank, mutual savings bank, credit union,~~
32 ~~or loan company under the jurisdiction of the state or an agency of the~~
33 ~~United States.~~

34 ~~(14) "Criminal profiteering" means any act, including any~~
35 ~~anticipatory or completed offense, committed for financial gain, that~~
36 ~~is chargeable or indictable under the laws of the state in which the~~
37 ~~act occurred and, if the act occurred in a state other than this state,~~
38 ~~would be chargeable or indictable under the laws of this state had the~~
39 ~~act occurred in this state and punishable as a felony and by~~

1 imprisonment for more than one year, regardless of whether the act is
2 charged or indicted, as any of the following:

- 3 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 4 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 5 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 6 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 7 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
8 9A.56.080;
- 9 (f) Unlawful sale of subscription television services, as defined
10 in RCW 9A.56.230;
- 11 (g) Theft of telecommunication services or unlawful manufacture of
12 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- 13 (h) Child selling or child buying, as defined in RCW 9A.64.030;
- 14 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
15 9A.68.050;
- 16 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- 17 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 18 (l) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 19 (m) Advancing money for use in an extortionate extension of credit,
20 as defined in RCW 9A.82.030;
- 21 (n) Collection of an extortionate extension of credit, as defined
22 in RCW 9A.82.040;
- 23 (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- 24 (p) Delivery or manufacture of controlled substances or possession
25 with intent to deliver or manufacture controlled substances under
26 chapter 69.50 RCW;
- 27 (q) Trafficking in stolen property, as defined in RCW 9A.82.050;
- 28 (r) Leading organized crime, as defined in RCW 9A.82.060;
- 29 (s) Money laundering, as defined in RCW 9A.83.020;
- 30 (t) Obstructing criminal investigations or prosecutions in
31 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
32 9A.76.070, or 9A.76.180;
- 33 (u) Fraud in the purchase or sale of securities, as defined in RCW
34 21.20.010;
- 35 (v) Promoting pornography, as defined in RCW 9.68.140;
- 36 (w) Sexual exploitation of children, as defined in RCW 9.68A.040,
37 9.68A.050, and 9.68A.060;
- 38 (x) Promoting prostitution, as defined in RCW 9A.88.070 and
39 9A.88.080;

1 ~~(y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;~~
2 ~~(z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;~~
3 ~~(aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;~~
4 ~~(bb) A pattern of equity skimming, as defined in RCW 61.34.020;~~
5 ~~(cc) Commercial telephone solicitation in violation of RCW~~
6 ~~19.158.040(1);~~
7 ~~(dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;~~
8 ~~(ee) Unlawful practice of law, as defined in RCW 2.48.180;~~
9 ~~(ff) Commercial bribery, as defined in RCW 9A.68.060;~~
10 ~~(gg) Health care false claims, as defined in RCW 48.80.030; or~~
11 ~~(hh) Unlicensed practice of a profession or business, as defined in~~
12 ~~RCW 18.130.190(7).~~

13 ~~(15) "Pattern of criminal profiteering activity" means engaging in~~
14 ~~at least three acts of criminal profiteering, one of which occurred~~
15 ~~after July 1, 1985, and the last of which occurred within five years,~~
16 ~~excluding any period of imprisonment, after the commission of the~~
17 ~~earliest act of criminal profiteering. In order to constitute a~~
18 ~~pattern, the three acts must have the same or similar intent, results,~~
19 ~~accomplices, principals, victims, or methods of commission, or be~~
20 ~~otherwise interrelated by distinguishing characteristics including a~~
21 ~~nexus to the same enterprise, and must not be isolated events.~~
22 ~~However, in any civil proceedings brought pursuant to RCW 9A.82.100 by~~
23 ~~any person other than the attorney general or county prosecuting~~
24 ~~attorney in which one or more acts of fraud in the purchase or sale of~~
25 ~~securities are asserted as acts of criminal profiteering activity, it~~
26 ~~is a condition to civil liability under RCW 9A.82.100 that the~~
27 ~~defendant has been convicted in a criminal proceeding of fraud in the~~
28 ~~purchase or sale of securities under RCW 21.20.400 or under the laws of~~
29 ~~another state or of the United States requiring the same elements of~~
30 ~~proof, but such conviction need not relate to any act or acts asserted~~
31 ~~as acts of criminal profiteering activity in such civil action under~~
32 ~~RCW 9A.82.100.~~

33 ~~(16) "Records" means any book, paper, writing, record, computer~~
34 ~~program, or other material.~~

35 ~~(17) "Documentary material" means any book, paper, document,~~
36 ~~writing, drawing, graph, chart, photograph, phonograph record, magnetic~~
37 ~~tape, computer printout, other data compilation from which information~~
38 ~~can be obtained or from which information can be translated into usable~~
39 ~~form, or other tangible item.~~

1 ~~(18))~~ (20)(a) "Trustee" means:
2 (i) A person acting as a trustee under a trust established under
3 Title 11 RCW in which the trustee holds legal or record title to real
4 property;
5 (ii) A person who holds legal or record title to real property in
6 which another person has a beneficial interest; or
7 (iii) A successor trustee to a person who is a trustee under (a)(i)
8 or (ii) of this subsection.
9 (b) "Trustee" does not mean a person appointed or acting as:
10 (i) A personal representative under Title 11 RCW;
11 (ii) A trustee of any testamentary trust;
12 (iii) A trustee of any indenture of trust under which a bond is
13 issued; or
14 (iv) A trustee under a deed of trust.
15 (21) "Unlawful debt" means any money or other thing of value
16 constituting principal or interest of a debt that is legally
17 unenforceable in the state in full or in part because the debt was
18 incurred or contracted:
19 (a) In violation of any one of the following:
20 (i) Chapter 67.16 RCW relating to horse racing;
21 (ii) Chapter 9.46 RCW relating to gambling;
22 (b) In a gambling activity in violation of federal law; or
23 (c) In connection with the business of lending money or a thing of
24 value at a rate that is at least twice the permitted rate under the
25 applicable state or federal law relating to usury.
26 ~~((19)(a) "Beneficial interest" means:~~
27 ~~(i) The interest of a person as a beneficiary under a trust~~
28 ~~established under Title 11 RCW in which the trustee for the trust holds~~
29 ~~legal or record title to real property;~~
30 ~~(ii) The interest of a person as a beneficiary under any other~~
31 ~~trust arrangement under which a trustee holds legal or record title to~~
32 ~~real property for the benefit of the beneficiary; or~~
33 ~~(iii) The interest of a person under any other form of express~~
34 ~~fiduciary arrangement under which one person holds legal or record~~
35 ~~title to real property for the benefit of the other person.~~
36 ~~(b) "Beneficial interest" does not include the interest of a~~
37 ~~stockholder in a corporation or the interest of a partner in a general~~
38 ~~partnership or limited partnership.~~

1 from some form, though not necessarily which form, of specified
2 unlawful activity.

3 (5) "Proceeds" means any interest in property directly or
4 indirectly acquired through or derived from an act or omission, and any
5 fruits of this interest, in whatever form.

6 (6) "Property" means anything of value, whether real or personal,
7 tangible or intangible.

8 (7) "Specified unlawful activity" means an offense committed in
9 this state that is a class A or B felony under Washington law or that
10 is listed as "criminal profiteering" in RCW 9A.82.010(~~((14))~~), or an
11 offense committed in any other state that is punishable under the laws
12 of that state by more than one year in prison, or an offense that is
13 punishable under federal law by more than one year in prison.

14 EXPLANATORY NOTE:

15 To conform to rearrangement of RCW 9A.82.010 in alphabetical
16 order; avoids problem of future rearrangement.

17 **Sec. 42.** RCW 10.05.030 and 1975 1st ex.s. c 244 s 3 are each
18 amended to read as follows:

19 The arraigning judge upon consideration of the petition and with
20 the concurrence of the prosecuting attorney may continue the
21 arraignment and refer such person for a diagnostic investigation and
22 evaluation to an approved alcoholism treatment (~~((facility))~~) program as
23 designated in chapter 70.96A RCW, if the petition alleges an alcohol
24 problem, an approved drug treatment center as designated in chapter
25 71.24 RCW, if the petition alleges a drug problem, or to an approved
26 mental health center, if the petition alleges a mental problem.

27 EXPLANATORY NOTE:

28 Chapter 70.96A RCW was amended by 1990 c 151, changing
29 "treatment facility" to "treatment program."

30 **Sec. 43.** RCW 10.05.150 and 1985 c 352 s 17 are each amended to
31 read as follows:

32 A deferred prosecution program for alcoholism shall be for a two-
33 year period and shall include, but not be limited to, the following
34 requirements:

35 (1) Total abstinence from alcohol and all other nonprescribed mind-
36 altering drugs;

37 (2) Participation in an intensive inpatient or intensive outpatient
38 program in a state-approved alcoholism treatment (~~((facility))~~) program;

1 (3) Participation in a minimum of two meetings per week of an
2 alcoholism self-help recovery support group, as determined by the
3 assessing agency, for the duration of the treatment program;

4 (4) Participation in an alcoholism self-help recovery support
5 group, as determined by the assessing agency, from the date of court
6 approval of the plan to entry into intensive treatment;

7 (5) Not less than weekly approved outpatient counseling, group or
8 individual, for a minimum of six months following the intensive phase
9 of treatment;

10 (6) Not less than monthly outpatient contact, group or individual,
11 for the remainder of the two-year deferred prosecution period;

12 (7) The decision to include the use of prescribed drugs, including
13 disulfiram, as a condition of treatment shall be reserved to the
14 treating facility and the petitioner's physician;

15 (8) All treatment within the purview of this section shall occur
16 within or be approved by a state-approved alcoholism treatment
17 ((facility)) program as described in chapter 70.96A RCW;

18 (9) Signature of the petitioner agreeing to the terms and
19 conditions of the treatment program.

20 EXPLANATORY NOTE:

21 Chapter 70.96A RCW was amended by 1990 c 151, changing
22 "treatment facility" to "treatment program."

23 **Sec. 44.** RCW 10.05.160 and 1998 c 208 s 4 are each amended to read
24 as follows:

25 The prosecutor may appeal an order granting deferred prosecution on
26 any or all of the following grounds:

27 (1) Prior deferred prosecution has been granted to the defendant;

28 (2) Failure of the court to obtain proof of insurance or a
29 treatment plan conforming to the requirements of this chapter;

30 (3) Failure of the court to comply with the requirements of RCW
31 10.05.100;

32 (4) Failure of the evaluation facility to provide the information
33 required in RCW 10.05.040 and 10.05.050, if the defendant has been
34 referred to the facility for treatment. If an appeal on such basis is
35 successful, the trial court may consider the use of another treatment
36 ((facility)) program.

37 EXPLANATORY NOTE:

1 Chapter 70.96A RCW was amended by 1990 c 151, changing
2 "treatment facility" to "treatment program."

3 **Sec. 45.** RCW 10.22.010 and 1989 c 411 s 3 are each amended to read
4 as follows:

5 When a defendant is prosecuted in a criminal action for a
6 misdemeanor, for which the person injured by the act constituting the
7 offense has a remedy by a civil action, the offense may be compromised
8 as provided in RCW 10.22.020, except when it was committed:

9 (1) By or upon an officer while in the execution of the duties of
10 his office.

11 (2) Riotously;

12 (3) With an intent to commit a felony; or

13 (4) By one family or household member against another as defined in
14 RCW 10.99.020(~~(+1)~~) and was a crime of domestic violence as defined in
15 RCW 10.99.020(~~(+2)~~).

16 EXPLANATORY NOTE:

17 Removes outdated and unnecessary subsection references.

18 **Sec. 46.** RCW 10.66.050 and 1989 c 271 s 218 are each amended to
19 read as follows:

20 In granting a temporary off-limits order or a one-year off-limits
21 order, the court shall have discretion to grant additional relief as
22 the court considers proper to achieve the purposes of this chapter.
23 The PADT area defined in any off-limits order must be reasonably
24 related to the area or areas impacted by the unlawful drug activity as
25 described by the applicant in any civil action under RCW 10.66.020 (1),
26 (2), or (3). The court in its discretion may allow a respondent, who
27 is the subject of any order issued under (~~section 214 of this act~~)
28 RCW 10.66.020 as part of a civil or criminal proceeding, to enter an
29 off-limits area or areas for health or employment reasons, subject to
30 conditions prescribed by the court. Upon request, a certified copy of
31 the order shall be provided to the applicant by the clerk of the court.

32 EXPLANATORY NOTE:

33 The reference to "section 214 of this act" appears to be
34 erroneous, as section 214 is a definition section. Section
35 215, codified as RCW 10.66.020, relates to the issuance of off-
36 limits orders.

37 **Sec. 47.** RCW 10.66.100 and 1989 c 271 s 222 are each amended to
38 read as follows:

1 Any person who willfully disobeys an off-limits order issued under
2 this chapter shall be subject to criminal penalties as provided in this
3 chapter and may also be found in contempt of court and subject to
4 penalties under chapter ((7.20)) 7.21 RCW.

5 EXPLANATORY NOTE:

6 Chapter 7.20 RCW was repealed by 1989 c 373 s 28. For later
7 enactment, see chapter 7.21 RCW.

8 **Sec. 48.** RCW 10.73.040 and 1893 c 61 s 31 are each amended to read
9 as follows:

10 In all criminal actions, except capital cases in which the proof of
11 guilt is clear or the presumption great, upon an appeal being taken
12 from a judgment of conviction, the court in which the judgment was
13 rendered, or a judge thereof, must, by an order entered in the journal
14 or filed with the clerk, fix and determine the amount of bail to be
15 required of the appellant; and the appellant shall be committed until
16 a bond to the state of Washington in the sum so fixed be executed on
17 his behalf by at least two sureties possessing the qualifications
18 required for sureties on appeal bonds (~~by section ten of this act~~),
19 such bond to be conditioned that the appellant shall appear whenever
20 required, and stand to and abide by the judgment or orders of the
21 appellate court, and any judgment and order of the superior court that
22 may be rendered or made in pursuance thereof. If the appellant be
23 already at large on bail, his sureties shall be liable to the amount of
24 their bond, in the same manner and upon the same conditions as if they
25 had executed the bond prescribed by this section; but the court may by
26 order require a new bond in a larger amount or with new sureties, and
27 may commit the appellant until the order be complied with.

28 EXPLANATORY NOTE:

29 The term "section ten of this act," refers to 1893 c 61 s 10,
30 which was repealed by 1957 c 7 s 10. The requirements for
31 sureties on appeal bonds are now set by court rule.

32 **Sec. 49.** RCW 10.77.010 and 1998 c 297 s 29 are each amended to
33 read as follows:

34 As used in this chapter:

35 (1) "County designated mental health professional" has the same
36 meaning as provided in RCW 71.05.020.

37 (2) A "criminally insane" person means any person who has been
38 acquitted of a crime charged by reason of insanity, and thereupon found

1 to be a substantial danger to other persons or to present a substantial
2 likelihood of committing criminal acts jeopardizing public safety or
3 security unless kept under further control by the court or other
4 persons or institutions.

5 (3) "Department" means the state department of social and health
6 services.

7 (4) "Developmental disabilities professional" means a person who
8 has specialized training and three years of experience in directly
9 treating or working with persons with developmental disabilities and is
10 a psychiatrist or psychologist, or a social worker, and such other
11 developmental disabilities professionals as may be defined by rules
12 adopted by the secretary.

13 (5) "Developmental disability" means the condition as defined in
14 RCW 71A.10.020(~~((2))~~).

15 (6) "Expert or professional person" means:

16 (a) A psychiatrist licensed as a physician and surgeon in this
17 state who has, in addition, completed three years of graduate training
18 in psychiatry in a program approved by the American medical association
19 or the American osteopathic association and is certified or eligible to
20 be certified by the American board of psychiatry and neurology;

21 (b) A psychologist licensed as a psychologist pursuant to chapter
22 18.83 RCW; or

23 (c) A social worker with a master's or further advanced degree from
24 an accredited school of social work or a degree deemed equivalent under
25 rules adopted by the secretary.

26 (7) "Furlough" means an authorized leave of absence for a resident
27 of a state institution operated by the department designated for the
28 custody, care, and treatment of the criminally insane, consistent with
29 an order of conditional release from the court under this chapter,
30 without any requirement that the resident be accompanied by, or be in
31 the custody of, any law enforcement or institutional staff, while on
32 such unescorted leave.

33 (8) "Habilitative services" means those services provided by
34 program personnel to assist persons in acquiring and maintaining life
35 skills and in raising their levels of physical, mental, social, and
36 vocational functioning. Habilitative services include education,
37 training for employment, and therapy. The habilitative process shall
38 be undertaken with recognition of the risk to the public safety

1 presented by the individual being assisted as manifested by prior
2 charged criminal conduct.

3 (9) "History of one or more violent acts" means violent acts
4 committed during: (a) The ten-year period of time prior to the filing
5 of criminal charges; plus (b) the amount of time equal to time spent
6 during the ten-year period in a mental health facility or in
7 confinement as a result of a criminal conviction.

8 (10) "Incompetency" means a person lacks the capacity to understand
9 the nature of the proceedings against him or her or to assist in his or
10 her own defense as a result of mental disease or defect.

11 (11) "Indigent" means any person who is financially unable to
12 obtain counsel or other necessary expert or professional services
13 without causing substantial hardship to the person or his or her
14 family.

15 (12) "Individualized service plan" means a plan prepared by a
16 developmental disabilities professional with other professionals as a
17 team, for an individual with developmental disabilities, which shall
18 state:

19 (a) The nature of the person's specific problems, prior charged
20 criminal behavior, and habilitation needs;

21 (b) The conditions and strategies necessary to achieve the purposes
22 of habilitation;

23 (c) The intermediate and long-range goals of the habilitation
24 program, with a projected timetable for the attainment;

25 (d) The rationale for using this plan of habilitation to achieve
26 those intermediate and long-range goals;

27 (e) The staff responsible for carrying out the plan;

28 (f) Where relevant in light of past criminal behavior and due
29 consideration for public safety, the criteria for proposed movement to
30 less-restrictive settings, criteria for proposed eventual discharge
31 from involuntary confinement, and a projected possible date for
32 discharge from involuntary confinement; and

33 (g) The type of residence immediately anticipated for the person
34 and possible future types of residences.

35 (13) "Secretary" means the secretary of the department of social
36 and health services or his or her designee.

37 (14) "Treatment" means any currently standardized medical or mental
38 health procedure including medication.

1 (15) "Violent act" means behavior that: (a)(i) Resulted in; (ii)
2 if completed as intended would have resulted in; or (iii) was
3 threatened to be carried out by a person who had the intent and
4 opportunity to carry out the threat and would have resulted in,
5 homicide, nonfatal injuries, or substantial damage to property; or (b)
6 recklessly creates an immediate risk of serious physical injury to
7 another person.

8 EXPLANATORY NOTE:

9 RCW 71A.10.020 was amended by 1998 c 216 s 2, changing
10 subsection (2) to subsection (3). The amendment by this
11 section will obviate the necessity of similar corrections in
12 the future.

13 **Sec. 50.** RCW 10.98.030 and 1984 c 17 s 3 are each amended to read
14 as follows:

15 The Washington state patrol identification, child abuse, and
16 criminal history section as established in RCW 43.43.700 shall be the
17 primary source of felony conviction histories for filings, plea
18 agreements, and sentencing on felony cases.

19 EXPLANATORY NOTE:

20 Reflects current name. See RCW 43.43.700.

21 **Sec. 51.** RCW 10.98.040 and 1985 c 201 s 1 are each amended to read
22 as follows:

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout this chapter.

25 (1) "Arrest and fingerprint form" means the reporting form
26 prescribed by the identification, child abuse, and criminal history
27 section to initiate compiling arrest and identification information.

28 (2) "Chief law enforcement officer" includes the sheriff or
29 director of public safety of a county, the chief of police of a city or
30 town, and chief officers of other law enforcement agencies operating
31 within the state.

32 (3) "Department" means the department of corrections.

33 (4) "Disposition" means the conclusion of a criminal proceeding at
34 any stage it occurs in the criminal justice system. Disposition
35 includes but is not limited to temporary or permanent outcomes such as
36 charges dropped by police, charges not filed by the prosecuting
37 attorney, deferred prosecution, defendant absconded, charges filed by

1 the prosecuting attorney pending court findings such as not guilty,
2 dismissed, guilty, or guilty--case appealed to higher court.

3 (5) "Disposition report" means the reporting form prescribed by the
4 identification, child abuse, and criminal history section to report the
5 legal procedures taken after completing an arrest and fingerprint form.
6 The disposition report shall include but not be limited to the
7 following types of information:

8 (a) The type of disposition;

9 (b) The statutory citation for the arrests;

10 (c) The sentence structure if the defendant was convicted of a
11 felony;

12 (d) The state identification number; and

13 (e) Identification information and other information that is
14 prescribed by the identification, child abuse, and criminal history
15 section.

16 (6) "Fingerprints" means the fingerprints taken from arrested or
17 charged persons under the procedures prescribed by the Washington state
18 patrol identification, child abuse, and criminal history section.

19 (7) "Prosecuting attorney" means the public or private attorney
20 prosecuting a criminal case.

21 (8) "Section" refers to the Washington state patrol section on
22 identification, child abuse, and criminal history.

23 (9) "Sentence structure" means itemizing the components of the
24 felony sentence. The sentence structure shall include but not be
25 limited to the total or partial confinement sentenced, and whether the
26 sentence is prison or jail, community supervision, fines, restitution,
27 or community service.

28 EXPLANATORY NOTE:

29 Reflects current name. See RCW 43.43.700.

30 **Sec. 52.** RCW 10.98.110 and 1993 c 31 s 1 are each amended to read
31 as follows:

32 (1) The department shall maintain records to track felony cases for
33 convicted felons sentenced either to a term of confinement exceeding
34 one year or ordered under the supervision of the department and felony
35 cases under the jurisdiction of the department pursuant to interstate
36 compact agreements.

37 (2) Tracking shall begin at the time the department receives a
38 judgment and sentence form from a prosecuting attorney and shall

1 include the collection and updating of felons' criminal records from
2 the time of sentencing through discharge.

3 (3) The department of corrections shall collect information for
4 tracking felons from its offices and from information provided by
5 county clerks, the Washington state patrol identification, child abuse,
6 and criminal history section, the office of financial management, and
7 any other public or private agency that provides services to help
8 individuals complete their felony sentences.

9 EXPLANATORY NOTE:

10 Reflects current name. See RCW 43.43.700.

11 **Sec. 53.** RCW 10.98.160 and 1987 c 462 s 5 are each amended to read
12 as follows:

13 In the development and modification of the procedures, definitions,
14 and reporting capabilities of the section, the department, the office
15 of financial management, and the responsible agencies and persons shall
16 consider the needs of other criminal justice agencies such as the
17 administrator for the courts, local law enforcement agencies, jailers,
18 the sentencing guidelines commission, the indeterminate sentence review
19 board (~~(of prison terms and paroles)~~), the clemency board, prosecuting
20 attorneys, and affected state agencies such as the office of financial
21 management and legislative committees dealing with criminal justice
22 issues. An executive committee appointed by the heads of the
23 department, the Washington state patrol, and the office of financial
24 management shall review and provide recommendations for development and
25 modification of the section, the department, and the office of
26 financial management's felony criminal information systems.

27 EXPLANATORY NOTE:

28 The "board of prison terms and paroles" was redesignated the
29 "indeterminate sentence review board" by 1986 c 224, effective
30 July 1, 1986.

--- END ---