
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-4647.1/02

ATTY/TYPIST: KT:rmh

BRIEF DESCRIPTION:

2 **ESSB 6704** - H COMM AMD
3 By Select Committee on Community Security

4

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS--INTENT. The
8 legislature finds that the events of September 11, 2001, have focused
9 our nation's attention on the importance of preparedness in preventing,
10 investigating, and prosecuting acts of terrorism against its citizens.
11 The legislature further finds that, to be effective, this effort
12 requires a partnership among the federal, state, and local governments.
13 In furtherance of this partnership, it is the legislature's intent to
14 strengthen the laws of the state of Washington to better protect the
15 health and safety of Washington state and its residents from acts of
16 terrorism. It is also the intent of the legislature that this act be
17 interpreted to provide the greatest measure of protection and safety
18 for the people of this state and to preserve and protect their
19 constitutional rights, including the right to petition their
20 governments and to exercise their rights under the First Amendment to
21 the United States Constitution.

22 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
23 section apply throughout this chapter unless the context clearly
24 requires otherwise.

25 (1) "Biological agent" means any microorganism, virus, infectious
26 substance, or biological product that may be engineered as a result of
27 biotechnology, or any naturally occurring microorganism, virus,
28 infectious substance, biological product, or toxin or vector, or any
29 naturally occurring or bioengineered component thereof, capable of
30 causing:

31 (a) Death, disease, or other biological malfunction in a human, an
32 animal, a plant, or another living organism; or

33 (b) Deterioration of food, water equipment, supplies, or material
34 of any kind; or

35 (c) Deleterious alteration of the environment.

1 (2) "Chemical agent" means any weapon, device, material, or
2 substance that is designed or intended to cause widespread death or
3 physical injury through the release, dissemination, or impact of toxic
4 or poisonous chemicals or precursors of toxic or poisonous chemicals.

5 (3) "Imitation weapon of mass destruction" means any device,
6 object, or substance that is not a weapon of mass destruction, but
7 which by appearance or representation would lead a reasonable person to
8 believe that the device or substance is a weapon of mass destruction.

9 (4) "Material support or resources" means currency or other
10 financial securities, financial services, lodging, training,
11 safehouses, false documentation or identification, intelligence
12 information, communications equipment, facilities, weapons, lethal
13 substances, explosives, personnel, transportation, and other assets.

14 (5) "Physical damage" has the meaning given in RCW 9A.48.100.

15 (6) "Public water system" means any publicly or privately owned
16 system, including a system serving only one single-family residence,
17 providing piped water for human consumption, including any collection,
18 treatment, storage, or distribution facilities.

19 (7) "Radioactive material" means any material containing, emitting,
20 or otherwise releasing radiation or radioactivity at a level dangerous
21 to human life.

22 (8) "Toxin" means the toxic material of plants, animals,
23 microorganisms, viruses, fungi, or infectious substances, or a
24 recombinant molecule, whatever its origin or method of production,
25 including:

26 (a) Any poisonous substance or biological product that may be
27 engineered as a result of biotechnology produced by a living organism;
28 or

29 (b) Any poisonous isomer or biological product, homolog, or
30 derivative of such a substance.

31 (9) "Vector" means a living organism, or molecule, including a
32 recombinant molecule, or biological product that may be engineered as
33 a result of biotechnology, capable of carrying a biological agent or
34 toxin to a host.

35 (10) "Weapon of mass destruction" means any device, object, or
36 substance that is designed, or that a person intends to use, to cause
37 multiple human deaths, or a biological agent, radioactive material, or
38 chemical agent that is possessed, released, or disseminated without
39 lawful authority.

1 NEW SECTION. **Sec. 3.** TERRORISM IN THE FIRST DEGREE. (1) A person
2 is guilty of terrorism in the first degree if such person, with the
3 intent to significantly disrupt the conduct of government or of the
4 general civilian population of the state or the United States, commits
5 an act which manifests an extreme indifference to human life and
6 thereby causes the death of another person.

7 (2) For the purposes of this section, "another person," in addition
8 to its ordinary meaning, includes, but is not limited to, any emergency
9 services personnel or a member of the civilian population responding,
10 at any point in time, to render aid in response to the act referred to
11 in subsection (1) of this section.

12 (3) Terrorism in the first degree is a class A felony and, any
13 other provision of law notwithstanding, is punishable as provided in
14 RCW 10.95.010, 10.95.030 through 10.95.900, and section 13 of this act.

15 NEW SECTION. **Sec. 4.** TERRORISM IN THE SECOND DEGREE. (1) A
16 person is guilty of terrorism in the second degree if such person, with
17 the intent to significantly disrupt the conduct of government or of the
18 general civilian population of the state or the United States, commits
19 an act which manifests an extreme indifference to human life and
20 thereby:

21 (a) Causes substantial bodily harm to any other person; or

22 (b) Causes substantial damage to a habitable building or structure,
23 whether or not occupied, sufficient to create a substantial risk of
24 death to another person if the building or structure had been occupied
25 by any such person; or

26 (c) Causes substantial physical damage sufficient to disrupt the
27 normal functioning of a critical public or private infrastructure
28 system including, but not limited to, a public water system, or an
29 emergency, governmental, medical, fire, or law enforcement response
30 system.

31 (2) Terrorism in the second degree is a class A felony.

32 NEW SECTION. **Sec. 5.** UNLAWFUL USE OR POSSESSION OF A WEAPON OF
33 MASS DESTRUCTION. (1) Any person who, with the intent to significantly
34 disrupt the conduct of government or of the general civilian population
35 of the state or the United States by engaging in conduct manifesting
36 extreme indifference to human life, uses, manufactures, transports,
37 possesses, spills, disposes of, or otherwise releases a weapon of mass

1 destruction is guilty of unlawful use or possession of a weapon of mass
2 destruction.

3 (2) Unlawful use or possession of a weapon of mass destruction is
4 a class A felony.

5 NEW SECTION. **Sec. 6.** THREATENING ACTS OF TERRORISM. (1) Any
6 person who knowingly threatens to use or release, or falsely claims to
7 have used or released, a weapon of mass destruction, or who takes any
8 other action intended to cause a reasonable belief that a weapon of
9 mass destruction has been or will be used or released, including, but
10 not limited to, placement of an imitation weapon of mass destruction in
11 an area open to or frequented by the public, is guilty of:

12 (a) Threatening acts of terrorism in the first degree if the
13 offense is committed with the intent to significantly disrupt the
14 conduct of government or of the general civilian population of the
15 state or the United States by threatening to engage in conduct which
16 manifests an extreme indifference to human life. Threatening acts of
17 terrorism in the first degree is a class B felony;

18 (b) Threatening acts of terrorism in the second degree if the
19 offense is committed under circumstances not amounting to threatening
20 acts of terrorism in the first degree. Threatening acts of terrorism
21 in the second degree is a class C felony.

22 (2) It is not a defense to any prosecution under this section that
23 the defendant did not have the intention or capability of actually
24 using or releasing a weapon of mass destruction.

25 NEW SECTION. **Sec. 7.** PROVIDING MATERIAL SUPPORT OR RESOURCES TO
26 TERRORISTS. (1) Any person who knowingly provides material support or
27 resources or conceals or disguises the nature, location, source, or
28 ownership of material support or resources, intending that the material
29 support or resources are to be used in planning, preparing for, or
30 carrying out a crime defined in this chapter, or in planning, preparing
31 for, or carrying out the concealment or an escape from the commission
32 of any such offense, is guilty of providing material support or
33 resources to terrorists.

34 (2) Providing material support or resources to terrorists is a
35 class B felony.

1 NEW SECTION. **Sec. 8.** UNLAWFUL POSSESSION OF FALSE IDENTIFICATION
2 FOR TERRORIST PURPOSES. (1) A person is guilty of unlawful possession
3 of false identification for terrorist purposes if he or she, with the
4 intent to commit or facilitate the commission of a crime defined in
5 this chapter, possesses or uses any document or record that contains
6 false information relating to the person who is the subject of such
7 document or record.

8 (2) Unlawful possession of false identification for terrorist
9 purposes is a class B felony.

10 **Sec. 9.** RCW 9A.82.010 and 2001 c 222 s 3 and 2001 c 217 s 11 are
11 each reenacted and amended to read as follows:

12 Unless the context requires the contrary, the definitions in this
13 section apply throughout this chapter.

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

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

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

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

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

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

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

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

34 (4) "Criminal profiteering" means any act, including any
35 anticipatory or completed offense, committed for financial gain, or any
36 offense, including any anticipatory or completed offense, which is
37 defined in chapter 9A.-- RCW (sections 1 through 8 and 19 through 25 of
38 this act), whether or not committed for financial gain, that is

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

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

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

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

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

11 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
12 9A.56.080;

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

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

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

18 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
19 9A.68.050;

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

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

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

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

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

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

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

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

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

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

34 (t) Obstructing criminal investigations or prosecutions in
35 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
36 9A.76.070, or 9A.76.180;

37 (u) Fraud in the purchase or sale of securities, as defined in RCW
38 21.20.010;

39 (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;

15 (hh) Unlicensed practice of a profession or business, as defined in
16 RCW 18.130.190(7);

17 (ii) Improperly obtaining financial information, as defined in RCW
18 9.35.010; (~~ex~~)

19 (jj) Identity theft, as defined in RCW 9.35.020;

20 (kk) Terrorism in the first degree, as defined in section 3 of this
21 act;

22 (ll) Terrorism in the second degree, as defined in section 4 of
23 this act;

24 (mm) Unlawful use or possession of a weapon of mass destruction, as
25 defined in section 5 of this act;

26 (nn) Threatening acts of terrorism in the first degree, as defined
27 in section 6(1)(a) of this act;

28 (oo) Threatening acts of terrorism in the second degree, as defined
29 in section 6(1)(b) of this act;

30 (pp) Providing material support or resources to terrorists, as
31 defined in section 7 of this act; or

32 (qq) Unlawful possession of false identification for terrorist
33 purposes, as defined in section 8 of this act.

34 (5) "Dealer in property" means a person who buys and sells property
35 as a business.

36 (6) "Debtor" means a person to whom an extension of credit is made
37 or a person who guarantees the repayment of an extension of credit or
38 in any manner undertakes to indemnify the creditor against loss

1 resulting from the failure of a person to whom an extension is made to
2 repay the same.

3 (7) "Documentary material" means any book, paper, document,
4 writing, drawing, graph, chart, photograph, phonograph record, magnetic
5 tape, computer printout, other data compilation from which information
6 can be obtained or from which information can be translated into usable
7 form, or other tangible item.

8 (8) "Enterprise" includes any individual, sole proprietorship,
9 partnership, corporation, business trust, or other profit or nonprofit
10 legal entity, and includes any union, association, or group of
11 individuals associated in fact although not a legal entity, and both
12 illicit and licit enterprises and governmental and nongovernmental
13 entities.

14 (9) "Extortionate extension of credit" means an extension of credit
15 with respect to which it is the understanding of the creditor and the
16 debtor at the time the extension is made that delay in making repayment
17 or failure to make repayment could result in the use of violence or
18 other criminal means to cause harm to the person, reputation, or
19 property of any person.

20 (10) "Extortionate means" means the use, or an express or implicit
21 threat of use, of violence or other criminal means to cause harm to the
22 person, reputation, or property of any person.

23 (11) "Financial institution" means any bank, trust company, savings
24 and loan association, savings bank, mutual savings bank, credit union,
25 or loan company under the jurisdiction of the state or an agency of the
26 United States.

27 (12) "Pattern of criminal profiteering activity" means engaging in
28 at least three acts of criminal profiteering, one of which occurred
29 after July 1, 1985, and the last of which occurred within five years,
30 excluding any period of imprisonment, after the commission of the
31 earliest act of criminal profiteering. In order to constitute a
32 pattern, the three acts must have the same or similar intent, results,
33 accomplices, principals, victims, or methods of commission, or be
34 otherwise interrelated by distinguishing characteristics including a
35 nexus to the same enterprise, and must not be isolated events.
36 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
37 any person other than the attorney general or county prosecuting
38 attorney in which one or more acts of fraud in the purchase or sale of
39 securities are asserted as acts of criminal profiteering activity, it

1 is a condition to civil liability under RCW 9A.82.100 that the
2 defendant has been convicted in a criminal proceeding of fraud in the
3 purchase or sale of securities under RCW 21.20.400 or under the laws of
4 another state or of the United States requiring the same elements of
5 proof, but such conviction need not relate to any act or acts asserted
6 as acts of criminal profiteering activity in such civil action under
7 RCW 9A.82.100.

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

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

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

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

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

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

25 (19) "Traffic" means to sell, transfer, distribute, dispense, or
26 otherwise dispose of stolen property to another person, or to buy,
27 receive, possess, or obtain control of stolen property, with intent to
28 sell, transfer, distribute, dispense, or otherwise dispose of the
29 property to another person.

30 (20)(a) "Trustee" means:

31 (i) A person acting as a trustee under a trust established under
32 Title 11 RCW in which the trustee holds legal or record title to real
33 property;

34 (ii) A person who holds legal or record title to real property in
35 which another person has a beneficial interest; or

36 (iii) A successor trustee to a person who is a trustee under (a)(i)
37 or (ii) of this subsection.

38 (b) "Trustee" does not mean a person appointed or acting as:

39 (i) A personal representative under Title 11 RCW;

- 1 (ii) A trustee of any testamentary trust;
2 (iii) A trustee of any indenture of trust under which a bond is
3 issued; or
4 (iv) A trustee under a deed of trust.

5 (21) "Unlawful debt" means any money or other thing of value
6 constituting principal or interest of a debt that is legally
7 unenforceable in the state in full or in part because the debt was
8 incurred or contracted:

9 (a) In violation of any one of the following:

10 (i) Chapter 67.16 RCW relating to horse racing;

11 (ii) Chapter 9.46 RCW relating to gambling;

12 (b) In a gambling activity in violation of federal law; or

13 (c) In connection with the business of lending money or a thing of
14 value at a rate that is at least twice the permitted rate under the
15 applicable state or federal law relating to usury.

16 **Sec. 10.** RCW 9A.82.090 and 2001 c 222 s 13 are each amended to
17 read as follows:

18 During the pendency of any criminal case charging a violation of
19 RCW 9A.82.060 or ~~((a violation of RCW))~~ 9A.82.080, or of an offense
20 defined in chapter 9A.-- RCW (sections 1 through 8 and 19 through 25 of
21 this act) whether or not committed for financial gain, the superior
22 court may, in addition to its other powers, issue an order pursuant to
23 RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation
24 of RCW 9A.82.060 or ~~((a violation of RCW))~~ 9A.82.080, or of an offense
25 defined in chapter 9A.-- RCW (sections 1 through 8 and 19 through 25 of
26 this act) whether or not committed for financial gain, the superior
27 court may, in addition to its other powers of disposition, issue an
28 order pursuant to RCW 9A.82.100.

29 **Sec. 11.** RCW 9A.82.100 and 2001 c 222 s 14 are each amended to
30 read as follows:

31 (1)(a) A person who sustains injury to his or her person, business,
32 or property by an act of criminal profiteering that is part of a
33 pattern of criminal profiteering activity, or by an offense defined in
34 chapter 9A.-- RCW (sections 1 through 8 and 19 through 25 of this act)
35 whether or not committed for financial gain, or by a violation of RCW
36 9A.82.060 or 9A.82.080 may file an action in superior court for the

1 recovery of damages and the costs of the suit, including reasonable
2 investigative and attorney's fees.

3 (b) The attorney general or county prosecuting attorney may file an
4 action: (i) On behalf of those persons injured or, respectively, on
5 behalf of the state or county if the entity has sustained damages, or
6 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering
7 activity, or an offense defined in chapter 9A.-- RCW (sections 1
8 through 8 and 19 through 25 of this act) whether or not committed for
9 financial gain, or a violation of RCW 9A.82.060 or 9A.82.080.

10 (c) An action for damages filed by or on behalf of an injured
11 person, the state, or the county shall be for the recovery of damages
12 and the costs of the suit, including reasonable investigative and
13 attorney's fees.

14 (d) In an action filed to prevent, restrain, or remedy a pattern of
15 criminal profiteering activity, or an offense defined in chapter 9A.--
16 RCW (sections 1 through 8 and 19 through 25 of this act) whether or not
17 committed for financial gain, or a violation of RCW 9A.82.060 or
18 9A.82.080, the court, upon proof of the violation, may impose a civil
19 penalty not exceeding two hundred fifty thousand dollars, in addition
20 to awarding the cost of the suit, including reasonable investigative
21 and attorney's fees.

22 (2) The superior court has jurisdiction to prevent, restrain, and
23 remedy a pattern of criminal profiteering, or an offense defined in
24 chapter 9A.-- RCW (sections 1 through 8 and 19 through 25 of this act)
25 whether or not committed for financial gain, or a violation of RCW
26 9A.82.060 or 9A.82.080 after making provision for the rights of all
27 innocent persons affected by the violation and after hearing or trial,
28 as appropriate, by issuing appropriate orders.

29 (3) Prior to a determination of liability, orders issued under
30 subsection (2) of this section may include, but are not limited to,
31 entering restraining orders or prohibitions or taking such other
32 actions, including the acceptance of satisfactory performance bonds, in
33 connection with any property or other interest subject to damages,
34 forfeiture, or other restraints pursuant to this section as the court
35 deems proper. The orders may also include attachment, receivership, or
36 injunctive relief in regard to personal or real property pursuant to
37 Title 7 RCW. In shaping the reach or scope of receivership,
38 attachment, or injunctive relief, the superior court shall provide for
39 the protection of bona fide interests in property, including community

1 property, of persons who were not involved in the violation of this
2 chapter, except to the extent that such interests or property were
3 acquired or used in such a way as to be subject to forfeiture under RCW
4 9A.82.100(4)(f).

5 (4) Following a determination of liability, orders may include, but
6 are not limited to:

7 (a) Ordering any person to divest himself or herself of any
8 interest, direct or indirect, in any enterprise.

9 (b) Imposing reasonable restrictions on the future activities or
10 investments of any person, including prohibiting any person from
11 engaging in the same type of endeavor as the enterprise engaged in, the
12 activities of which affect the laws of this state, to the extent the
13 Constitutions of the United States and this state permit.

14 (c) Ordering dissolution or reorganization of any enterprise.

15 (d) Ordering the payment of actual damages sustained to those
16 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an
17 offense defined in chapter 9A.-- RCW (sections 1 through 8 and 19
18 through 25 of this act) whether or not committed for financial gain, or
19 an act of criminal profiteering that is part of a pattern of criminal
20 profiteering, and in the court's discretion, increasing the payment to
21 an amount not exceeding three times the actual damages sustained.

22 (e) Ordering the payment of all costs and expenses of the
23 prosecution and investigation of a pattern of criminal profiteering
24 activity, or an offense defined in chapter 9A.-- RCW (sections 1
25 through 8 and 19 through 25 of this act) whether or not committed for
26 financial gain, or a violation of RCW 9A.82.060 or 9A.82.080, civil and
27 criminal, incurred by the state or county, including any costs of
28 defense provided at public expense, as appropriate to the state general
29 fund or the antiprofitteering revolving fund of the county.

30 (f) Ordering forfeiture first as restitution to any person damaged
31 by an act of criminal profiteering that is part of a pattern of
32 criminal profiteering, or by an offense defined in chapter 9A.-- RCW
33 (sections 1 through 8 and 19 through 25 of this act) whether or not
34 committed for financial gain, then to the state general fund or
35 antiprofitteering revolving fund of the county, as appropriate, to the
36 extent not already ordered to be paid in other damages, of the
37 following:

38 (i) Any property or other interest acquired or maintained in
39 violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment

1 of funds, and any appreciation or income attributable to the
2 investment, from a violation of RCW 9A.82.060 or 9A.82.080.

3 (ii) Any property, contractual right, or claim against property
4 used to influence any enterprise that a person has established,
5 operated, controlled, conducted, or participated in the conduct of, in
6 violation of RCW 9A.82.060 or 9A.82.080.

7 (iii) All proceeds traceable to or derived from an offense included
8 in the pattern of criminal profiteering activity, or an offense defined
9 in chapter 9A.-- RCW (sections 1 through 8 and 19 through 25 of this
10 act) whether or not committed for financial gain, and all moneys,
11 negotiable instruments, securities, and other things of value
12 significantly used or intended to be used significantly to facilitate
13 commission of the offense.

14 (g) Ordering payment to the state general fund or antiprofitteering
15 revolving fund of the county, as appropriate, of an amount equal to the
16 gain a person has acquired or maintained through an offense included in
17 the definition of criminal profiteering.

18 (5) In addition to or in lieu of an action under this section, the
19 attorney general or county prosecuting attorney may file an action for
20 forfeiture to the state general fund or antiprofitteering revolving fund
21 of the county, as appropriate, to the extent not already ordered paid
22 pursuant to this section, of the following:

23 (a) Any interest acquired or maintained by a person in violation of
24 RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds
25 obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any
26 appreciation or income attributable to the investment.

27 (b) Any property, contractual right, or claim against property used
28 to influence any enterprise that a person has established, operated,
29 controlled, conducted, or participated in the conduct of, in violation
30 of RCW 9A.82.060 or 9A.82.080.

31 (c) All proceeds traceable to or derived from an offense included
32 in the pattern of criminal profiteering activity, or an offense defined
33 in chapter 9A.-- RCW (sections 1 through 8 and 19 through 25 of this
34 act) whether or not committed for financial gain, and all moneys,
35 negotiable instruments, securities, and other things of value
36 significantly used or intended to be used significantly to facilitate
37 the commission of the offense.

38 (6) A defendant convicted in any criminal proceeding is precluded
39 in any civil proceeding from denying the essential allegations of the

1 criminal offense proven in the criminal trial in which the defendant
2 was convicted. For the purposes of this subsection, a conviction shall
3 be deemed to have occurred upon a verdict, finding, or plea of guilty,
4 notwithstanding the fact that appellate review of the conviction and
5 sentence has been or may be sought. If a subsequent reversal of the
6 conviction occurs, any judgment that was based upon that conviction may
7 be reopened upon motion of the defendant.

8 (7) The initiation of civil proceedings under this section shall be
9 commenced within three years after discovery of the pattern of criminal
10 profiteering activity or after the pattern should reasonably have been
11 discovered or, in the case of an offense which is defined in chapter
12 9A.-- RCW (sections 1 through 8 and 19 through 25 of this act), within
13 three years after the final disposition of any criminal charges
14 relating to the offense, whichever is later.

15 (8) The attorney general or county prosecuting attorney may, in a
16 civil action brought pursuant to this section, file with the clerk of
17 the superior court a certificate stating that the case is of special
18 public importance. A copy of that certificate shall be furnished
19 immediately by the clerk to the presiding chief judge of the superior
20 court in which the action is pending and, upon receipt of the copy, the
21 judge shall immediately designate a judge to hear and determine the
22 action. The judge so designated shall promptly assign the action for
23 hearing, participate in the hearings and determination, and cause the
24 action to be expedited.

25 (9) The standard of proof in actions brought pursuant to this
26 section is the preponderance of the evidence test.

27 (10) A person other than the attorney general or county prosecuting
28 attorney who files an action under this section shall serve notice and
29 one copy of the pleading on the attorney general within thirty days
30 after the action is filed with the superior court. The notice shall
31 identify the action, the person, and the person's attorney. Service of
32 the notice does not limit or otherwise affect the right of the state to
33 maintain an action under this section or intervene in a pending action
34 nor does it authorize the person to name the state or the attorney
35 general as a party to the action.

36 (11) Except in cases filed by a county prosecuting attorney, the
37 attorney general may, upon timely application, intervene in any civil
38 action or proceeding brought under this section if the attorney general
39 certifies that in the attorney general's opinion the action is of

1 special public importance. Upon intervention, the attorney general may
2 assert any available claim and is entitled to the same relief as if the
3 attorney general had instituted a separate action.

4 (12) In addition to the attorney general's right to intervene as a
5 party in any action under this section, the attorney general may appear
6 as amicus curiae in any proceeding in which a claim under this section
7 has been asserted or in which a court is interpreting RCW 9A.82.010,
8 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

9 (13) A private civil action under this section does not limit any
10 other civil or criminal action under this chapter or any other
11 provision. Private civil remedies provided under this section are
12 supplemental and not mutually exclusive.

13 (14) Upon motion by the defendant, the court may authorize the sale
14 or transfer of assets subject to an order or lien authorized by this
15 chapter for the purpose of paying actual attorney's fees and costs of
16 defense. The motion shall specify the assets for which sale or
17 transfer is sought and shall be accompanied by the defendant's sworn
18 statement that the defendant has no other assets available for such
19 purposes. No order authorizing such sale or transfer may be entered
20 unless the court finds that the assets involved are not subject to
21 possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of
22 the motion, the court shall notify the state of the assets sought to be
23 sold or transferred and shall hear argument on the issue of whether the
24 assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a
25 motion may be made from time to time and shall be heard by the court on
26 an expedited basis.

27 (15) In an action brought under subsection (1)(a) and (b)(i) of
28 this section, either party has the right to a jury trial.

29 **Sec. 12.** RCW 9A.82.120 and 2001 c 222 s 16 are each amended to
30 read as follows:

31 (1) The state, upon filing a criminal action under RCW 9A.82.060 or
32 9A.82.080 or for an offense defined in chapter 9A.-- RCW (sections 1
33 through 8 and 19 through 25 of this act) whether or not committed for
34 financial gain, or a civil action under RCW 9A.82.100, may file in
35 accordance with this section a criminal profiteering lien. A filing
36 fee or other charge is not required for filing a criminal profiteering
37 lien.

1 (2) A criminal profiteering lien shall be signed by the attorney
2 general or the county prosecuting attorney representing the state in
3 the action and shall set forth the following information:

4 (a) The name of the defendant whose property or other interests are
5 to be subject to the lien;

6 (b) In the discretion of the attorney general or county prosecuting
7 attorney filing the lien, any aliases or fictitious names of the
8 defendant named in the lien;

9 (c) If known to the attorney general or county prosecuting attorney
10 filing the lien, the present residence or principal place of business
11 of the person named in the lien;

12 (d) A reference to the proceeding pursuant to which the lien is
13 filed, including the name of the court, the title of the action, and
14 the court's file number for the proceeding;

15 (e) The name and address of the attorney representing the state in
16 the proceeding pursuant to which the lien is filed;

17 (f) A statement that the notice is being filed pursuant to this
18 section;

19 (g) The amount that the state claims in the action or, with respect
20 to property or other interests that the state has requested forfeiture
21 to the state or county, a description of the property or interests
22 sought to be paid or forfeited;

23 (h) If known to the attorney general or county prosecuting attorney
24 filing the lien, a description of property that is subject to
25 forfeiture to the state or property in which the defendant has an
26 interest that is available to satisfy a judgment entered in favor of
27 the state; and

28 (i) Such other information as the attorney general or county
29 prosecuting attorney filing the lien deems appropriate.

30 (3) The attorney general or the county prosecuting attorney filing
31 the lien may amend a lien filed under this section at any time by
32 filing an amended criminal profiteering lien in accordance with this
33 section that identifies the prior lien amended.

34 (4) The attorney general or the county prosecuting attorney filing
35 the lien shall, as soon as practical after filing a criminal
36 profiteering lien, furnish to any person named in the lien a notice of
37 the filing of the lien. Failure to furnish notice under this
38 subsection does not invalidate or otherwise affect a criminal
39 profiteering lien filed in accordance with this section.

1 (5)(a) A criminal profiteering lien is perfected against interests
2 in personal property in the same manner as a security interest in like
3 property pursuant to RCW 62A.9-302, 62A.9-303, 62A.9-304, 62A.9-305,
4 and 62A.9-306 or as otherwise required to perfect a security interest
5 in like property under applicable law. In the case of perfection by
6 filing, the state shall file, in lieu of a financing statement in the
7 form prescribed by RCW 62A.9-402, a notice of lien in substantially the
8 following form:

9 NOTICE OF LIEN

10 Pursuant to RCW 9A.82.120, the state of Washington claims a
11 criminal profiteering lien on all real and personal property of:

12 Name:
13 Address:
14
15
16

17 State of Washington
18

19 By (authorized signature)

20 On receipt of such a notice from the state, a filing officer shall,
21 without payment of filing fee, file and index the notice as if it were
22 a financing statement naming the state as secured party and the
23 defendant as debtor.

24 (b) A criminal profiteering lien is perfected against interests in
25 real property by filing the lien in the office where a mortgage on the
26 real estate would be filed or recorded. The filing officer shall file
27 and index the criminal profiteering lien, without payment of a filing
28 fee, in the same manner as a mortgage.

29 (6) The filing of a criminal profiteering lien in accordance with
30 this section creates a lien in favor of the state in:

31 (a) Any interest of the defendant, in real property situated in the
32 county in which the lien is filed, then maintained, or thereafter
33 acquired in the name of the defendant identified in the lien;

34 (b) Any interest of the defendant, in personal property situated in
35 this state, then maintained or thereafter acquired in the name of the
36 defendant identified in the lien; and

37 (c) Any property identified in the lien to the extent of the
38 defendant's interest therein.

1 (7) The lien created in favor of the state in accordance with this
2 section, when filed or otherwise perfected as provided in subsection
3 (5) of this section, has, with respect to any of the property described
4 in subsection (6) of this section, the same priority determined
5 pursuant to the laws of this state as a mortgage or security interest
6 given for value (but not a purchase money security interest) and
7 perfected in the same manner with respect to such property; except that
8 any lien perfected pursuant to Title 60 RCW by any person who, in the
9 ordinary course of his business, furnishes labor, services, or
10 materials, or rents, leases, or otherwise supplies equipment, without
11 knowledge of the criminal profiteering lien, is superior to the
12 criminal profiteering lien.

13 (8) Upon entry of judgment in favor of the state, the state may
14 proceed to execute thereon as in the case of any other judgment, except
15 that in order to preserve the state's lien priority as provided in this
16 section the state shall, in addition to such other notice as is
17 required by law, give at least thirty days' notice of the execution to
18 any person possessing at the time the notice is given, an interest
19 recorded subsequent to the date the state's lien was perfected.

20 (9) Upon the entry of a final judgment in favor of the state
21 providing for forfeiture of property to the state, the title of the
22 state to the property:

23 (a) In the case of real property or a beneficial interest in real
24 property, relates back to the date of filing the criminal profiteering
25 lien or, if no criminal profiteering lien is filed, then to the date of
26 recording of the final judgment or the abstract thereof; or

27 (b) In the case of personal property or a beneficial interest in
28 personal property, relates back to the date the personal property was
29 seized by the state, or the date of filing of a criminal profiteering
30 lien in accordance with this section, whichever is earlier, but if the
31 property was not seized and no criminal profiteering lien was filed
32 then to the date the final judgment was filed with the department of
33 licensing and, if the personal property is an aircraft, with the
34 federal aviation administration.

35 (10) This section does not limit the right of the state to obtain
36 any order or injunction, receivership, writ, attachment, garnishment,
37 or other remedy authorized under RCW 9A.82.100 or appropriate to
38 protect the interests of the state or available under other applicable
39 law.

1 (11) In a civil or criminal action under this chapter, the superior
2 court shall provide for the protection of bona fide interests in
3 property, including community property, subject to liens of persons who
4 were not involved in the violation of this chapter, except to the
5 extent that such interests or property were acquired or used in such a
6 way as to be subject to forfeiture pursuant to RCW 9A.82.100(4)(f).

7 NEW SECTION. **Sec. 13.** A new section is added to chapter 10.95 RCW
8 to read as follows:

9 AGGRAVATED FIRST DEGREE MURDER--DEFINITION--ALTERNATIVE MEANS OF
10 COMMISSION--TERRORISM IN THE FIRST DEGREE. A person is guilty of
11 aggravated murder in the first degree if he or she commits terrorism in
12 the first degree as defined by section 3 of this act and shall be
13 punished in accordance with the provisions of this chapter.

14 **Sec. 14.** RCW 10.95.040 and 1981 c 138 s 4 are each amended to read
15 as follows:

16 (1) If a person is charged with aggravated first degree murder as
17 defined by RCW 10.95.020 or section 13 of this act, the prosecuting
18 attorney shall file written notice of a special sentencing proceeding
19 to determine whether or not the death penalty should be imposed when
20 there is reason to believe that there are not sufficient mitigating
21 circumstances to merit leniency.

22 (2) The notice of special sentencing proceeding shall be filed and
23 served on the defendant or the defendant's attorney within thirty days
24 after the defendant's arraignment upon the charge of aggravated first
25 degree murder unless the court, for good cause shown, extends or
26 reopens the period for filing and service of the notice. Except with
27 the consent of the prosecuting attorney, during the period in which the
28 prosecuting attorney may file the notice of special sentencing
29 proceeding, the defendant may not tender a plea of guilty to the charge
30 of aggravated first degree murder nor may the court accept a plea of
31 guilty to the charge of aggravated first degree murder or any lesser
32 included offense.

33 (3) If a notice of special sentencing proceeding is not filed and
34 served as provided in this section, the prosecuting attorney may not
35 request the death penalty.

1 Leading Organized Crime (RCW
2 9A.82.060(1)(a))
3 Malicious explosion 3 (RCW 70.74.280(3))
4 Manufacture of methamphetamine (RCW
5 69.50.401(a)(1)(ii))
6 Over 18 and deliver heroin,
7 methamphetamine, a narcotic from
8 Schedule I or II, or flunitrazepam
9 from Schedule IV to someone under 18
10 (RCW 69.50.406)
11 Providing Material Support or Resources to
12 Terrorists (RCW 9A.--.--- (section 7
13 of this act))
14 Sexually Violent Predator Escape (RCW
15 9A.76.115)
16 Unlawful Possession of False Identification
17 for Terrorist Purposes (RCW 9A.--.---
18 (section 8 of this act))

19 IX Assault of a Child 2 (RCW 9A.36.130)
20 Controlled Substance Homicide (RCW
21 69.50.415)
22 Explosive devices prohibited (RCW
23 70.74.180)
24 Hit and Run--Death (RCW 46.52.020(4)(a))
25 Homicide by Watercraft, by being under the
26 influence of intoxicating liquor or
27 any drug (RCW 79A.60.050)
28 Inciting Criminal Profiteering (RCW
29 9A.82.060(1)(b))
30 Malicious placement of an explosive 2 (RCW
31 70.74.270(2))
32 Over 18 and deliver narcotic from Schedule
33 III, IV, or V or a nonnarcotic, except
34 flunitrazepam or methamphetamine, from
35 Schedule I-V to someone under 18 and 3
36 years junior (RCW 69.50.406)
37 Robbery 1 (RCW 9A.56.200)
38 Sexual Exploitation (RCW 9.68A.040)

1 Vehicular Homicide, by being under the
2 influence of intoxicating liquor or
3 any drug (RCW 46.61.520)

4 VIII Arson 1 (RCW 9A.48.020)
5 Deliver or possess with intent to deliver
6 methamphetamine (RCW
7 69.50.401(a)(1)(ii))
8 Homicide by Watercraft, by the operation of
9 any vessel in a reckless manner (RCW
10 79A.60.050)
11 Manslaughter 2 (RCW 9A.32.070)
12 Manufacture, deliver, or possess with
13 intent to deliver amphetamine (RCW
14 69.50.401(a)(1)(ii))
15 Manufacture, deliver, or possess with
16 intent to deliver heroin or cocaine
17 (RCW 69.50.401(a)(1)(i))
18 Possession of Ephedrine, Pseudoephedrine,
19 or Anhydrous Ammonia with intent to
20 manufacture methamphetamine (RCW
21 69.50.440)
22 Promoting Prostitution 1 (RCW 9A.88.070)
23 Selling for profit (controlled or
24 counterfeit) any controlled substance
25 (RCW 69.50.410)
26 Theft of Anhydrous Ammonia (RCW 69.55.010)
27 Vehicular Homicide, by the operation of any
28 vehicle in a reckless manner (RCW
29 46.61.520)

30 VII Burglary 1 (RCW 9A.52.020)
31 Child Molestation 2 (RCW 9A.44.086)
32 Dealing in depictions of minor engaged in
33 sexually explicit conduct (RCW
34 9.68A.050)
35 Drive-by Shooting (RCW 9A.36.045)
36 Homicide by Watercraft, by disregard for
37 the safety of others (RCW 79A.60.050)

1 Indecent Liberties (without forcible
 2 compulsion) (RCW 9A.44.100(1) (b) and
 3 (c))
 4 Introducing Contraband 1 (RCW 9A.76.140)
 5 Involving a minor in drug dealing (RCW
 6 69.50.401(f))
 7 Malicious placement of an explosive 3 (RCW
 8 70.74.270(3))
 9 Sending, bringing into state depictions of
 10 minor engaged in sexually explicit
 11 conduct (RCW 9.68A.060)
 12 Unlawful Possession of a Firearm in the
 13 first degree (RCW 9.41.040(1)(a))
 14 Use of a Machine Gun in Commission of a
 15 Felony (RCW 9.41.225)
 16 Vehicular Homicide, by disregard for the
 17 safety of others (RCW 46.61.520)

18 VI Bail Jumping with Murder 1 (RCW
 19 9A.76.170(3)(a))
 20 Bribery (RCW 9A.68.010)
 21 Incest 1 (RCW 9A.64.020(1))
 22 Intimidating a Judge (RCW 9A.72.160)
 23 Intimidating a Juror/Witness (RCW
 24 9A.72.110, 9A.72.130)
 25 Malicious placement of an imitation device
 26 2 (RCW 70.74.272(1)(b))
 27 Manufacture, deliver, or possess with
 28 intent to deliver narcotics from
 29 Schedule I or II (except heroin or
 30 cocaine) or flunitrazepam from
 31 Schedule IV (RCW 69.50.401(a)(1)(i))
 32 Rape of a Child 3 (RCW 9A.44.079)
 33 Theft of a Firearm (RCW 9A.56.300)
 34 Unlawful Storage of Anhydrous Ammonia (RCW
 35 69.55.020)

36 V Abandonment of dependent person 1 (RCW
 37 9A.42.060)

1 Advancing money or property for
2 extortionate extension of credit (RCW
3 9A.82.030)
4 Bail Jumping with class A Felony (RCW
5 9A.76.170(3)(b))
6 Child Molestation 3 (RCW 9A.44.089)
7 Criminal Mistreatment 1 (RCW 9A.42.020)
8 Custodial Sexual Misconduct 1 (RCW
9 9A.44.160)
10 Delivery of imitation controlled substance
11 by person eighteen or over to person
12 under eighteen (RCW 69.52.030(2))
13 Domestic Violence Court Order Violation
14 (RCW 10.99.040, 10.99.050, 26.09.300,
15 26.10.220, 26.26.138, 26.50.110,
16 26.52.070, or 74.34.145)
17 Extortion 1 (RCW 9A.56.120)
18 Extortionate Extension of Credit (RCW
19 9A.82.020)
20 Extortionate Means to Collect Extensions of
21 Credit (RCW 9A.82.040)
22 Incest 2 (RCW 9A.64.020(2))
23 Kidnapping 2 (RCW 9A.40.030)
24 Perjury 1 (RCW 9A.72.020)
25 Persistent prison misbehavior (RCW
26 9.94.070)
27 Possession of a Stolen Firearm (RCW
28 9A.56.310)
29 Rape 3 (RCW 9A.44.060)
30 Rendering Criminal Assistance 1 (RCW
31 9A.76.070)
32 Sexual Misconduct with a Minor 1 (RCW
33 9A.44.093)
34 Sexually Violating Human Remains (RCW
35 9A.44.105)
36 Stalking (RCW 9A.46.110)
37 IV Arson 2 (RCW 9A.48.030)
38 Assault 2 (RCW 9A.36.021)
39 Assault by Watercraft (RCW 79A.60.060)

1 Bribing a Witness/Bribe Received by Witness
2 (RCW 9A.72.090, 9A.72.100)
3 Commercial Bribery (RCW 9A.68.060)
4 Counterfeiting (RCW 9.16.035(4))
5 Escape 1 (RCW 9A.76.110)
6 Hit and Run--Injury (RCW 46.52.020(4)(b))
7 Hit and Run with Vessel--Injury Accident
8 (RCW 79A.60.200(3))
9 Identity Theft 1 (RCW 9.35.020(2)(a))
10 Indecent Exposure to Person Under Age
11 Fourteen (subsequent sex offense) (RCW
12 9A.88.010)
13 Influencing Outcome of Sporting Event (RCW
14 9A.82.070)
15 Knowingly Trafficking in Stolen Property
16 (RCW 9A.82.050(2))
17 Malicious Harassment (RCW 9A.36.080)
18 Manufacture, deliver, or possess with
19 intent to deliver narcotics from
20 Schedule III, IV, or V or nonnarcotics
21 from Schedule I-V (except marijuana,
22 amphetamine, methamphetamines, or
23 flunitrazepam) (RCW 69.50.401(a)(1)
24 (iii) through (v))
25 Residential Burglary (RCW 9A.52.025)
26 Robbery 2 (RCW 9A.56.210)
27 Theft of Livestock 1 (RCW 9A.56.080)
28 Threats to Bomb (RCW 9.61.160)
29 Use of Proceeds of Criminal Profiteering
30 (RCW 9A.82.080 (1) and (2))
31 Vehicular Assault, by being under the
32 influence of intoxicating liquor or
33 any drug, or by the operation or
34 driving of a vehicle in a reckless
35 manner (RCW 46.61.522)
36 Willful Failure to Return from Furlough
37 (RCW 72.66.060)
38 III Abandonment of dependent person 2 (RCW
39 9A.42.070)

1 Assault 3 (RCW 9A.36.031)
2 Assault of a Child 3 (RCW 9A.36.140)
3 Bail Jumping with class B or C Felony (RCW
4 9A.76.170(3)(c))
5 Burglary 2 (RCW 9A.52.030)
6 Communication with a Minor for Immoral
7 Purposes (RCW 9.68A.090)
8 Criminal Gang Intimidation (RCW 9A.46.120)
9 Criminal Mistreatment 2 (RCW 9A.42.030)
10 Custodial Assault (RCW 9A.36.100)
11 Delivery of a material in lieu of a
12 controlled substance (RCW
13 69.50.401(c))
14 Escape 2 (RCW 9A.76.120)
15 Extortion 2 (RCW 9A.56.130)
16 Harassment (RCW 9A.46.020)
17 Intimidating a Public Servant (RCW
18 9A.76.180)
19 Introducing Contraband 2 (RCW 9A.76.150)
20 Maintaining a Dwelling or Place for
21 Controlled Substances (RCW
22 69.50.402(a)(6))
23 Malicious Injury to Railroad Property (RCW
24 81.60.070)
25 Manufacture, deliver, or possess with
26 intent to deliver marijuana (RCW
27 69.50.401(a)(1)(iii))
28 Manufacture, distribute, or possess with
29 intent to distribute an imitation
30 controlled substance (RCW
31 69.52.030(1))
32 Patronizing a Juvenile Prostitute (RCW
33 9.68A.100)
34 Perjury 2 (RCW 9A.72.030)
35 Possession of Incendiary Device (RCW
36 9.40.120)
37 Possession of Machine Gun or Short-Barreled
38 Shotgun or Rifle (RCW 9.41.190)
39 Promoting Prostitution 2 (RCW 9A.88.080)

1 Recklessly Trafficking in Stolen Property
2 (RCW 9A.82.050(1))
3 Securities Act violation (RCW 21.20.400)
4 Tampering with a Witness (RCW 9A.72.120)
5 Telephone Harassment (subsequent conviction
6 or threat of death) (RCW 9.61.230)
7 Theft of Livestock 2 (RCW 9A.56.080)
8 Unlawful Imprisonment (RCW 9A.40.040)
9 Unlawful possession of firearm in the
10 second degree (RCW 9.41.040(1)(b))
11 Unlawful Use of Building for Drug Purposes
12 (RCW 69.53.010)
13 Vehicular Assault, by the operation or
14 driving of a vehicle with disregard
15 for the safety of others (RCW
16 46.61.522)
17 Willful Failure to Return from Work Release
18 (RCW 72.65.070)

19 II Computer Trespass 1 (RCW 9A.52.110)
20 Counterfeiting (RCW 9.16.035(3))
21 Create, deliver, or possess a counterfeit
22 controlled substance (RCW
23 69.50.401(b))
24 Escape from Community Custody (RCW
25 72.09.310)
26 Health Care False Claims (RCW 48.80.030)
27 Identity Theft 2 (RCW 9.35.020(2)(b))
28 Improperly Obtaining Financial Information
29 (RCW 9.35.010)
30 Malicious Mischief 1 (RCW 9A.48.070)
31 Possession of controlled substance that is
32 either heroin or narcotics from
33 Schedule I or II or flunitrazepam from
34 Schedule IV (RCW 69.50.401(d))
35 Possession of phencyclidine (PCP) (RCW
36 69.50.401(d))
37 Possession of Stolen Property 1 (RCW
38 9A.56.150)
39 Theft 1 (RCW 9A.56.030)

1 Theft of Rental, Leased, or Lease-purchased
2 Property (valued at one thousand five
3 hundred dollars or more) (RCW
4 9A.56.096(4))
5 Trafficking in Insurance Claims (RCW
6 48.30A.015)
7 Unlawful Practice of Law (RCW 2.48.180)
8 Unlicensed Practice of a Profession or
9 Business (RCW 18.130.190(7))
10 I Attempting to Elude a Pursuing Police
11 Vehicle (RCW 46.61.024)
12 False Verification for Welfare (RCW
13 74.08.055)
14 Forged Prescription (RCW 69.41.020)
15 Forged Prescription for a Controlled
16 Substance (RCW 69.50.403)
17 Forgery (RCW 9A.60.020)
18 Malicious Mischief 2 (RCW 9A.48.080)
19 Possess Controlled Substance that is a
20 Narcotic from Schedule III, IV, or V
21 or Non-narcotic from Schedule I-V
22 (except phencyclidine or
23 flunitrazepam) (RCW 69.50.401(d))
24 Possession of Stolen Property 2 (RCW
25 9A.56.160)
26 Reckless Burning 1 (RCW 9A.48.040)
27 Taking Motor Vehicle Without Permission
28 (RCW 9A.56.070)
29 Theft 2 (RCW 9A.56.040)
30 Theft of Rental, Leased, or Lease-purchased
31 Property (valued at two hundred fifty
32 dollars or more but less than one
33 thousand five hundred dollars) (RCW
34 9A.56.096(4))
35 Unlawful Issuance of Checks or Drafts (RCW
36 9A.56.060)
37 Unlawful Use of Food Stamps (RCW 9.91.140
38 (2) and (3))
39 Vehicle Prowl 1 (RCW 9A.52.095)

1	B	Residential Burglary	
2		(9A.52.025)	C
3	B	Burglary 2 (9A.52.030)	C
4	D	Burglary Tools (Possession of)	
5		(9A.52.060)	E
6	D	Criminal Trespass 1 (9A.52.070)	E
7	E	Criminal Trespass 2 (9A.52.080)	E
8	C	Vehicle Prowling 1 (9A.52.095)	D
9	D	Vehicle Prowling 2 (9A.52.100)	E
10		Drugs	
11	E	Possession/Consumption of Alcohol	
12		(66.44.270)	E
13	C	Illegally Obtaining Legend Drug	
14		(69.41.020)	D
15	C+	Sale, Delivery, Possession of Legend	
16		Drug with Intent to Sell	
17		(69.41.030)	D+
18	E	Possession of Legend Drug	
19		(69.41.030)	E
20	B+	Violation of Uniform Controlled	
21		Substances Act - Narcotic,	
22		Methamphetamine, or Flunitrazepam	
23		Sale (69.50.401(a)(1) (i) or (ii))	B+
24	C	Violation of Uniform Controlled	
25		Substances Act - Nonnarcotic Sale	
26		(69.50.401(a)(1)(iii))	C
27	E	Possession of Marihuana <40 grams	
28		(69.50.401(e))	E
29	C	Fraudulently Obtaining Controlled	
30		Substance (69.50.403)	C
31	C+	Sale of Controlled Substance	
32		for Profit (69.50.410)	C+
33	E	Unlawful Inhalation (9.47A.020)	E
34	B	Violation of Uniform Controlled	
35		Substances Act - Narcotic,	
36		Methamphetamine, or Flunitrazepam	
37		Counterfeit Substances	
38		(69.50.401(b)(1) (i) or (ii))	B

1	C	Violation of Uniform Controlled	
2		Substances Act - Nonnarcotic	
3		Counterfeit Substances	
4		(69.50.401(b)(1) (iii), (iv), (v))	C
5	C	Violation of Uniform Controlled	
6		Substances Act - Possession of a	
7		Controlled Substance	
8		(69.50.401(d))	C
9	C	Violation of Uniform Controlled	
10		Substances Act - Possession of a	
11		Controlled Substance	
12		(69.50.401(c))	C
13		Firearms and Weapons	
14	B	Theft of Firearm (9A.56.300)	C
15	B	Possession of Stolen Firearm	
16		(9A.56.310)	C
17	E	Carrying Loaded Pistol Without	
18		Permit (9.41.050)	E
19	C	Possession of Firearms by Minor (<18)	
20		(9.41.040(1)(b)(iii))	C
21	D+	Possession of Dangerous Weapon	
22		(9.41.250)	E
23	D	Intimidating Another Person by use	
24		of Weapon (9.41.270)	E
25		Homicide	
26	A+	Murder 1 (9A.32.030)	A
27	A+	Murder 2 (9A.32.050)	B+
28	B+	Manslaughter 1 (9A.32.060)	C+
29	C+	Manslaughter 2 (9A.32.070)	D+
30	B+	Vehicular Homicide (46.61.520)	C+
31		Kidnapping	
32	A	Kidnap 1 (9A.40.020)	B+
33	B+	Kidnap 2 (9A.40.030)	C+
34	C+	Unlawful Imprisonment	
35		(9A.40.040)	D+

1		Obstructing Governmental Operation	
2	D	Obstructing a Law Enforcement	
3		Officer (9A.76.020)	E
4	E	Resisting Arrest (9A.76.040)	E
5	B	Introducing Contraband 1	
6		(9A.76.140)	C
7	C	Introducing Contraband 2	
8		(9A.76.150)	D
9	E	Introducing Contraband 3	
10		(9A.76.160)	E
11	B+	Intimidating a Public Servant	
12		(9A.76.180)	C+
13	B+	Intimidating a Witness	
14		(9A.72.110)	C+
15		Public Disturbance	
16	C+	Riot with Weapon (9A.84.010)	D+
17	D+	Riot Without Weapon	
18		(9A.84.010)	E
19	E	Failure to Disperse (9A.84.020)	E
20	E	Disorderly Conduct (9A.84.030)	E
21		Sex Crimes	
22	A	Rape 1 (9A.44.040)	B+
23	A-	Rape 2 (9A.44.050)	B+
24	C+	Rape 3 (9A.44.060)	D+
25	A-	Rape of a Child 1 (9A.44.073)	B+
26	B+	Rape of a Child 2 (9A.44.076)	C+
27	B	Incest 1 (9A.64.020(1))	C
28	C	Incest 2 (9A.64.020(2))	D
29	D+	Indecent Exposure	
30		(Victim <14) (9A.88.010)	E
31	E	Indecent Exposure	
32		(Victim 14 or over) (9A.88.010)	E
33	B+	Promoting Prostitution 1	
34		(9A.88.070)	C+
35	C+	Promoting Prostitution 2	
36		(9A.88.080)	D+
37	E	O & A (Prostitution) (9A.88.030)	E
38	B+	Indecent Liberties (9A.44.100)	C+

1	A-	Child Molestation 1 (9A.44.083)	B+
2	B	Child Molestation 2 (9A.44.086)	C+
3		<u>Terrorism</u>	
4	<u>A+</u>	<u>Terrorism in the First</u>	
5		<u>Degree (section 3 of this act)</u>	<u>A</u>
6	<u>A</u>	<u>Terrorism in the Second Degree</u>	
7		<u>(section 4 of this act)</u>	<u>B+</u>
8	<u>B+</u>	<u>Unlawful Use or Possession</u>	
9		<u>of Weapon of Mass Destruction</u>	
10		<u>(section 5 of this act)</u>	<u>C+</u>
11	<u>B</u>	<u>Threatening Acts of Terrorism 1</u>	
12		<u>(section 6(1)(a) of this act)</u>	<u>C</u>
13	<u>C+</u>	<u>Providing Material Support or</u>	
14		<u>Resources to Terrorists (section</u>	
15		<u>7 of this act)</u>	<u>D+</u>
16	<u>C</u>	<u>Unlawful Possession of False</u>	
17		<u>Identification for Terrorist Purposes</u>	
18		<u>(section 8 of this act)</u>	<u>D</u>
19	<u>D+</u>	<u>Threatening Acts of Terrorism 2</u>	
20		<u>(section 6(1)(b) of this act)</u>	<u>E</u>
21		<u>Theft, Robbery, Extortion, and Forgery</u>	
22	B	Theft 1 (9A.56.030)	C
23	C	Theft 2 (9A.56.040)	D
24	D	Theft 3 (9A.56.050)	E
25	B	Theft of Livestock (9A.56.080)	C
26	C	Forgery (9A.60.020)	D
27	A	Robbery 1 (9A.56.200)	B+
28	B+	Robbery 2 (9A.56.210)	C+
29	B+	Extortion 1 (9A.56.120)	C+
30	C+	Extortion 2 (9A.56.130)	D+
31	C	Identity Theft 1 (9.35.020(2)(a))	D
32	D	Identity Theft 2 (9.35.020(2)(b))	E
33	D	Improperly Obtaining Financial	
34		Information (((9.35.010)))	
35		<u>(9.35.010)</u>	<u>E</u>
36	B	Possession of Stolen Property 1	
37		(9A.56.150)	C

1	C	Possession of Stolen Property 2	
2		(9A.56.160)	D
3	D	Possession of Stolen Property 3	
4		(9A.56.170)	E
5	C	Taking Motor Vehicle Without	
6		Owner's Permission (9A.56.070)	D
7		Motor Vehicle Related Crimes	
8	E	Driving Without a License	
9		(46.20.005)	E
10	B+	Hit and Run - Death	
11		(46.52.020(4)(a))	C+
12	C	Hit and Run - Injury	
13		(46.52.020(4)(b))	D
14	D	Hit and Run-Attended	
15		(46.52.020(5))	E
16	E	Hit and Run-Unattended	
17		(46.52.010)	E
18	C	Vehicular Assault (46.61.522)	D
19	C	Attempting to Elude Pursuing	
20		Police Vehicle (46.61.024)	D
21	E	Reckless Driving (46.61.500)	E
22	D	Driving While Under the Influence	
23		(46.61.502 and 46.61.504)	E
24		Other	
25	B	Bomb Threat (9.61.160)	C
26	C	Escape 1 (9A.76.110)	C
27	C	Escape 2 (9A.76.120)	C
28	D	Escape 3 (9A.76.130)	E
29	E	Obscene, Harassing, Etc.,	
30		Phone Calls (9.61.230)	E
31	A	Other Offense Equivalent to an	
32		Adult Class A Felony	B+
33	B	Other Offense Equivalent to an	
34		Adult Class B Felony	C
35	C	Other Offense Equivalent to an	
36		Adult Class C Felony	D
37	D	Other Offense Equivalent to an	
38		Adult Gross Misdemeanor	E

1	E	Other Offense Equivalent to an	
2		Adult Misdemeanor	E
3	V	Violation of Order of Restitution,	
4		Community Supervision, or	
5		Confinement (13.40.200)	V

6 Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses
7 and the standard range is established as follows:

8 1st escape or attempted escape during 12-month period - 4 weeks
9 confinement

10 2nd escape or attempted escape during 12-month period - 8 weeks
11 confinement

12 3rd and subsequent escape or attempted escape during 12-month
13 period - 12 weeks confinement

14 If the court finds that a respondent has violated terms of an order,
15 it may impose a penalty of up to 30 days of confinement.

16 **JUVENILE SENTENCING STANDARDS**

17 This schedule must be used for juvenile offenders. The court may
18 select sentencing option A, B, or C.

OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE

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Current Offense Category	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
A+	180 WEEKS TO AGE 21 YEARS				
A	103 WEEKS TO 129 WEEKS				
A-	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
	EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS				
B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
B	LOCAL SANCTIONS (LS)	15-36 WEEKS	52-65 WEEKS		
C+	LS	15-36 WEEKS			
C	LS	15-36 WEEKS			
		Local Sanctions: 0 to 30 Days			
D+	LS	0 to 12 Months Community Supervision 0 to 150 Hours Community Service			
D	LS	\$0 to \$500 Fine			
E	LS				
	0	1	2	3	4 or more
	PRIOR ADJUDICATIONS				

36 NOTE: References in the grid to days or weeks mean periods of
37 confinement.

38 (1) The vertical axis of the grid is the current offense category.
39 The current offense category is determined by the offense of
40 adjudication.

41 (2) The horizontal axis of the grid is the number of prior
42 adjudications included in the juvenile's criminal history. Each prior
43 felony adjudication shall count as one point. Each prior violation,

1 misdemeanor, and gross misdemeanor adjudication shall count as 1/4
2 point. Fractional points shall be rounded down.

3 (3) The standard range disposition for each offense is determined
4 by the intersection of the column defined by the prior adjudications
5 and the row defined by the current offense category.

6 (4) RCW 13.40.180 applies if the offender is being sentenced for
7 more than one offense.

8 (5) A current offense that is a violation is equivalent to an
9 offense category of E. However, a disposition for a violation shall
10 not include confinement.

11 OR

12 OPTION B

13 CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

14 If the juvenile offender is subject to a standard range disposition
15 of local sanctions or 15 to 36 weeks of confinement and has not
16 committed an A- or B+ offense, the court may impose a disposition under
17 RCW 13.40.160(4) and 13.40.165.

18 OR

19 OPTION C

20 MANIFEST INJUSTICE

21 If the court determines that a disposition under option A or B would
22 effectuate a manifest injustice, the court shall impose a disposition
23 outside the standard range under RCW 13.40.160(2).

24 **Sec. 17.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300
25 s 3, and 2001 c 7 s 2 are each reenacted and amended to read as
26 follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Board" means the indeterminate sentence review board created
30 under chapter 9.95 RCW.

31 (2) "Collect," or any derivative thereof, "collect and remit," or
32 "collect and deliver," when used with reference to the department,
33 means that the department, either directly or through a collection
34 agreement authorized by RCW 9.94A.760, is responsible for monitoring
35 and enforcing the offender's sentence with regard to the legal

1 financial obligation, receiving payment thereof from the offender, and,
2 consistent with current law, delivering daily the entire payment to the
3 superior court clerk without depositing it in a departmental account.

4 (3) "Commission" means the sentencing guidelines commission.

5 (4) "Community corrections officer" means an employee of the
6 department who is responsible for carrying out specific duties in
7 supervision of sentenced offenders and monitoring of sentence
8 conditions.

9 (5) "Community custody" means that portion of an offender's
10 sentence of confinement in lieu of earned release time or imposed
11 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
12 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
13 community subject to controls placed on the offender's movement and
14 activities by the department. For offenders placed on community
15 custody for crimes committed on or after July 1, 2000, the department
16 shall assess the offender's risk of reoffense and may establish and
17 modify conditions of community custody, in addition to those imposed by
18 the court, based upon the risk to community safety.

19 (6) "Community custody range" means the minimum and maximum period
20 of community custody included as part of a sentence under RCW
21 9.94A.715, as established by the commission or the legislature under
22 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

23 (7) "Community placement" means that period during which the
24 offender is subject to the conditions of community custody and/or
25 postrelease supervision, which begins either upon completion of the
26 term of confinement (postrelease supervision) or at such time as the
27 offender is transferred to community custody in lieu of earned release.
28 Community placement may consist of entirely community custody, entirely
29 postrelease supervision, or a combination of the two.

30 (8) "Community service" means compulsory service, without
31 compensation, performed for the benefit of the community by the
32 offender.

33 (9) "Community supervision" means a period of time during which a
34 convicted offender is subject to crime-related prohibitions and other
35 sentence conditions imposed by a court pursuant to this chapter or RCW
36 16.52.200(6) or 46.61.524. Where the court finds that any offender has
37 a chemical dependency that has contributed to his or her offense, the
38 conditions of supervision may, subject to available resources, include
39 treatment. For purposes of the interstate compact for out-of-state

1 supervision of parolees and probationers, RCW 9.95.270, community
2 supervision is the functional equivalent of probation and should be
3 considered the same as probation by other states.

4 (10) "Confinement" means total or partial confinement.

5 (11) "Conviction" means an adjudication of guilt pursuant to Titles
6 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
7 acceptance of a plea of guilty.

8 (12) "Crime-related prohibition" means an order of a court
9 prohibiting conduct that directly relates to the circumstances of the
10 crime for which the offender has been convicted, and shall not be
11 construed to mean orders directing an offender affirmatively to
12 participate in rehabilitative programs or to otherwise perform
13 affirmative conduct. However, affirmative acts necessary to monitor
14 compliance with the order of a court may be required by the department.

15 (13) "Criminal history" means the list of a defendant's prior
16 convictions and juvenile adjudications, whether in this state, in
17 federal court, or elsewhere. The history shall include, where known,
18 for each conviction (a) whether the defendant has been placed on
19 probation and the length and terms thereof; and (b) whether the
20 defendant has been incarcerated and the length of incarceration.

21 (14) "Day fine" means a fine imposed by the sentencing court that
22 equals the difference between the offender's net daily income and the
23 reasonable obligations that the offender has for the support of the
24 offender and any dependents.

25 (15) "Day reporting" means a program of enhanced supervision
26 designed to monitor the offender's daily activities and compliance with
27 sentence conditions, and in which the offender is required to report
28 daily to a specific location designated by the department or the
29 sentencing court.

30 (16) "Department" means the department of corrections.

31 (17) "Determinate sentence" means a sentence that states with
32 exactitude the number of actual years, months, or days of total
33 confinement, of partial confinement, of community supervision, the
34 number of actual hours or days of community service work, or dollars or
35 terms of a legal financial obligation. The fact that an offender
36 through earned release can reduce the actual period of confinement
37 shall not affect the classification of the sentence as a determinate
38 sentence.

1 (18) "Disposable earnings" means that part of the earnings of an
2 offender remaining after the deduction from those earnings of any
3 amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (19) "Drug offender sentencing alternative" is a sentencing option
14 available to persons convicted of a felony offense other than a violent
15 offense or a sex offense and who are eligible for the option under RCW
16 9.94A.660.

17 (20) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession of
19 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
20 controlled substance (RCW 69.50.403);

21 (b) Any offense defined as a felony under federal law that relates
22 to the possession, manufacture, distribution, or transportation of a
23 controlled substance; or

24 (c) Any out-of-state conviction for an offense that under the laws
25 of this state would be a felony classified as a drug offense under (a)
26 of this subsection.

27 (21) "Earned release" means earned release from confinement as
28 provided in RCW 9.94A.728.

29 (22) "Escape" means:

30 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
31 first degree (RCW 9A.76.110), escape in the second degree (RCW
32 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
33 willful failure to return from work release (RCW 72.65.070), or willful
34 failure to be available for supervision by the department while in
35 community custody (RCW 72.09.310); or

36 (b) Any federal or out-of-state conviction for an offense that
37 under the laws of this state would be a felony classified as an escape
38 under (a) of this subsection.

39 (23) "Felony traffic offense" means:

1 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
2 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
3 and-run injury-accident (RCW 46.52.020(4)); or

4 (b) Any federal or out-of-state conviction for an offense that
5 under the laws of this state would be a felony classified as a felony
6 traffic offense under (a) of this subsection.

7 (24) "Fine" means a specific sum of money ordered by the sentencing
8 court to be paid by the offender to the court over a specific period of
9 time.

10 (25) "First-time offender" means any person who has no prior
11 convictions for a felony and is eligible for the first-time offender
12 waiver under RCW 9.94A.650.

13 (26) "Home detention" means a program of partial confinement
14 available to offenders wherein the offender is confined in a private
15 residence subject to electronic surveillance.

16 (27) "Legal financial obligation" means a sum of money that is
17 ordered by a superior court of the state of Washington for legal
18 financial obligations which may include restitution to the victim,
19 statutorily imposed crime victims' compensation fees as assessed
20 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
21 court-appointed attorneys' fees, and costs of defense, fines, and any
22 other financial obligation that is assessed to the offender as a result
23 of a felony conviction. Upon conviction for vehicular assault while
24 under the influence of intoxicating liquor or any drug, RCW
25 46.61.522(1)(b), or vehicular homicide while under the influence of
26 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
27 obligations may also include payment to a public agency of the expense
28 of an emergency response to the incident resulting in the conviction,
29 subject to RCW 38.52.430.

30 (28) "Most serious offense" means any of the following felonies or
31 a felony attempt to commit any of the following felonies:

32 (a) Any felony defined under any law as a class A felony or
33 criminal solicitation of or criminal conspiracy to commit a class A
34 felony;

35 (b) Assault in the second degree;

36 (c) Assault of a child in the second degree;

37 (d) Child molestation in the second degree;

38 (e) Controlled substance homicide;

39 (f) Extortion in the first degree;

1 (g) Incest when committed against a child under age fourteen;
2 (h) Indecent liberties;
3 (i) Kidnapping in the second degree;
4 (j) Leading organized crime;
5 (k) Manslaughter in the first degree;
6 (l) Manslaughter in the second degree;
7 (m) Promoting prostitution in the first degree;
8 (n) Rape in the third degree;
9 (o) Robbery in the second degree;
10 (p) Sexual exploitation;
11 (q) Vehicular assault, when caused by the operation or driving of
12 a vehicle by a person while under the influence of intoxicating liquor
13 or any drug or by the operation or driving of a vehicle in a reckless
14 manner;
15 (r) Vehicular homicide, when proximately caused by the driving of
16 any vehicle by any person while under the influence of intoxicating
17 liquor or any drug as defined by RCW 46.61.502, or by the operation of
18 any vehicle in a reckless manner;
19 (s) Any other class B felony offense with a finding of sexual
20 motivation;
21 (t) Any other felony with a deadly weapon verdict under RCW
22 9.94A.602;
23 (u) Any felony offense in effect at any time prior to December 2,
24 1993, that is comparable to a most serious offense under this
25 subsection, or any federal or out-of-state conviction for an offense
26 that under the laws of this state would be a felony classified as a
27 most serious offense under this subsection;
28 (v)(i) A prior conviction for indecent liberties under RCW
29 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
30 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
31 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
32 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
33 (ii) A prior conviction for indecent liberties under RCW
34 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
35 if: (A) The crime was committed against a child under the age of
36 fourteen; or (B) the relationship between the victim and perpetrator is
37 included in the definition of indecent liberties under RCW
38 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,

1 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
2 through July 27, 1997.

3 (29) "Nonviolent offense" means an offense which is not a violent
4 offense.

5 (30) "Offender" means a person who has committed a felony
6 established by state law and is eighteen years of age or older or is
7 less than eighteen years of age but whose case is under superior court
8 jurisdiction under RCW 13.04.030 or has been transferred by the
9 appropriate juvenile court to a criminal court pursuant to RCW
10 13.40.110. Throughout this chapter, the terms "offender" and
11 "defendant" are used interchangeably.

12 (31) "Partial confinement" means confinement for no more than one
13 year in a facility or institution operated or utilized under contract
14 by the state or any other unit of government, or, if home detention or
15 work crew has been ordered by the court, in an approved residence, for
16 a substantial portion of each day with the balance of the day spent in
17 the community. Partial confinement includes work release, home
18 detention, work crew, and a combination of work crew and home
19 detention.

20 (32) "Persistent offender" is an offender who:

21 (a)(i) Has been convicted in this state of any felony considered a
22 most serious offense; and

23 (ii) Has, before the commission of the offense under (a) of this
24 subsection, been convicted as an offender on at least two separate
25 occasions, whether in this state or elsewhere, of felonies that under
26 the laws of this state would be considered most serious offenses and
27 would be included in the offender score under RCW 9.94A.525; provided
28 that of the two or more previous convictions, at least one conviction
29 must have occurred before the commission of any of the other most
30 serious offenses for which the offender was previously convicted; or

31 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
32 of a child in the first degree, child molestation in the first degree,
33 rape in the second degree, rape of a child in the second degree, or
34 indecent liberties by forcible compulsion; (B) any of the following
35 offenses with a finding of sexual motivation: Murder in the first
36 degree, murder in the second degree, homicide by abuse, kidnapping in
37 the first degree, kidnapping in the second degree, assault in the first
38 degree, assault in the second degree, assault of a child in the first

1 degree, or burglary in the first degree; or (C) an attempt to commit
2 any crime listed in this subsection (32)(b)(i); and

3 (ii) Has, before the commission of the offense under (b)(i) of this
4 subsection, been convicted as an offender on at least one occasion,
5 whether in this state or elsewhere, of an offense listed in (b)(i) of
6 this subsection or any federal or out-of-state offense or offense under
7 prior Washington law that is comparable to the offenses listed in
8 (b)(i) of this subsection. A conviction for rape of a child in the
9 first degree constitutes a conviction under (b)(i) of this subsection
10 only when the offender was sixteen years of age or older when the
11 offender committed the offense. A conviction for rape of a child in
12 the second degree constitutes a conviction under (b)(i) of this
13 subsection only when the offender was eighteen years of age or older
14 when the offender committed the offense.

15 (33) "Postrelease supervision" is that portion of an offender's
16 community placement that is not community custody.

17 (34) "Restitution" means a specific sum of money ordered by the
18 sentencing court to be paid by the offender to the court over a
19 specified period of time as payment of damages. The sum may include
20 both public and private costs.

21 (35) "Risk assessment" means the application of an objective
22 instrument supported by research and adopted by the department for the
23 purpose of assessing an offender's risk of reoffense, taking into
24 consideration the nature of the harm done by the offender, place and
25 circumstances of the offender related to risk, the offender's
26 relationship to any victim, and any information provided to the
27 department by victims. The results of a risk assessment shall not be
28 based on unconfirmed or unconfirmable allegations.

29 (36) "Serious traffic offense" means:

30 (a) Driving while under the influence of intoxicating liquor or any
31 drug (RCW 46.61.502), actual physical control while under the influence
32 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
33 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
34 or

35 (b) Any federal, out-of-state, county, or municipal conviction for
36 an offense that under the laws of this state would be classified as a
37 serious traffic offense under (a) of this subsection.

38 (37) "Serious violent offense" is a subcategory of violent offense
39 and means:

1 (a)(i) Murder in the first degree;
2 (ii) Homicide by abuse;
3 (iii) Murder in the second degree;
4 (iv) Manslaughter in the first degree;
5 (v) Assault in the first degree;
6 (vi) Kidnapping in the first degree;
7 (vii) Rape in the first degree;
8 (viii) Assault of a child in the first degree; ((~~or~~))
9 (ix) Terrorism in the first degree (RCW 9A.--.--- (section 3 of
10 this act));
11 (x) Terrorism in the second degree (RCW 9A.--.--- (section 4 of
12 this act));
13 (xi) Unlawful use or possession of a weapon of mass destruction
14 (RCW 9A.--.--- (section 5 of this act)); or
15 (xii) An attempt, criminal solicitation, or criminal conspiracy to
16 commit one of these felonies; or
17 (b) Any federal or out-of-state conviction for an offense that
18 under the laws of this state would be a felony classified as a serious
19 violent offense under (a) of this subsection.
20 (38) "Sex offense" means:
21 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
22 RCW 9A.44.130(11);
23 (ii) A violation of RCW 9A.64.020;
24 (iii) A felony that is a violation of chapter 9.68A RCW other than
25 RCW 9.68A.070 or 9.68A.080; or
26 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
27 criminal solicitation, or criminal conspiracy to commit such crimes;
28 (b) Any conviction for a felony offense in effect at any time prior
29 to July 1, 1976, that is comparable to a felony classified as a sex
30 offense in (a) of this subsection;
31 (c) A felony with a finding of sexual motivation under RCW
32 9.94A.835 or 13.40.135; or
33 (d) Any federal or out-of-state conviction for an offense that
34 under the laws of this state would be a felony classified as a sex
35 offense under (a) of this subsection.
36 (39) "Sexual motivation" means that one of the purposes for which
37 the defendant committed the crime was for the purpose of his or her
38 sexual gratification.

1 (40) "Standard sentence range" means the sentencing court's
2 discretionary range in imposing a nonappealable sentence.

3 (41) "Statutory maximum sentence" means the maximum length of time
4 for which an offender may be confined as punishment for a crime as
5 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
6 crime, or other statute defining the maximum penalty for a crime.

7 (42) "Total confinement" means confinement inside the physical
8 boundaries of a facility or institution operated or utilized under
9 contract by the state or any other unit of government for twenty-four
10 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (43) "Transition training" means written and verbal instructions
12 and assistance provided by the department to the offender during the
13 two weeks prior to the offender's successful completion of the work
14 ethic camp program. The transition training shall include instructions
15 in the offender's requirements and obligations during the offender's
16 period of community custody.

17 (44) "Victim" means any person who has sustained emotional,
18 psychological, physical, or financial injury to person or property as
19 a direct result of the crime charged.

20 (45) "Violent offense" means:

21 (a) Any of the following felonies:

22 (i) Any felony defined under any law as a class A felony or an
23 attempt to commit a class A felony;

24 (ii) Criminal solicitation of or criminal conspiracy to commit a
25 class A felony;

26 (iii) Manslaughter in the first degree;

27 (iv) Manslaughter in the second degree;

28 (v) Indecent liberties if committed by forcible compulsion;

29 (vi) Kidnapping in the second degree;

30 (vii) Arson in the second degree;

31 (viii) Assault in the second degree;

32 (ix) Assault of a child in the second degree;

33 (x) Extortion in the first degree;

34 (xi) Robbery in the second degree;

35 (xii) Drive-by shooting;

36 (xiii) Vehicular assault, when caused by the operation or driving
37 of a vehicle by a person while under the influence of intoxicating
38 liquor or any drug or by the operation or driving of a vehicle in a
39 reckless manner; and

1 (xiv) Vehicular homicide, when proximately caused by the driving of
2 any vehicle by any person while under the influence of intoxicating
3 liquor or any drug as defined by RCW 46.61.502, or by the operation of
4 any vehicle in a reckless manner;

5 (b) Any conviction for a felony offense in effect at any time prior
6 to July 1, 1976, that is comparable to a felony classified as a violent
7 offense in (a) of this subsection; and

8 (c) Any federal or out-of-state conviction for an offense that
9 under the laws of this state would be a felony classified as a violent
10 offense under (a) or (b) of this subsection.

11 (46) "Work crew" means a program of partial confinement consisting
12 of civic improvement tasks for the benefit of the community that
13 complies with RCW 9.94A.725.

14 (47) "Work ethic camp" means an alternative incarceration program
15 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
16 the cost of corrections by requiring offenders to complete a
17 comprehensive array of real-world job and vocational experiences,
18 character-building work ethics training, life management skills
19 development, substance abuse rehabilitation, counseling, literacy
20 training, and basic adult education.

21 (48) "Work release" means a program of partial confinement
22 available to offenders who are employed or engaged as a student in a
23 regular course of study at school.

24 **Sec. 18.** RCW 9A.04.080 and 1998 c 221 s 2 are each amended to read
25 as follows:

26 (1) Prosecutions for criminal offenses shall not be commenced after
27 the periods prescribed in this section.

28 (a) The following offenses may be prosecuted at any time after
29 their commission:

30 (i) Murder;

31 (ii) Any offense defined in chapter 9A.-- RCW (sections 1 through
32 8 and 19 through 25 of this act);

33 (iii) Homicide by abuse;

34 ~~((iii))~~ (iv) Arson if a death results;

35 ~~((iv))~~ (v) Vehicular homicide;

36 ~~((v))~~ (vi) Vehicular assault if a death results;

37 ~~((vi))~~ (vii) Hit-and-run injury-accident if a death results (RCW
38 46.52.020(4)).

1 (b) The following offenses shall not be prosecuted more than ten
2 years after their commission:

3 (i) Any felony committed by a public officer if the commission is
4 in connection with the duties of his or her office or constitutes a
5 breach of his or her public duty or a violation of the oath of office;

6 (ii) Arson if no death results; or

7 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
8 reported to a law enforcement agency within one year of its commission;
9 except that if the victim is under fourteen years of age when the rape
10 is committed and the rape is reported to a law enforcement agency
11 within one year of its commission, the violation may be prosecuted up
12 to three years after the victim's eighteenth birthday or up to ten
13 years after the rape's commission, whichever is later. If a violation
14 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape
15 may not be prosecuted: (A) More than three years after its commission
16 if the violation was committed against a victim fourteen years of age
17 or older; or (B) more than three years after the victim's eighteenth
18 birthday or more than seven years after the rape's commission,
19 whichever is later, if the violation was committed against a victim
20 under fourteen years of age.

21 (c) Violations of the following statutes shall not be prosecuted
22 more than three years after the victim's eighteenth birthday or more
23 than seven years after their commission, whichever is later: RCW
24 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
25 9A.44.100(1)(b), or 9A.64.020.

26 (d) The following offenses shall not be prosecuted more than six
27 years after their commission: Violations of RCW 9A.82.060 or
28 9A.82.080.

29 (e) The following offenses shall not be prosecuted more than five
30 years after their commission: Any class C felony under chapter 74.09,
31 82.36, or 82.38 RCW.

32 (f) Bigamy shall not be prosecuted more than three years after the
33 time specified in RCW 9A.64.010.

34 (g) A violation of RCW 9A.56.030 must not be prosecuted more than
35 three years after the discovery of the offense when the victim is a tax
36 exempt corporation under 26 U.S.C. Sec. 501(c)(3).

37 (h) No other felony may be prosecuted more than three years after
38 its commission; except that in a prosecution under RCW 9A.44.115, if
39 the person who was viewed, photographed, or filmed did not realize at

1 the time that he or she was being viewed, photographed, or filmed, the
2 prosecution must be commenced within two years of the time the person
3 who was viewed or in the photograph or film first learns that he or she
4 was viewed, photographed, or filmed.

5 (i) No gross misdemeanor may be prosecuted more than two years
6 after its commission.

7 (j) No misdemeanor may be prosecuted more than one year after its
8 commission.

9 (2) The periods of limitation prescribed in subsection (1) of this
10 section do not run during any time when the person charged is not
11 usually and publicly resident within this state.

12 (3) If, before the end of a period of limitation prescribed in
13 subsection (1) of this section, an indictment has been found or a
14 complaint or an information has been filed, and the indictment,
15 complaint, or information is set aside, then the period of limitation
16 is extended by a period equal to the length of time from the finding or
17 filing to the setting aside.

18 NEW SECTION. **Sec. 19.** CRIMINAL PENALTIES ADDITIONAL TO CIVIL AND
19 ADMINISTRATIVE SANCTIONS. The penalties imposed pursuant to this
20 chapter shall be in addition to, and not in lieu of, all other civil,
21 administrative, and other penalties and remedies provided for by other
22 laws providing penalties or remedies for actions or conduct which also
23 constitutes a violation of this chapter.

24 NEW SECTION. **Sec. 20.** ADDITIONAL PENALTIES. In addition to all
25 other penalties, criminal or civil, and any other provision of law
26 notwithstanding, any person convicted of any of the offenses described
27 in this chapter shall be ordered by the sentencing court to:

28 (1) Make restitution for actual damages sustained to those persons
29 or entities injured by the commission of any of the offenses described
30 in this chapter;

31 (2) Make restitution of all costs and expenses incurred by the
32 state or county in the investigation and prosecution of the offense,
33 including any costs of defense provided at public expense.

34 NEW SECTION. **Sec. 21.** ANTIMERGER PROVISION. Every person who, in
35 the commission of an offense defined by this chapter, commits any other

1 crime may be punished therefor, as well as for the violation of this
2 chapter, and may be prosecuted for each crime separately.

3 NEW SECTION. **Sec. 22.** SECTION CAPTIONS. Section captions as used
4 in this chapter do not constitute any part of the law.

5 NEW SECTION. **Sec. 23.** SEVERABILITY. If any provision of this act
6 or its application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 24.** SHORT TITLE. This act shall be known as
10 the Washington AntiTerrorism Act of 2002.

11 NEW SECTION. **Sec. 25.** DECLARING AN EMERGENCY. This act is
12 necessary for the immediate preservation of the public peace, health,
13 or safety, or support of the state government and its existing public
14 institutions, and takes effect immediately.

15 NEW SECTION. **Sec. 26.** It is the intent of the legislature to
16 prevent terrorist attacks, and thereby save the lives of Washington
17 residents by providing appropriate investigative tools that facilitate
18 and promote cooperation between local, state, and federal law
19 enforcement agencies, that remove barriers to cooperation in terrorism
20 investigations, and that continue to protect the privacy rights of
21 residents of the state.

22 NEW SECTION. **Sec. 27.** A new section is added to chapter 9.73 RCW
23 to read as follows:

24 The attorney general or any deputy or assistant attorney general
25 specifically designated by the attorney general, or a prosecuting
26 attorney or any deputy or assistant prosecuting attorney specifically
27 designated by a prosecuting attorney, may authorize an application to
28 a superior court for, and the court may grant, in conformity with
29 section 28 of this act, an order authorizing the interception, by a law
30 enforcement agency having responsibility for the investigation of the
31 offense as to which the application is made, of wire, oral, or
32 electronic communications if the interception may provide evidence of
33 an act of terrorism.

1 NEW SECTION. **Sec. 28.** A new section is added to chapter 9.73 RCW
2 to read as follows:

3 (1) Each application pursuant to section 27 of this act for an
4 order authorizing the interception of a wire, oral, or electronic
5 communication shall be made in writing upon oath or affirmation to a
6 superior court and shall state the applicant's authority to make the
7 application. Each application shall include the following information:

8 (a) The identity of the investigative or law enforcement officer
9 making the application, and the officer authorizing the application;

10 (b) A full and complete statement of the facts and circumstances
11 relied upon by the applicant, to justify his or her belief that an
12 order should be issued, including (i) details as to the particular act
13 of terrorism that has been, is being, or is about to be committed, (ii)
14 except as provided in subsection (11) of this section, a particular
15 description of the nature and location of the facilities from which or
16 the place where the communication is to be intercepted, (iii) a
17 particular description of the type of communications sought to be
18 intercepted, and (iv) the identity of the person, if known, committing
19 the offense and whose communications are to be intercepted;

20 (c) A full and complete statement as to whether or not other
21 investigative procedures have been tried and failed or why they
22 reasonably appear to be unlikely to succeed if tried or to be too
23 dangerous;

24 (d) A statement of the period of time for which the interception is
25 required to be maintained. If the nature of the investigation is such
26 that the authorization of interceptions should not automatically
27 terminate when the described type of communication has been first
28 obtained, a particular description of facts establishing probable cause
29 to believe that additional communications of the same type will occur
30 thereafter;

31 (e) A full and complete statement of the facts concerning all
32 previous applications known to the individual authorizing and making
33 the application, made to any court for authorization to intercept wire,
34 oral, or electronic communications involving any of the same persons,
35 facilities, or places specified in the application, and the action
36 taken by the court on each such application; and

37 (f) Where the application is for the extension of an order, a
38 statement setting forth the results thus far obtained from the

1 interception, or a reasonable explanation of the failure to obtain
2 results.

3 (2) The court may require the applicant to furnish additional
4 testimony or documentary evidence in support of the application.

5 (3) Upon receiving the application, the court may enter an ex parte
6 order, as requested or as modified, authorizing interception of wire,
7 oral, or electronic communications, if the court determines on the
8 basis of the facts submitted by the applicant that:

9 (a) There is probable cause for belief that a person is committing,
10 has committed, or is about to commit an act of terrorism;

11 (b) There is probable cause for belief that particular
12 communications concerning the offense will be obtained through the
13 interception;

14 (c) Normal investigative procedures have been tried and have failed
15 or reasonably appear to be unlikely to succeed if tried or to be too
16 dangerous;

17 (d) Except as provided in subsection (11) of this section, there is
18 probable cause for belief that the facilities from which, or the place
19 where, the wire, oral, or electronic communications are to be
20 intercepted are being used, or are about to be used, in connection with
21 the commission of the offense, or are leased to, listed in the name of,
22 or commonly used by such person.

23 (4) Each order authorizing the interception of any wire, oral, or
24 electronic communication under this section shall specify:

25 (a) The identity of the person, if known, whose communications are
26 to be intercepted;

27 (b) The nature and location of the communications facilities as to
28 which, or the place where, authority to intercept is to be granted;

29 (c) A particular description of the type of communication sought to
30 be intercepted, and a statement of the particular offense to which it
31 relates;

32 (d) The identity of the agency authorized to intercept the
33 communications, and of the person authorizing the application; and

34 (e) The period of time during which the interception is authorized,
35 including a statement as to whether or not the interception shall
36 automatically terminate when the described communication has been first
37 obtained.

38 (5) An order authorizing the interception of a wire, oral, or
39 electronic communication under this section shall, upon request of the

1 applicant, direct that a provider of wire or electronic communication
2 service, landlord, custodian, or other person shall furnish the
3 applicant forthwith all information, facilities, and technical
4 assistance necessary to accomplish the interception unobtrusively and
5 with a minimum of interference with the services that the service
6 provider, landlord, custodian, or such other person is according the
7 person whose communications are to be intercepted. Any service
8 provider, landlord, custodian, or other person furnishing such
9 facilities or technical assistance shall be compensated by the
10 applicant for reasonable expenses incurred in providing the facilities
11 or assistance.

12 (6) No order entered under this section may authorize the
13 interception of any wire, oral, or electronic communication for any
14 period longer than is necessary to achieve the objective of the
15 authorization, nor in any event longer than thirty days. The
16 thirty-day period begins on the earlier of the day on which the
17 investigative or law enforcement officer first begins to conduct an
18 interception under the order or ten days after the order is entered.
19 Extensions of an order may be granted, but only upon application for an
20 extension made in accordance with subsection (1) of this section and
21 the court making the findings required by subsection (3) of this
22 section. The period of extension shall be no longer than the
23 authorizing court deems necessary to achieve the purposes for which it
24 is granted and in no event for longer than thirty days. Every order
25 and extension shall contain a provision that the authorization to
26 intercept shall be executed as soon as practicable, shall be conducted
27 in such a way as to minimize the interception of communications not
28 otherwise subject to interception under this section, and must
29 terminate upon attainment of the authorized objective, or in any event
30 in thirty days. In the event the intercepted communication is in a
31 code or foreign language, and an expert in that code or foreign
32 language is not reasonably available during the interception period,
33 minimization may be accomplished as soon as practicable after the
34 interception. An interception under this section may be conducted in
35 whole or in part by employees of the state or a political subdivision
36 of the state, or by an individual operating under a contract with the
37 state or a political subdivision of the state, when acting under the
38 supervision of an investigative or law enforcement officer authorized
39 to conduct the interception.

1 (7) Whenever an order authorizing interception is entered pursuant
2 to this section, the order may require reports to be made to the court
3 that issued the order showing what progress has been made toward
4 achievement of the authorized objective and the need for continued
5 interception. The reports shall be made at such intervals as the court
6 may require.

7 (8)(a) The contents of any wire, oral, or electronic communication
8 intercepted by any means authorized by this section shall, if possible,
9 be recorded on tape or wire or other comparable device. The recording
10 of the contents of any wire, oral, or electronic communication under
11 this subsection shall be done in such a way as will protect the
12 recording from editing or other alterations. Immediately upon the
13 expiration of the period of the order, or extensions thereof, the
14 recordings shall be made available to the court issuing the order and
15 shall be sealed under the court's directions. Custody of the
16 recordings shall be wherever the court orders. The recordings shall
17 not be destroyed except upon an order of the issuing court and in any
18 event shall be kept for at least ten years. Duplicate recordings may
19 be made for use, or for disclosure pursuant to the provisions of
20 section 31 (1) and (2) of this act, for investigations. The presence
21 of the seal provided for by this subsection, or a satisfactory
22 explanation for the absence thereof, shall be a prerequisite for the
23 use or disclosure of the contents of any wire, oral, or electronic
24 communication or derivative evidence under section 31(3) of this act.

25 (b) Applications made and orders granted under this section shall
26 be sealed by the court. Custody of the applications and orders shall
27 be wherever the court directs. The applications and orders shall be
28 disclosed only upon a showing of good cause before a superior court and
29 shall not be destroyed except on order of the issuing or denying court,
30 and in any event shall be kept for at least ten years.

31 (c) Any violation of the provisions of this subsection may be
32 punished as contempt of the issuing or denying court.

33 (d) Within a reasonable time but not later than ninety days after
34 the termination of the period of an order or extensions thereof, the
35 issuing court shall cause to be served, on the persons named in the
36 order, and such other parties to intercepted communications as the
37 court may determine is in the interest of justice, an inventory which
38 shall include notice of (i) the fact of the entry of the order, (ii)
39 the date of the entry and the period of authorized interception, and

1 (iii) whether during that period wire, oral, or electronic
2 communications were or were not intercepted.

3 The court, upon the filing of a motion, may make available to any
4 such person or party or his or her counsel for inspection such portions
5 of the intercepted communications and orders as the court determines to
6 be in the interest of justice. On an ex parte showing of good cause to
7 the court, the serving of the inventory required by this subsection may
8 be postponed.

9 (9) The contents of any wire, oral, or electronic communication
10 intercepted pursuant to this section or evidence derived from such
11 contents shall not be received in evidence or otherwise disclosed in
12 any trial, hearing, or other proceeding in a court of this state unless
13 each party, not less than ten days before the trial, hearing, or
14 proceeding, has been furnished with a copy of the court order, and
15 accompanying application, under which the interception was authorized.
16 This ten-day period may be waived by the court upon a finding that it
17 was not possible to furnish the party with the order and application
18 ten days before the trial, hearing, or proceeding and that the party
19 will not be prejudiced by the delay in receiving such information.

20 (10)(a) An aggrieved person in any trial, hearing, or other
21 proceeding in or before any court, administrative law judge, hearing
22 officer or examiner, department, officer, agency, board, regulatory
23 body, legislative committee, or other similar authority of this state
24 or any political subdivision of this state may move to suppress the
25 contents of any wire, oral, or electronic communication intercepted
26 pursuant to this section, or evidence derived from such contents, on
27 the grounds that (i) the communication was unlawfully intercepted; (ii)
28 the order of authorization under which it was intercepted is
29 insufficient on its face; or (iii) the interception was not made in
30 conformity with the order of authorization.

31 Such a motion shall be made before the trial, hearing, or
32 proceeding unless there was no opportunity to make the motion or the
33 person was not aware of the grounds of the motion. If the motion is
34 granted, the contents of the intercepted wire, oral, or electronic
35 communication, or evidence derived from such contents, shall be treated
36 as having been obtained in violation of this section. The court or
37 person presiding, upon the filing of such a motion by the aggrieved
38 person, may make available to the aggrieved person or his or her
39 counsel for inspection such portions of the intercepted communication

1 or derivative evidence as the court or person presiding determines to
2 be in the interest of justice.

3 (b) In addition to any other right to appeal, the state or other
4 proponent of evidence that is suppressed has the right to appeal from
5 an order granting a motion to suppress made under (a) of this
6 subsection, if the attorney for the state or other proponent certifies
7 to the court or other official granting the motion that the appeal is
8 not taken for purposes of delay. Such an appeal shall be taken within
9 thirty days after the date the order was entered and shall be
10 diligently prosecuted.

11 (11) The requirements of (1)(b)(ii) and (3)(d) of this section
12 relating to the specification of the facilities from which, or the
13 place where, a communication is to be intercepted do not apply if:

14 (a) In the case of an application with respect to the interception
15 of an oral communication:

16 (i) The application is by an investigative or law enforcement
17 officer and is approved by the attorney general, a prosecuting
18 attorney, or other attorney authorized to provide such approval under
19 section 27 of this act;

20 (ii) The application contains a full and complete statement as to
21 why such specification is not practical and identifies the person
22 believed to be committing the offense and whose communications are to
23 be intercepted; and

24 (iii) The court finds that such specification is not practical; and

25 (b) In the case of an application with respect to a wire or
26 electronic communication:

27 (i) The application is by an investigative or law enforcement
28 officer and is approved by the attorney general, a prosecuting
29 attorney, or other attorney authorized to provide such approval under
30 section 27 of this act;

31 (ii) The application identifies the person believed to be
32 committing the offense and whose communications are to be intercepted
33 and the applicant makes a showing that there is probable cause to
34 believe that the person's actions could have the effect of thwarting
35 interception from a specified facility;

36 (iii) The court finds that such showing has been adequately made;
37 and

38 (iv) The order authorizing the interception is limited to
39 interception only for such time as it is reasonable to presume that the

1 person identified in the application is reasonably proximate to the
2 instrument through which such communication will be transmitted.

3 (12) An interception of a communication under an order with respect
4 to which the requirements of (1)(b)(ii) and (3)(d) of this section do
5 not apply by reason of subsection (11)(a) of this section shall not
6 begin until the facilities from which, or the place where, the
7 communication is to be intercepted is ascertained by the person
8 implementing the interception order. A provider of wire or electronic
9 communication service that has received an order as provided for in
10 subsection (11)(b) of this section may move the court to modify or
11 quash the order on the ground that its assistance with respect to the
12 interception cannot be performed in a timely or reasonable fashion.
13 The court, upon notice to the government, shall decide such a motion
14 expeditiously.

15 NEW SECTION. **Sec. 29.** A new section is added to chapter 9.73 RCW
16 to read as follows:

17 (1) As part of a bona fide criminal investigation, the chief law
18 enforcement officer of a law enforcement agency or his or her designee
19 above the rank of first line supervisor may authorize the interception,
20 transmission, or recording of a conversation or communication by
21 officers under the following circumstances:

22 (a) At least one party to the conversation or communication has
23 consented to the interception, transmission, or recording;

24 (b) Probable cause exists to believe that the conversation or
25 communication involves an act of terrorism; and

26 (c) A written report has been completed as required by subsection
27 (2) of this section.

28 (2) The agency's chief officer or designee authorizing an
29 interception, transmission, or recording under subsection (1) of this
30 section shall prepare and sign a written report at the time of
31 authorization indicating:

32 (a) The circumstances that meet the requirements of subsection (1)
33 of this section;

34 (b) The names of the authorizing and consenting parties, except
35 that in those cases where the consenting party is a confidential
36 informant, the name of the confidential informant need not be divulged;

37 (c) The names of the officers authorized to intercept, transmit,
38 and record the conversation or communication;

1 (d) The identity of the particular person or persons, if known, who
2 may have committed or may commit the offense;

3 (e) The details of the particular offense or offenses that may have
4 been or may be committed and the expected date, location, and
5 approximate time of the conversation or communication; and

6 (f) Whether there was an attempt to obtain authorization pursuant
7 to RCW 9.73.090(2) and, if there was such an attempt, the outcome of
8 the attempt.

9 (3) An authorization under this section is valid in all
10 jurisdictions within Washington state and for the interception of
11 communications from additional persons if the persons are brought into
12 the conversation or transaction by the nonconsenting party or if the
13 nonconsenting party or such additional persons cause or invite the
14 consenting party to enter another jurisdiction.

15 (4) The recording of any conversation or communication under this
16 section shall be done in such a manner that protects the recording from
17 editing or other alterations.

18 (5) An authorization made under this section is valid for no more
19 than twenty-four hours from the time it is signed by the authorizing
20 officer, and each authorization shall independently meet all of the
21 requirements of this section. The authorizing officer shall sign the
22 written report required under subsection (2) of this section,
23 certifying the exact date and time of his or her signature. An
24 authorization under this section may be extended not more than twice
25 for an additional consecutive twenty-four hour period based upon the
26 same probable cause regarding the same suspected transaction. Each
27 such extension shall be signed by the authorizing officer.

28 (6) Within fifteen days after the signing of an authorization that
29 results in any interception, transmission, or recording of a
30 conversation or communication pursuant to this section, the law
31 enforcement agency which made the interception, transmission, or
32 recording shall submit a report including the original authorization
33 under subsection (2) of this section to a judge of a court having
34 jurisdiction which report shall identify (a) the persons, including the
35 consenting party, who participated in the conversation, and (b) the
36 date, location, and approximate time of the conversation.

37 In those cases where the consenting party is a confidential
38 informant, the name of the confidential informant need not be divulged.

1 A monthly report shall be filed by the law enforcement agency with
2 the administrator for the courts indicating the number of
3 authorizations granted, the date and time of each authorization,
4 interceptions made, arrests resulting from an interception, and
5 subsequent invalidations.

6 (7)(a) Within two judicial days of receipt of a report under
7 subsection (6) of this section, the court shall make an ex parte review
8 of the authorization, but not of the evidence, and shall make a
9 determination whether the requirements of subsection (1) of this
10 section were met. If the court determines that any of the requirements
11 of subsection (1) of this section were not met, the court shall order
12 that any recording and any copies or transcriptions of the conversation
13 or communication be destroyed. Destruction of recordings, copies, or
14 transcriptions shall be stayed pending any appeal of a finding that the
15 requirements of subsection (1) of this section were not met.

16 (b) Absent a continuation under (c) of this subsection, six months
17 following a determination under (a) of this subsection that probable
18 cause did not exist, the court shall cause a notice to be mailed to the
19 last known address of any nonconsenting party to the conversation or
20 communication that was the subject of the authorization. The notice
21 shall indicate the date, time, and place of any interception,
22 transmission, or recording made pursuant to the authorization. The
23 notice shall also identify the agency that sought the authorization and
24 shall indicate that a review under (a) of this subsection resulted in
25 a determination that the authorization was made in violation of this
26 section.

27 (c) An authorizing agency may obtain six-month extensions to the
28 notice requirement of (b) of this subsection in cases of active,
29 ongoing criminal investigations that might be jeopardized by sending
30 the notice.

31 (8) In any subsequent judicial proceeding, evidence obtained
32 through the interception or recording of a conversation or
33 communication pursuant to this section shall be admissible only if:

34 (a) The court finds that the requirements of subsection (1) of this
35 section were met and the evidence is used in prosecuting an offense
36 identified in subsection (1)(b) of this section, or the evidence is
37 used in accordance with section 31 of this act; or

1 (b) The evidence is admitted with the permission of the person
2 whose communication or conversation was intercepted, transmitted, or
3 recorded; or

4 (c) The evidence is admitted in a prosecution for a serious violent
5 offense as defined in RCW 9.94A.030 in which a party who consented to
6 the interception, transmission, or recording was a victim of the
7 offense; or

8 (d) The evidence is admitted in a civil suit for personal injury or
9 wrongful death arising out of the same incident, in which a party who
10 consented to the interception, transmission, or recording was a victim
11 of a serious violent offense as defined in RCW 9.94A.030.

12 Nothing in this subsection bars the admission of testimony of a
13 party or eyewitness to the intercepted, transmitted, or recorded
14 conversation or communication when that testimony is unaided by
15 information obtained solely by violation of RCW 9.73.030.

16 (9) Any determination of invalidity of an authorization under this
17 section shall be reported by the court to the office of the
18 administrator for the courts.

19 (10) Any person who intentionally intercepts, transmits, or records
20 or who intentionally authorizes the interception, transmission, or
21 recording of a conversation or communication in violation of this
22 section is guilty of a class C felony punishable according to chapter
23 9A.20 RCW.

24 (11) An authorizing agency is liable for twenty-five thousand
25 dollars in exemplary damages, in addition to any other damages
26 authorized by this chapter or by other law, to a person whose
27 conversation or communication was intercepted, transmitted, or recorded
28 pursuant to an authorization under this section if:

29 (a) In a review under subsection (7) of this section, or in a
30 suppression of evidence proceeding, it has been determined that the
31 authorization was made without the probable cause required by
32 subsection (1)(b) of this section; and

33 (b) The authorization was also made without a reasonable suspicion
34 that the conversation or communication would involve the unlawful acts
35 identified in subsection (1)(b) of this section.

36 NEW SECTION. **Sec. 30.** A new section is added to chapter 9.73 RCW
37 to read as follows:

1 (1) This section applies to pen registers and traps and traces as
2 defined in section 32 of this act when used to obtain information
3 regarding an act of terrorism.

4 (2) An investigative or law enforcement officer may seek and the
5 superior court may issue orders and extensions of orders authorizing
6 the installation or application and use of pen registers and traps and
7 traces as provided in this section. The request for an order shall be
8 under oath and shall include the identity of the officer seeking the
9 order and the identity of the law enforcement agency conducting the
10 investigation. The officer must certify that the information likely to
11 be obtained is relevant to an ongoing criminal investigation of
12 terrorism being conducted by that agency.

13 (3) If the court finds that the information likely to be obtained
14 by such installation or application and use is relevant to an ongoing
15 criminal investigation of terrorism and finds that there is probable
16 cause to believe that the pen register or trap and trace will lead to
17 obtaining evidence of terrorism, contraband, fruits of crime, things
18 criminally possessed, weapons, or other things by means of which an act
19 of terrorism has been committed or reasonably appears about to be
20 committed, or will lead to learning the location of a person who is
21 unlawfully restrained or reasonably believed to be a witness in an
22 investigation of such an act or for whose arrest there is probable
23 cause, the court shall enter an ex parte order authorizing the
24 installation or application and use of a pen register or a trap and
25 trace. The order shall specify:

26 (a) The identity, if known, of the person to whom is leased or in
27 whose name is listed the telephone line or other instrument or facility
28 to which the pen register or trap and trace is to be attached or
29 applied;

30 (b) The identity, if known, of the person who is the subject of the
31 criminal investigation;

32 (c) The attributes of the communications to which the order
33 applies, including the number or other identifier and, if known, the
34 location of the telephone line or other instrument or facility to which
35 the pen register or trap and trace is to be attached or applied, and,
36 in the case of a trap and trace, the geographic limits of the trap and
37 trace; and

38 (d) A statement of the act of terrorism to which the information
39 likely to be obtained by the pen register or trap and trace relates.

1 The order shall direct, if the applicant has requested, the
2 furnishing of information, facilities, and technical assistance
3 necessary to accomplish the installation of the pen register or trap
4 and trace. An order issued under this section shall authorize the
5 installation or application and use of a pen register or a trap and
6 trace for a period not to exceed sixty days. An extension of the
7 original order may only be granted upon: A new request for an order
8 under subsection (2) of this section; and a showing that there is a
9 probability that the information or items sought under this subsection
10 are more likely to be obtained under the extension than under the
11 original order. No extension beyond the first extension shall be
12 granted unless: There is a showing that there is a high probability
13 that the information or items sought under this subsection are much
14 more likely to be obtained under the second or subsequent extension
15 than under the original order; and there are extraordinary
16 circumstances such as a direct and immediate danger of death or serious
17 bodily injury to a law enforcement officer. The period of extension
18 shall be for a period not to exceed sixty days.

19 An order authorizing or approving the installation or application
20 and use of a pen register or a trap and trace shall direct that the
21 order be sealed until otherwise ordered by the court and that the
22 person owning or leasing the line or other facility to which the pen
23 register or trap and trace is attached or applied, or who has been
24 ordered by the court to provide assistance to the applicant, not
25 disclose the existence of the pen register or trap and trace or the
26 existence of the investigation to the listed subscriber or to any other
27 person, unless or until otherwise ordered by the court.

28 (4) Upon the presentation of an order, entered under subsection (3)
29 of this section, by an officer of a law enforcement agency authorized
30 to install or apply and use a pen register under this chapter, a
31 provider of wire or electronic communication service, landlord,
32 custodian, or other person shall furnish such law enforcement officer
33 forthwith all information, facilities, and technical assistance
34 necessary to accomplish the installation or application of the pen
35 register unobtrusively and with a minimum of interference with the
36 services that the person so ordered by the court accords the party with
37 respect to whom the installation or application and use is to take
38 place, if such assistance is directed by a court order as provided in
39 subsection (3) of this section.

1 Upon the request of an officer of a law enforcement agency
2 authorized to receive the results of a trap and trace under this
3 chapter, a provider of a wire or electronic communication service,
4 landlord, custodian, or other person shall install or apply the trap
5 and trace forthwith on the appropriate line or other facility and shall
6 furnish such law enforcement officer all additional information,
7 facilities, and technical assistance including installation or
8 application and operation of the device unobtrusively and with a
9 minimum of interference with the services that the person so ordered by
10 the court accords the party with respect to whom the installation or
11 application and use is to take place, if such installation or
12 application and assistance is directed by a court order as provided in
13 subsection (3) of this section. Unless otherwise ordered by the court,
14 the results of the trap and trace shall be furnished to the officer of
15 a law enforcement agency, designated in the court order, at reasonable
16 intervals during regular business hours for the duration of the order.

17 A provider of a wire or electronic communication service, landlord,
18 custodian, or other person who furnishes facilities or technical
19 assistance pursuant to this subsection shall be reasonably compensated
20 by the law enforcement agency that requests the facilities or
21 assistance for such reasonable expenses incurred in providing such
22 facilities and assistance.

23 No cause of action shall lie in any court against any provider of
24 a wire or electronic communication service, its officers, employees,
25 agents, or other specified persons for providing information,
26 facilities, or assistance in accordance with the terms of a court order
27 under this section. A good faith reliance on a court order under this
28 section, a request pursuant to this section, a legislative
29 authorization, or a statutory authorization is a complete defense
30 against any civil or criminal action brought under this chapter or any
31 other law.

32 (5)(a) Notwithstanding any other provision of this chapter, a law
33 enforcement officer and a prosecuting attorney or deputy prosecuting
34 attorney who jointly and reasonably determine that there is probable
35 cause to believe that an emergency situation exists that involves
36 immediate danger of death or serious bodily injury to any person that
37 requires the installation or application and use of a pen register or
38 a trap and trace before an order authorizing such installation or
39 application and use can, with due diligence, be obtained, and there are

1 grounds upon which an order could be entered under this chapter to
2 authorize such installation or application and use, may have installed
3 or applied and use a pen register or trap and trace if, within forty-
4 eight hours after the installation or application has occurred, or
5 begins to occur, an order approving the installation or application or
6 use is sought and issued in accordance with subsection (3) of this
7 section. In the absence of an authorizing order, such use shall
8 immediately terminate when the information sought is obtained, when the
9 request for the order is denied, or when forty-eight hours have lapsed
10 since the installation or application of the pen register or trap and
11 trace, whichever is earlier. If an order approving the installation,
12 application, or use is not obtained within forty-eight hours, any
13 information obtained is not admissible as evidence in any legal
14 proceeding. The knowing installation, application, or use by any law
15 enforcement officer of a pen register or trap and trace pursuant to
16 this subsection without seeking the authorizing order within forty-
17 eight hours of the installation or application of the pen register or
18 trap and trace shall constitute a violation of this chapter and be
19 punishable as a gross misdemeanor. A provider of a wire or electronic
20 communication service, landlord, custodian, or other person who
21 furnished facilities or technical assistance pursuant to this
22 subsection shall be reasonably compensated by the law enforcement
23 agency that requests the facilities or assistance for such reasonable
24 expenses incurred in providing such facilities and assistance.

25 (b) A law enforcement agency that authorizes the installation or
26 application of a pen register or trap and trace under this subsection
27 (5) shall file a monthly report with the administrator for the courts.
28 The report shall indicate the number of authorizations made, the date
29 and time of each authorization, whether a court authorization was
30 sought within forty-eight hours, and whether a subsequent court
31 authorization was granted.

32 NEW SECTION. **Sec. 31.** A new section is added to chapter 9.73 RCW
33 to read as follows:

34 (1)(a) Any investigative or law enforcement officer who, by any
35 means authorized by this section or section 28 or 29 of this act, has
36 obtained knowledge of the contents of any wire, oral, or electronic
37 communication, or evidence derived from such contents, may disclose
38 such contents or derivative evidence to another investigative or law

1 enforcement officer, including an investigative or law enforcement
2 officer of another state, to the extent that such disclosure is
3 appropriate to the proper performance of the official duties of the
4 officer making or receiving the disclosure; or

5 (b) Any investigative or law enforcement officer who, by any means
6 authorized by this section or section 30 of this act, has obtained
7 information from a pen register or trap and trace, or evidence derived
8 from such information, may disclose such contents or derivative
9 evidence to another investigative or law enforcement officer, including
10 an investigative or law enforcement officer of another state, to the
11 extent that such disclosure is appropriate to the proper performance of
12 the official duties of the officer making or receiving the disclosure.

13 (2)(a) Any investigative or law enforcement officer who, by any
14 means authorized by this section or section 28 or 29 of this act, has
15 obtained knowledge of the contents of any wire, oral, or electronic
16 communication, or evidence derived from such contents, may use such
17 contents or derivative evidence to the extent such use is appropriate
18 to the proper performance of his or her official duties.

19 (b) Any investigative or law enforcement officer who, by any means
20 authorized by this section or section 30 of this act, has obtained
21 information from a pen register or trap and trace, or evidence derived
22 from such information, may use such information or derivative evidence
23 to the extent such use is appropriate to the proper performance of his
24 or her official duties.

25 (3)(a) Any person who, by any means authorized by this section or
26 section 28 or 29 of this act, has received any information concerning
27 the contents of a wire, oral, or electronic communication, or evidence
28 derived from such contents, intercepted in accordance with section 28
29 or 29 of this act, may disclose such contents or derivative evidence
30 while giving testimony under oath or affirmation in any proceeding held
31 under the authority of this state or any political subdivision of this
32 state.

33 (b) Any person who, by any means authorized by this section or
34 section 30 of this act, has received information obtained from a pen
35 register or trap and trace or evidence derived from such information,
36 may disclose such information or derivative evidence while giving
37 testimony under oath or affirmation in any proceeding held under the
38 authority of this state or any political subdivision of this state.

1 (4)(a) When an investigative or law enforcement officer, while
2 engaged in intercepting wire, oral, or electronic communications in the
3 manner authorized in section 28 or 29 of this act, intercepts wire,
4 oral, or electronic communications relating to an offense other than an
5 offense specified in the order of authorization, the contents of the
6 communications, and evidence derived from the contents, may be
7 disclosed or used as provided in subsections (1) and (2) of this
8 section. Such contents and derivative evidence may be used under
9 subsection (3) of this section when authorized by a superior court
10 where the court finds on subsequent application that the contents were
11 otherwise intercepted in accordance with the provisions of section 28
12 or 29 of this act. Such application shall be made as soon as
13 practicable.

14 (b) When an investigative or law enforcement officer, while engaged
15 in obtaining information by any means authorized by section 30 of this
16 act, obtains information from a pen register or trap and trace relating
17 to an offense other than an offense specified in the authorizing order,
18 the information and evidence derived from it may be disclosed or used
19 as provided in subsections (1) and (2) of this section. Such
20 information and derivative evidence may be used under subsection (3) of
21 this section when authorized by a superior court where the court finds
22 on subsequent application that the information was otherwise obtained
23 in accordance with section 30 of this act. Such application shall be
24 made as soon as practicable.

25 (5)(a) Any investigative or law enforcement officer, or attorney
26 for the state or any political subdivision of the state, who by any
27 means authorized by this section or section 28 or 29 of this act has
28 obtained knowledge of the contents of any wire, oral, or electronic
29 communication, or evidence derived from such contents, may also
30 disclose such contents or derivative evidence to any federal
31 intelligence, protective, immigration, national defense, or national
32 security official to the extent that such contents or derivative
33 evidence includes foreign intelligence or counterintelligence, as
34 defined in section 3 of the National Security Act of 1947, 50 U.S.C.
35 Sec. 401(a), or foreign intelligence information, as defined in
36 subsection (19) of 18 U.S.C. Sec. 2510, to assist the official who is
37 to receive that information in the performance of his or her official
38 duties. Any federal official who receives information pursuant to this
39 provision may use that information only as necessary in the conduct of

1 that person's official duties subject to any limitations on the
2 unauthorized disclosure of such information.

3 (b) Any investigative or law enforcement officer, or attorney for
4 the state or any political subdivision of the state, who by any means
5 authorized by this section or section 30 of this act has obtained
6 information from a pen register or trap and trace or evidence derived
7 from such information, may also disclose such information or derivative
8 evidence to any federal intelligence, protective, immigration, national
9 defense, or national security official to the extent that such
10 information or derivative evidence includes foreign intelligence or
11 counterintelligence, as defined in section 3 of the National Security
12 Act of 1947, 50 U.S.C. Sec. 401(a), or foreign intelligence
13 information, as defined in subsection (19) of 18 U.S.C. Sec. 2510, to
14 assist the official who is to receive that information in the
15 performance of his or her official duties. Any federal official who
16 receives information pursuant to this provision may use that
17 information only as necessary in the conduct of that person's official
18 duties subject to any limitations on the unauthorized disclosure of
19 such information.

20 (6) Any federal investigative or law enforcement officer who
21 obtains information regarding an act of terrorism from the contents of
22 a wire, oral, or electronic communication or obtains such information
23 from the installation or application of a pen register or trap and
24 trace, or obtains any evidence derived from such information, may
25 disclose such information or derivative evidence while giving testimony
26 under oath or affirmation in any proceeding held under the authority of
27 this state or any political subdivision of this state, if such
28 information or derivative evidence was obtained in compliance with
29 federal law, and in a case in which no party to a communication has
30 consented to an interception, if such information or derivative
31 evidence was obtained through an interception that was also done with
32 prior judicial authorization whether or not such prior authorization
33 was required by federal law.

34 (7) No otherwise privileged wire, oral, or electronic communication
35 intercepted in accordance with, or in violation of, the provisions of
36 this act shall lose its privileged character.

37 NEW SECTION. **Sec. 32.** A new section is added to chapter 9.73 RCW
38 to read as follows:

1 As used in sections 27 through 31 of this act, the following terms
2 have the following meanings:

3 (1) "Act of terrorism" means any of the following offenses, or
4 conspiracy to commit any of the following offenses, as they are defined
5 in Title 9A RCW:

6 (a) Terrorism in the first degree;

7 (b) Terrorism in the second degree;

8 (c) Unlawful use or possession of a weapon of mass destruction; or

9 (d) Threatening acts of terrorism in the first degree.

10 (2) "Aggrieved person" means a person who was a party to any
11 intercepted wire, oral, or electronic communication or a person against
12 whom the interception was directed.

13 (3) "Computer" means an electronic, magnetic, optical,
14 electrochemical, or other high speed data processing device performing
15 logical, arithmetic, or storage functions, and includes any data
16 storage facility or communications facility directly related to or
17 operating in conjunction with such device, but such term does not
18 include an automated typewriter or typesetter, a portable handheld
19 calculator, or other similar device.

20 (4) "Contents," when used with respect to any wire, oral, or
21 electronic communication, includes any information concerning the
22 substance, purport, or meaning of that communication.

23 (5) "Electronic communication" means any transfer of signs,
24 signals, writing, images, sounds, data, or intelligence of any nature
25 transmitted in whole or in part by a wire, radio, electromagnetic,
26 photoelectronic, or photooptical system, but does not include:

27 (a) Any wire or oral communication;

28 (b) Any communication made through a tone-only paging device;

29 (c) Any communication from a tracking device;

30 (d) Electronic funds transfer information stored by a financial
31 institution in an electronic communication system used for the
32 electronic storage and transfer of funds.

33 (6) "Electronic communication service" means any service which
34 provides users the ability to send or receive wire or electronic
35 communications.

36 (7) "Electronic communication system" means any wire, radio,
37 electromagnetic, photooptical, or photoelectronic facilities for the
38 transmission of wire or electronic communications, and any computer

1 facilities or related electronic equipment for the electronic storage
2 of such communications.

3 (8) "Electronic storage" means (a) any temporary, intermediate
4 storage of a wire or electronic communication incidental to the
5 electronic transmission thereof; and (b) any storage of such
6 communication by an electronic communication service for purposes of
7 backup protection of such communication.

8 (9) "Investigative or law enforcement officer" means any officer of
9 the United States or of this state or a political subdivision of this
10 state, who is empowered by law to conduct investigations of or make
11 arrest for criminal offenses enumerated in the United States Code of
12 laws of this state, and any attorney authorized by law to prosecute or
13 participate in the prosecution of such offenses.

14 (10) "Oral communication" means any oral communication uttered by
15 a person exhibiting an expectation that such communication is not
16 subject to interception under circumstances justifying such
17 expectation, but such term does not include any electronic
18 communication.

19 (11) "Pen register" means a device which records or decodes
20 dialing, routing, addressing, or signaling information transmitted by
21 an instrument or facility from which a wire or electronic communication
22 is transmitted if the device does not record or decode the contents of
23 any communication, but the term does not include any device used by a
24 provider or customer of a wire or electronic communication service for
25 billing, or recording as an incident to billing, for communications
26 services provided by such provider or any device used by a provider or
27 customer of a wire communication service for cost accounting or other
28 like purposes in the ordinary course of its business.

29 (12) "Trap and trace" means a device or process which captures the
30 incoming electronic or other impulses which identify the originating
31 number or other dialing, routing, addressing, and signaling information
32 reasonably likely to identify the source of a wire or electronic
33 communication, but which device or process does not capture the
34 contents of any communication.

35 (13) "User" means any person or entity who (a) uses an electronic
36 communication service; and (b) is duly authorized by the provider of
37 such service to engage in such use.

38 (14) "Wire communication" means any transfer of the human voice
39 made in whole or in part through the use of facilities for the

1 transmission of communications by the aid of wire, cable, or other like
2 connection between the point of origin and the point of reception,
3 including the use of such connection in a switching station, furnished
4 or operated by any person engaged in providing or operating such
5 facilities for the transmission of intrastate, interstate, or foreign
6 communications.

7 **Sec. 33.** RCW 9.73.240 and 1989 c 271 s 206 are each amended to
8 read as follows:

9 (1) The attorney general shall have concurrent authority and power
10 with the prosecuting attorneys to investigate violations of RCW
11 9.73.200 through 9.73.230 (~~or RCW~~), 9.73.090, or sections 27 through
12 31 of this act and initiate and conduct prosecutions of any violations
13 upon request of any of the following:

14 (a) The person who was the nonconsenting party to the intercepted,
15 transmitted, or recorded conversation or communication; or

16 (b) The county prosecuting attorney of the jurisdiction in which
17 the offense has occurred.

18 (2) The request shall be communicated in writing to the attorney
19 general.

20 NEW SECTION. **Sec. 34.** CODIFICATION INSTRUCTIONS. Sections 1
21 through 8 and 19 through 25 of this act constitute a new chapter in
22 Title 9A RCW."

23 Correct the title.

EFFECT: Creates these new felony terrorism crimes which must be committed with the intent to significantly disrupt the conduct of government or of the general civilian population of the state or the United States, and commits any act which manifests an extreme indifference to human life: Terrorism in the first degree; terrorism in the second degree; unlawful possession of a weapon of mass destruction; threatening acts of terrorism in the first and second degree; unlawful possession of false identification for terrorist purposes; and providing material support or resources to terrorists. Makes terrorism in the first degree an alternate means of committing aggravated first degree murder. Changes the definitions related to unconventional weapons. Adds terrorism crimes to the definition of crimes that constitute "criminal profiteering" regardless of whether the crimes were committed for financial gain. Removes the definition of "terrorist intent." Removes the felony terrorism crimes of hoax terrorist act; unlawful use of agents for terrorist purposes; possession of agents for terrorist purposes; releasing radioactive

material with terrorist intent; and possession of radioactive material with terrorist intent. Removes the aggravating circumstance of "terrorist intent" from the list that allows for exceptional sentences. Removes the definition of "terrorist offender." Removes terrorism crimes from the list of serious violent offenses.

Adds provisions authorizing the interception of communications in cases involving acts of terrorism (defined to include four crimes created in the striking amendment -- terrorism in the first degree; terrorism in the second degree; unlawful use or possession of a weapon of mass destruction; and threatening acts of terrorism in the first degree):

(1) Allows prior judicial authorization to intercept a communication involving acts of terrorism when no party to the communication has consented to the interception. Specifies the procedure for seeking such authorization, exceptions to that procedure, the basis upon which the court may grant authorization, the length of time for which such authorization is valid, and procedures after entering an order.

(2) Allows law enforcement agencies to authorize the interception of communications with postinterception judicial review when at least one party has consented to the interception and the communication involves an act of terrorism. Specifies when interceptions can be made and provides the procedure for postjudicial review. Makes an intentional interception done in violation of one-party consent interception requirements a class C felony and subjects a law enforcement agency to liability for civil damages, including exemplary damages of \$25,000, if the agency authorized interception without the required probable cause and without a reasonable suspicion the intercepted communication would involve the act of terrorism identified in the authorization.

(3) Allows the expanded use of pen registers and traps and traces in investigations of terrorism and covers electronic communications such as e-mail as well as telephones. Specifies procedure for seeking authorization from the superior court to use a pen register or a trap and trace and the basis upon which the court may grant authorization. Specifies length of validity of authorization and allows for use before judicial authorization in emergency situations under certain circumstances.

(4) Details the ways in which law enforcement agencies may share and use information obtained through surveillance authorized in investigations of terrorism: (a) Federal law enforcement officers are expressly given authority to testify in state court as to evidence of terrorism obtained pursuant to federal law, if the evidence was obtained with prior judicial authorization; (b) federal or state officers may use or share information lawfully obtained under the terrorism provisions if the use or sharing is appropriate to their duties; (c) any person who has lawfully received information under the terrorism provisions may testify as to that information in state court; (d) evidence of a crime other than terrorism may also be shared or used if the evidence was obtained lawfully during a terrorism surveillance authorized under the terrorism provisions (may be testified to in state court upon a showing it was obtained in accordance with the surveillance authorization); (e) state officers are authorized to disclose to federal officials any evidence of foreign intelligence or counterintelligence obtained during a lawful surveillance under the terrorism provisions; and (f) interception of a communication does not change the nature of any privileged information in that communication.

(5) Defines various terms related to terrorism surveillance and gives the state attorney general the same existing concurrent authority

with county prosecutors with respect to other provisions of the Privacy Act.

--- END ---