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**SUBSTITUTE SENATE BILL 6114**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Stevens, Winsley, Oke, Schmidt, Honeyford, Mulliken, Parlette, Finkbeiner, Deccio, Swecker, Zarelli, Morton, Hewitt, Sheahan, Horn, Rasmussen, Roach and Benton)

READ FIRST TIME 01/30/04.

1       AN ACT Relating to criminal offenses involving animals or natural  
2 resources; amending RCW 9A.82.090, 9A.82.100, 9A.82.120, and 9.94A.535;  
3 reenacting and amending RCW 9A.82.010 and 9.94A.515; adding a new  
4 chapter to Title 9A RCW; prescribing penalties; and providing an  
5 effective date.

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

7       NEW SECTION. **Sec. 1.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9       (1) "Animal" means any warm or cold-blooded animal or insect which  
10 is lawfully being used in food, fur, or fiber production, agriculture,  
11 research, testing, or education. "Animal" does not include any animal  
12 or insect held primarily as a pet.

13       (2) "Activity involving animals" means any lawful activity  
14 involving the use of animals or animal parts, including:

- 15       (a) Hunting, fishing, and trapping;
- 16       (b) Food production, processing, and preparation;
- 17       (c) Clothing manufacturing and distribution;
- 18       (d) Medical or other research;
- 19       (e) Entertainment and recreation;

1 (f) Agriculture; or  
2 (g) Any other services involving the use of animals.  
3 (3) "Activity involving natural resources" means any lawful  
4 activity involving the use of a natural resource with an economic  
5 value, including mining, foresting, harvesting, or processing natural  
6 resources.  
7 (4) "Animal facility" means a vehicle, building, structure,  
8 research facility, nature preserve, or other premises where an animal  
9 is lawfully:  
10 (a) Housed, exhibited, bred, or offered for sale, including a zoo,  
11 amusement park, or preserve, or a location at which a circus or a rodeo  
12 or other competitive event is held; or  
13 (b) Used for scientific purposes, including research, testing, and  
14 experiments.  
15 (5) "Animal rights or ecological terrorist organization" means any  
16 association, organization, entity, coalition, or combination of two or  
17 more persons with the primary or incidental purpose of intimidating,  
18 coercing, causing fear with the intent to obstruct, or impeding any  
19 person from participating in an activity involving animals, activity  
20 involving natural resources, or an animal facility, horticultural  
21 facility, or research facility, or the lawful activity of mining,  
22 foresting, harvesting, gathering, or processing natural resources.  
23 (6) "Effective consent" means consent by the owner or by a person  
24 legally authorized to act for the owner. Consent is not effective if  
25 it is:  
26 (a) Induced by force or threat;  
27 (b) Given by a person that the offender knows or reasonably should  
28 have known is not an agent for the owner; or  
29 (c) Given by a person who by reason of youth, mental disease, or  
30 defect, or being under the influence of drugs or alcohol is known by  
31 the offender to be unable to make reasonable decisions.  
32 (7) "Horticultural facility" means any horticultural premises as  
33 defined in RCW 15.08.010, any horticultural facility as defined in RCW  
34 15.13.250, or any premises used for horticultural research or  
35 educational purposes.  
36 (8) "Natural resource" means a material source of wealth, such as  
37 timber, fresh water, or a mineral deposit, that occurs in a natural  
38 state and has economic value.

1        NEW SECTION.    **Sec. 2.** (1) It is unlawful for an animal or  
2 ecological terrorist organization or any person acting on its behalf or  
3 at its request or for its benefit or any individual to intentionally:

4        (a) Deprive the owner of an animal or natural resource from  
5 lawfully participating in an activity involving animals, an activity  
6 involving natural resources, or lawful use of a horticultural facility  
7 by:

8        (i) Interfering with access to or from an animal, natural resource,  
9 or horticultural facility by:

10        (A) Physically obstructing or impeding the free passage of a person  
11 seeking to enter or depart from the facility or from common areas of  
12 the real property upon which the facility is located;

13        (B) Making noise that unreasonably disturbs the peace within the  
14 facility;

15        (C) Telephoning the facility repeatedly, or knowingly permitting  
16 any telephone under his or her control to be used for such a purpose;  
17 or

18        (D) Threatening to inflict injury on the owners, agents, employees,  
19 animals, or property of the facility or knowingly permitting any  
20 telephone under his or her control to be used for such a purpose;

21        (ii) Taking or detaining an animal, natural resource, or other  
22 property and agreeing to restore it only upon reward or other  
23 compensation; or

24        (iii) Damaging or disposing of an animal, natural resource, or  
25 other property or to so alter its condition or usefulness that the  
26 value of the animal, natural resource, or other property is  
27 substantially reduced.

28        (b) Obstruct or impede the use of an animal facility or  
29 horticultural facility or the use of a natural resource without the  
30 effective consent of the owner by:

31        (i) Damaging or destroying an animal or horticultural facility or  
32 other property in or on the premises;

33        (ii) Entering an animal or horticultural facility that is at the  
34 time closed to the public;

35        (iii) Remaining concealed in an animal or horticultural facility  
36 with the intent to commit an act prohibited by this chapter;

37        (iv) Entering an animal or horticultural facility and committing or  
38 attempting to commit an act prohibited by this chapter;

1 (v) Entering an animal or horticultural facility to take pictures  
2 by photograph, video camera, or other means with the intent to commit  
3 criminal activities;

4 (vi) Entering or remaining on the premises of an animal or  
5 horticultural facility if the person or organization:

6 (A) Had notice that the entry was forbidden; or

7 (B) Received notice to depart but failed to do so; or

8 (c) Participate in or support animal or ecological terrorism,  
9 including raising, soliciting, collecting, or providing any person with  
10 material, financial support, or other resources such as lodging,  
11 training, safe houses, false documentation, or identification,  
12 communications, equipment, or transportation that will be used in whole  
13 or in part to encourage, plan, prepare, carry out, publicize, promote,  
14 or aid an act of animal or ecological terrorism, the concealment of, or  
15 an escape from an act of animal or ecological terrorism.

16 (2) It is an exception to the application of subsection (1) of this  
17 section that the conduct is engaged in by:

18 (a) A government agency or an employee of a government agency  
19 acting in the course and scope of his or her employment;

20 (b) An employee of a financial institution or other secured party  
21 acting in the course and scope of his or her employment;

22 (c) An employee of an animal control authority or a recognized  
23 animal shelter or humane society acting in the course and scope of his  
24 or her employment;

25 (d) An employee or employee organization participating in a strike,  
26 work slowdown, or stoppage of any kind, or other labor-related dispute,  
27 lawfully picketing, or providing the public with truthful information  
28 regarding the existence of a dispute with the employer.

29 NEW SECTION. **Sec. 3.** (1) A person convicted of an act that  
30 violates section 2 of this act and that results in one thousand five  
31 hundred dollars or less in physical damage or destruction of property  
32 is guilty of a gross misdemeanor and shall be punished according to  
33 chapter 9A.20 RCW.

34 (2) A person convicted of an act that violates section 2 of this  
35 act and that results in more than one thousand five hundred dollars in  
36 physical damage or destruction of property is guilty of a class C  
37 felony and shall be punished according to chapter 9A.20 RCW.

1 (3) Any person convicted of an act that violates section 2 of this  
2 act, and such act intentionally or negligently results in bodily harm  
3 to any individual, is guilty of a class B felony and shall be punished  
4 according to chapter 9A.20 RCW.

5 (4) If conduct that constitutes an offense under this section also  
6 constitutes an offense under any other law, the defendant may be  
7 prosecuted under either law or both laws.

8 NEW SECTION. **Sec. 4.** There is created the registry of animal and  
9 ecological terrorists. A person who is convicted of or pleads guilty  
10 to an act that violates this chapter shall be registered with the  
11 attorney general on a form prescribed by the attorney general. The  
12 registry shall contain the name, a current residence address, a recent  
13 photograph, and signature of the offender. The offender is required to  
14 provide written notice to the attorney general regarding any change in  
15 name or residence address within thirty days of making the change. The  
16 attorney general shall create a website containing the information set  
17 forth in this section for each person who is convicted or pleads guilty  
18 to a violation of this chapter. Information regarding an offender  
19 shall remain on the website for not less than three years at which time  
20 the registrant may apply to the attorney general for removal after a  
21 hearing on the application for removal.

22 **Sec. 5.** RCW 9A.82.010 and 2003 c 119 s 6, 2003 c 113 s 3, and 2003  
23 c 53 s 85 are each reenacted and amended to read as follows:

24 Unless the context requires the contrary, the definitions in this  
25 section apply throughout this chapter.

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

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

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

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

1 (b) "Beneficial interest" does not include the interest of a  
2 stockholder in a corporation or the interest of a partner in a general  
3 partnership or limited partnership.

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

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

8 (3) "Creditor" means a person making an extension of credit or a  
9 person claiming by, under, or through a person making an extension of  
10 credit.

11 (4) "Criminal profiteering" means any act, including any  
12 anticipatory or completed offense, committed for financial gain, or an  
13 offense, including an anticipatory or completed offense, or a lawfully  
14 obtained and otherwise admissible confession to have completed an  
15 offense, that is defined in chapter 9A.-- RCW (sections 1 through 4 of  
16 this act), whether or not committed for financial gain, that is  
17 chargeable or indictable under the laws of the state in which the act  
18 occurred and, if the act occurred in a state other than this state,  
19 would be chargeable or indictable under the laws of this state had the  
20 act occurred in this state and punishable as a felony and by  
21 imprisonment for more than one year, regardless of whether the act is  
22 charged or indicted, as any of the following:

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

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

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

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

27 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,  
28 9A.56.080, and 9A.56.083;

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

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

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

34 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
35 9A.68.050;

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

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

1 (l) Unlawful production of payment instruments, unlawful possession  
2 of payment instruments, unlawful possession of a personal  
3 identification device, unlawful possession of fictitious  
4 identification, or unlawful possession of instruments of financial  
5 fraud, as defined in RCW 9A.56.320;

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

7 (n) Advancing money for use in an extortionate extension of credit,  
8 as defined in RCW 9A.82.030;

9 (o) Collection of an extortionate extension of credit, as defined  
10 in RCW 9A.82.040;

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

12 (q) Delivery or manufacture of controlled substances or possession  
13 with intent to deliver or manufacture controlled substances under  
14 chapter 69.50 RCW;

15 (r) Trafficking in stolen property, as defined in RCW 9A.82.050;

16 (s) Leading organized crime, as defined in RCW 9A.82.060;

17 (t) Money laundering, as defined in RCW 9A.83.020;

18 (u) Obstructing criminal investigations or prosecutions in  
19 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
20 9A.76.070, or 9A.76.180;

21 (v) Fraud in the purchase or sale of securities, as defined in RCW  
22 21.20.010;

23 (w) Promoting pornography, as defined in RCW 9.68.140;

24 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,  
25 9.68A.050, and 9.68A.060;

26 (y) Promoting prostitution, as defined in RCW 9A.88.070 and  
27 9A.88.080;

28 (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

29 (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

30 (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

31 (cc) A pattern of equity skimming, as defined in RCW 61.34.020;

32 (dd) Commercial telephone solicitation in violation of RCW  
33 19.158.040(1);

34 (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;

35 (ff) Unlawful practice of law, as defined in RCW 2.48.180;

36 (gg) Commercial bribery, as defined in RCW 9A.68.060;

37 (hh) Health care false claims, as defined in RCW 48.80.030;

- 1 (ii) Unlicensed practice of a profession or business, as defined in  
2 RCW 18.130.190(7);
- 3 (jj) Improperly obtaining financial information, as defined in RCW  
4 9.35.010;
- 5 (kk) Identity theft, as defined in RCW 9.35.020;
- 6 (ll) Unlawful shipment of cigarettes in violation of RCW  
7 70.155.105(6) (a) or (b); (~~(e)~~)
- 8 (mm) Unlawful shipment of cigarettes in violation of RCW  
9 82.24.110(2); or
- 10 (nn) A violation of chapter 9A.-- RCW (sections 1 through 4 of this  
11 act).
- 12 (5) "Dealer in property" means a person who buys and sells property  
13 as a business.
- 14 (6) "Debtor" means a person to whom an extension of credit is made  
15 or a person who guarantees the repayment of an extension of credit or  
16 in any manner undertakes to indemnify the creditor against loss  
17 resulting from the failure of a person to whom an extension is made to  
18 repay the same.
- 19 (7) "Documentary material" means any book, paper, document,  
20 writing, drawing, graph, chart, photograph, phonograph record, magnetic  
21 tape, computer printout, other data compilation from which information  
22 can be obtained or from which information can be translated into usable  
23 form, or other tangible item.
- 24 (8) "Enterprise" includes any individual, sole proprietorship,  
25 partnership, corporation, business trust, or other profit or nonprofit  
26 legal entity, and includes any union, association, or group of  
27 individuals associated in fact although not a legal entity, and both  
28 illicit and licit enterprises and governmental and nongovernmental  
29 entities.
- 30 (9) "Extortionate extension of credit" means an extension of credit  
31 with respect to which it is the understanding of the creditor and the  
32 debtor at the time the extension is made that delay in making repayment  
33 or failure to make repayment could result in the use of violence or  
34 other criminal means to cause harm to the person, reputation, or  
35 property of any person.
- 36 (10) "Extortionate means" means the use, or an express or implicit  
37 threat of use, of violence or other criminal means to cause harm to the  
38 person, reputation, or property of any person.



1 (11) "Financial institution" means any bank, trust company, savings  
2 and loan association, savings bank, mutual savings bank, credit union,  
3 or loan company under the jurisdiction of the state or an agency of the  
4 United States.

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

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

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

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

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

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

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

5 (19) "Traffic" means to sell, transfer, distribute, dispense, or  
6 otherwise dispose of stolen property to another person, or to buy,  
7 receive, possess, or obtain control of stolen property, with intent to  
8 sell, transfer, distribute, dispense, or otherwise dispose of the  
9 property to another person.

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

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

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

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

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

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

20 (ii) A trustee of any testamentary trust;

21 (iii) A trustee of any indenture of trust under which a bond is  
22 issued; or

23 (iv) A trustee under a deed of trust.

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

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

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

30 (ii) Chapter 9.46 RCW relating to gambling;

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

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

35 **Sec. 6.** RCW 9A.82.090 and 2003 c 267 s 5 are each amended to read  
36 as follows:

37 During the pendency of any criminal case charging a violation of

1 RCW 9A.82.060 or 9A.82.080, (~~(or)~~) an offense defined in RCW 9A.40.100,  
2 or an offense, including an anticipatory or completed offense, or a  
3 lawfully obtained and otherwise admissible confession to have completed  
4 an offense, that is defined in chapter 9A.-- RCW (sections 1 through 4  
5 of this act), whether or not committed for financial gain, the superior  
6 court may, in addition to its other powers, issue an order pursuant to  
7 RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation  
8 of RCW 9A.82.060 or 9A.82.080, (~~(or)~~) an offense defined in RCW  
9 9A.40.100, or an offense, including an anticipatory or completed  
10 offense, or a lawfully obtained and otherwise admissible confession to  
11 have completed an offense, that is defined in chapter 9A.-- RCW  
12 (sections 1 through 4 of this act), whether or not committed for  
13 financial gain, the superior court may, in addition to its other powers  
14 of disposition, issue an order pursuant to RCW 9A.82.100.

15 **Sec. 7.** RCW 9A.82.100 and 2003 c 267 s 6 are each amended to read  
16 as follows:

17 (1)(a) A person who sustains injury to his or her person, business,  
18 or property by an act of criminal profiteering that is part of a  
19 pattern of criminal profiteering activity, or by an offense defined in  
20 RCW 9A.40.100, or an offense, including an anticipatory or completed  
21 offense, or a lawfully obtained and otherwise admissible confession to  
22 have completed an offense, that is defined in chapter 9A.-- RCW  
23 (sections 1 through 4 of this act), whether or not committed for  
24 financial gain, or by a violation of RCW 9A.82.060 or 9A.82.080 may  
25 file an action in superior court for the recovery of damages and the  
26 costs of the suit, including reasonable investigative and attorney's  
27 fees.

28 (b) The attorney general or county prosecuting attorney may file an  
29 action: (i) On behalf of those persons injured or, respectively, on  
30 behalf of the state or county if the entity has sustained damages, or  
31 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering  
32 activity, or an offense defined in RCW 9A.40.100, or an offense,  
33 including an anticipatory or completed offense, or a lawfully obtained  
34 and otherwise admissible confession to have completed an offense, that  
35 is defined in chapter 9A.-- RCW (sections 1 through 4 of this act),  
36 whether or not committed for financial gain, or a violation of RCW  
37 9A.82.060 or 9A.82.080.

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

5 (d) In an action filed to prevent, restrain, or remedy a pattern of  
6 criminal profiteering activity, or an offense defined in RCW 9A.40.100,  
7 or an offense, including an anticipatory or completed offense, or a  
8 lawfully obtained and otherwise admissible confession to have completed  
9 an offense, that is defined in chapter 9A.-- RCW (sections 1 through 4  
10 of this act), whether or not committed for financial gain, or a  
11 violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the  
12 violation, may impose a civil penalty not exceeding two hundred fifty  
13 thousand dollars, in addition to awarding the cost of the suit,  
14 including reasonable investigative and attorney's fees.

15 (2) The superior court has jurisdiction to prevent, restrain, and  
16 remedy a pattern of criminal profiteering, or an offense defined in RCW  
17 9A.40.100, or an offense, including an anticipatory or completed  
18 offense, or a lawfully obtained and otherwise admissible confession to  
19 have completed an offense, that is defined in chapter 9A.-- RCW  
20 (sections 1 through 4 of this act), whether or not committed for  
21 financial gain, or a violation of RCW 9A.82.060 or 9A.82.080 after  
22 making provision for the rights of all innocent persons affected by the  
23 violation and after hearing or trial, as appropriate, by issuing  
24 appropriate orders.

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

1 acquired or used in such a way as to be subject to forfeiture under RCW  
2 9A.82.100(4)(f).

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

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

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

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

13 (d) Ordering the payment of actual damages sustained to those  
14 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an  
15 offense defined in RCW 9A.40.100, or an offense, including an  
16 anticipatory or completed offense, or a lawfully obtained and otherwise  
17 admissible confession to have completed an offense, that is defined in  
18 chapter 9A.-- RCW (sections 1 through 4 of this act), whether or not  
19 committed for financial gain, or an act of criminal profiteering that  
20 is part of a pattern of criminal profiteering, and in the court's  
21 discretion, increasing the payment to an amount not exceeding three  
22 times the actual damages sustained.

23 (e) Ordering the payment of all costs and expenses of the  
24 prosecution and investigation of a pattern of criminal profiteering, or  
25 an offense defined in RCW 9A.40.100, or an offense, including an  
26 anticipatory or completed offense, or a lawfully obtained and otherwise  
27 admissible confession to have completed an offense, that is defined in  
28 chapter 9A.-- RCW (sections 1 through 4 of this act), whether or not  
29 committed for financial gain, activity or a violation of RCW 9A.82.060  
30 or 9A.82.080, civil and criminal, incurred by the state or county,  
31 including any costs of defense provided at public expense, as  
32 appropriate to the state general fund or the antiprofitteering revolving  
33 fund of the county.

34 (f) Ordering forfeiture first as restitution to any person damaged  
35 by an act of criminal profiteering that is part of a pattern of  
36 criminal profiteering, or by an offense defined in RCW 9A.40.100, or an  
37 offense, including an anticipatory or completed offense, or a lawfully  
38 obtained and otherwise admissible confession to have completed an

1 offense, that is defined in chapter 9A.-- RCW (sections 1 through 4 of  
2 this act), whether or not committed for financial gain, then to the  
3 state general fund or antiprofitereering revolving fund of the county, as  
4 appropriate, to the extent not already ordered to be paid in other  
5 damages, of the following:

6 (i) Any property or other interest acquired or maintained in  
7 violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment  
8 of funds, and any appreciation or income attributable to the  
9 investment, from a violation of RCW 9A.82.060 or 9A.82.080.

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

14 (iii) All proceeds traceable to or derived from an offense included  
15 in the pattern of criminal profiteering activity, or an offense defined  
16 in RCW 9A.40.100, or an offense, including an anticipatory or completed  
17 offense, or a lawfully obtained and otherwise admissible confession to  
18 have completed an offense, that is defined in chapter 9A.-- RCW  
19 (sections 1 through 4 of this act), whether or not committed for  
20 financial gain, and all moneys, negotiable instruments, securities, and  
21 other things of value significantly used or intended to be used  
22 significantly to facilitate commission of the offense.

23 (g) Ordering payment to the state general fund or antiprofitereering  
24 revolving fund of the county, as appropriate, of an amount equal to the  
25 gain a person has acquired or maintained through an offense included in  
26 the definition of criminal profiteering.

27 (5) In addition to or in lieu of an action under this section, the  
28 attorney general or county prosecuting attorney may file an action for  
29 forfeiture to the state general fund or antiprofitereering revolving fund  
30 of the county, as appropriate, to the extent not already ordered paid  
31 pursuant to this section, of the following:

32 (a) Any interest acquired or maintained by a person in violation of  
33 RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds  
34 obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any  
35 appreciation or income attributable to the investment.

36 (b) Any property, contractual right, or claim against property used  
37 to influence any enterprise that a person has established, operated,

1 controlled, conducted, or participated in the conduct of, in violation  
2 of RCW 9A.82.060 or 9A.82.080.

3 (c) All proceeds traceable to or derived from an offense included  
4 in the pattern of criminal profiteering activity, or an offense defined  
5 in RCW 9A.40.100, or an offense, including an anticipatory or completed  
6 offense, or a lawfully obtained and otherwise admissible confession to  
7 have completed an offense, that is defined in chapter 9A.-- RCW  
8 (sections 1 through 4 of this act), whether or not committed for  
9 financial gain, and all moneys, negotiable instruments, securities, and  
10 other things of value significantly used or intended to be used  
11 significantly to facilitate the commission of the offense.

12 (6) A defendant convicted in any criminal proceeding is precluded  
13 in any civil proceeding from denying the essential allegations of the  
14 criminal offense proven in the criminal trial in which the defendant  
15 was convicted. For the purposes of this subsection, a conviction shall  
16 be deemed to have occurred upon a verdict, finding, or plea of guilty,  
17 notwithstanding the fact that appellate review of the conviction and  
18 sentence has been or may be sought. If a subsequent reversal of the  
19 conviction occurs, any judgment that was based upon that conviction may  
20 be reopened upon motion of the defendant.

21 (7) The initiation of civil proceedings under this section shall be  
22 commenced within three years after discovery of the pattern of criminal  
23 profiteering activity or after the pattern should reasonably have been  
24 discovered or, in the case of an offense that is defined in RCW  
25 9A.40.100 or chapter 9A.-- RCW (sections 1 through 4 of this act),  
26 within three years after the final disposition of any criminal charges  
27 relating to the offense, whichever is later.

28 (8) The attorney general or county prosecuting attorney may, in a  
29 civil action brought pursuant to this section, file with the clerk of  
30 the superior court a certificate stating that the case is of special  
31 public importance. A copy of that certificate shall be furnished  
32 immediately by the clerk to the presiding chief judge of the superior  
33 court in which the action is pending and, upon receipt of the copy, the  
34 judge shall immediately designate a judge to hear and determine the  
35 action. The judge so designated shall promptly assign the action for  
36 hearing, participate in the hearings and determination, and cause the  
37 action to be expedited.

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

3 (10) A person other than the attorney general or county prosecuting  
4 attorney who files an action under this section shall serve notice and  
5 one copy of the pleading on the attorney general within thirty days  
6 after the action is filed with the superior court. The notice shall  
7 identify the action, the person, and the person's attorney. Service of  
8 the notice does not limit or otherwise affect the right of the state to  
9 maintain an action under this section or intervene in a pending action  
10 nor does it authorize the person to name the state or the attorney  
11 general as a party to the action.

12 (11) Except in cases filed by a county prosecuting attorney, the  
13 attorney general may, upon timely application, intervene in any civil  
14 action or proceeding brought under this section if the attorney general  
15 certifies that in the attorney general's opinion the action is of  
16 special public importance. Upon intervention, the attorney general may  
17 assert any available claim and is entitled to the same relief as if the  
18 attorney general had instituted a separate action.

19 (12) In addition to the attorney general's right to intervene as a  
20 party in any action under this section, the attorney general may appear  
21 as amicus curiae in any proceeding in which a claim under this section  
22 has been asserted or in which a court is interpreting RCW 9A.82.010,  
23 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

24 (13) A private civil action under this section does not limit any  
25 other civil or criminal action under this chapter or any other  
26 provision. Private civil remedies provided under this section are  
27 supplemental and not mutually exclusive.

28 (14) Upon motion by the defendant, the court may authorize the sale  
29 or transfer of assets subject to an order or lien authorized by this  
30 chapter for the purpose of paying actual attorney's fees and costs of  
31 defense. The motion shall specify the assets for which sale or  
32 transfer is sought and shall be accompanied by the defendant's sworn  
33 statement that the defendant has no other assets available for such  
34 purposes. No order authorizing such sale or transfer may be entered  
35 unless the court finds that the assets involved are not subject to  
36 possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of  
37 the motion, the court shall notify the state of the assets sought to be  
38 sold or transferred and shall hear argument on the issue of whether the



1 assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a  
2 motion may be made from time to time and shall be heard by the court on  
3 an expedited basis.

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

6 **Sec. 8.** RCW 9A.82.120 and 2003 c 267 s 7 are each amended to read  
7 as follows:

8 (1) The state, upon filing a criminal action under RCW 9A.82.060 or  
9 9A.82.080 or for an offense defined in RCW 9A.40.100, or an offense,  
10 including an anticipatory or completed offense, or a lawfully obtained  
11 and otherwise admissible confession to have completed an offense, that  
12 is defined in chapter 9A.-- RCW (sections 1 through 4 of this act),  
13 whether or not committed for financial gain, or a civil action under  
14 RCW 9A.82.100, may file in accordance with this section a criminal  
15 profiteering lien. A filing fee or other charge is not required for  
16 filing a criminal profiteering lien.

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

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

22 (b) In the discretion of the attorney general or county prosecuting  
23 attorney filing the lien, any aliases or fictitious names of the  
24 defendant named in the lien;

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

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

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

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

35 (g) The amount that the state claims in the action or, with respect  
36 to property or other interests that the state has requested forfeiture

1 to the state or county, a description of the property or interests  
2 sought to be paid or forfeited;

3 (h) If known to the attorney general or county prosecuting attorney  
4 filing the lien, a description of property that is subject to  
5 forfeiture to the state or property in which the defendant has an  
6 interest that is available to satisfy a judgment entered in favor of  
7 the state; and

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

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

14 (4) The attorney general or the county prosecuting attorney filing  
15 the lien shall, as soon as practical after filing a criminal  
16 profiteering lien, furnish to any person named in the lien a notice of  
17 the filing of the lien. Failure to furnish notice under this  
18 subsection does not invalidate or otherwise affect a criminal  
19 profiteering lien filed in accordance with this section.

20 (5)(a) A criminal profiteering lien is perfected against interests  
21 in personal property in the same manner as a security interest in like  
22 property pursuant to RCW 62A.9A-301 through 62A.9A-316 or as otherwise  
23 required to perfect a security interest in like property under  
24 applicable law. In the case of perfection by filing, the state shall  
25 file, in lieu of a financing statement in the form prescribed by RCW  
26 62A.9A-502, a notice of lien in substantially the following form:

27 NOTICE OF LIEN

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

31 Name: .....

32 Address: .....

33 .....

34 State of Washington

35 .....

36 By (authorized signature)

1           On receipt of such a notice from the state, a filing officer shall,  
2 without payment of filing fee, file and index the notice as if it were  
3 a financing statement naming the state as secured party and the  
4 defendant as debtor.

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

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

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

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

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

20          (7) The lien created in favor of the state in accordance with this  
21 section, when filed or otherwise perfected as provided in subsection  
22 (5) of this section, has, with respect to any of the property described  
23 in subsection (6) of this section, the same priority determined  
24 pursuant to the laws of this state as a mortgage or security interest  
25 given for value (but not a purchase money security interest) and  
26 perfected in the same manner with respect to such property; except that  
27 any lien perfected pursuant to Title 60 RCW by any person who, in the  
28 ordinary course of his or her business, furnishes labor, services, or  
29 materials, or rents, leases, or otherwise supplies equipment, without  
30 knowledge of the criminal profiteering lien, is superior to the  
31 criminal profiteering lien.

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

1 (9) Upon the entry of a final judgment in favor of the state  
2 providing for forfeiture of property to the state, the title of the  
3 state to the property:

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

8 (b) In the case of personal property or a beneficial interest in  
9 personal property, relates back to the date the personal property was  
10 seized by the state, or the date of filing of a criminal profiteering  
11 lien in accordance with this section, whichever is earlier, but if the  
12 property was not seized and no criminal profiteering lien was filed  
13 then to the date the final judgment was filed with the department of  
14 licensing and, if the personal property is an aircraft, with the  
15 federal aviation administration.

16 (10) This section does not limit the right of the state to obtain  
17 any order or injunction, receivership, writ, attachment, garnishment,  
18 or other remedy authorized under RCW 9A.82.100 or appropriate to  
19 protect the interests of the state or available under other applicable  
20 law.

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

27 **Sec. 9.** RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c  
28 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52  
29 s 4 are each reenacted and amended to read as follows:

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TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)

1 Malicious explosion 1 (RCW  
2 70.74.280(1))  
3 Murder 1 (RCW 9A.32.030)  
4 XIV Murder 2 (RCW 9A.32.050)  
5 Trafficking 1 (RCW 9A.40.100(1))  
6 XIII Malicious explosion 2 (RCW  
7 70.74.280(2))  
8 Malicious placement of an explosive 1  
9 (RCW 70.74.270(1))  
10 XII Assault 1 (RCW 9A.36.011)  
11 Assault of a Child 1 (RCW 9A.36.120)  
12 Malicious placement of an imitation  
13 device 1 (RCW 70.74.272(1)(a))  
14 Rape 1 (RCW 9A.44.040)  
15 Rape of a Child 1 (RCW 9A.44.073)  
16 Trafficking 2 (RCW 9A.40.100(2))  
17 XI Manslaughter 1 (RCW 9A.32.060)  
18 Rape 2 (RCW 9A.44.050)  
19 Rape of a Child 2 (RCW 9A.44.076)  
20 X Child Molestation 1 (RCW 9A.44.083)  
21 Indecent Liberties (with forcible  
22 compulsion) (RCW  
23 9A.44.100(1)(a))  
24 Kidnapping 1 (RCW 9A.40.020)  
25 Leading Organized Crime (RCW  
26 9A.82.060(1)(a))  
27 Malicious explosion 3 (RCW  
28 70.74.280(3))  
29 Sexually Violent Predator Escape  
30 (RCW 9A.76.115)  
31 IX Assault of a Child 2 (RCW 9A.36.130)  
32 Explosive devices prohibited (RCW  
33 70.74.180)  
34 Hit and Run--Death (RCW  
35 46.52.020(4)(a))

1 Homicide by Watercraft, by being  
2 under the influence of intoxicating  
3 liquor or any drug (RCW  
4 79A.60.050)  
5 Inciting Criminal Profiteering (RCW  
6 9A.82.060(1)(b))  
7 Malicious placement of an explosive 2  
8 (RCW 70.74.270(2))  
9 Robbery 1 (RCW 9A.56.200)  
10 Sexual Exploitation (RCW 9.68A.040)  
11 Vehicular Homicide, by being under  
12 the influence of intoxicating  
13 liquor or any drug (RCW  
14 46.61.520)  
15 VIII Arson 1 (RCW 9A.48.020)  
16 Homicide by Watercraft, by the  
17 operation of any vessel in a  
18 reckless manner (RCW  
19 79A.60.050)  
20 Manslaughter 2 (RCW 9A.32.070)  
21 Promoting Prostitution 1 (RCW  
22 9A.88.070)  
23 Theft of Ammonia (RCW 69.55.010)  
24 Vehicular Homicide, by the operation  
25 of any vehicle in a reckless  
26 manner (RCW 46.61.520)  
27 VII Burglary 1 (RCW 9A.52.020)  
28 Child Molestation 2 (RCW 9A.44.086)  
29 Civil Disorder Training (RCW  
30 9A.48.120)  
31 Dealing in depictions of minor  
32 engaged in sexually explicit  
33 conduct (RCW 9.68A.050)  
34 Drive-by Shooting (RCW 9A.36.045)  
35 Homicide by Watercraft, by disregard  
36 for the safety of others (RCW  
37 79A.60.050)

1 Indecent Liberties (without forcible  
2 compulsion) (RCW 9A.44.100(1)  
3 (b) and (c))  
4 Introducing Contraband 1 (RCW  
5 9A.76.140)  
6 Malicious placement of an explosive 3  
7 (RCW 70.74.270(3))  
8 Sending, bringing into state depictions  
9 of minor engaged in sexually  
10 explicit conduct (RCW  
11 9.68A.060)  
12 Unlawful Possession of a Firearm in  
13 the first degree (RCW  
14 9.41.040(1))  
15 Use of a Machine Gun in Commission  
16 of a Felony (RCW 9.41.225)  
17 Vehicular Homicide, by disregard for  
18 the safety of others (RCW  
19 46.61.520)  
20 VI Animal or Ecological Terrorism,  
21 Resulting in Bodily Harm (section  
22 3(3) of this act)  
23 Bail Jumping with Murder 1 (RCW  
24 9A.76.170(3)(a))  
25 Bribery (RCW 9A.68.010)  
26 Incest 1 (RCW 9A.64.020(1))  
27 Intimidating a Judge (RCW  
28 9A.72.160)  
29 Intimidating a Juror/Witness (RCW  
30 9A.72.110, 9A.72.130)  
31 Malicious placement of an imitation  
32 device 2 (RCW 70.74.272(1)(b))  
33 Rape of a Child 3 (RCW 9A.44.079)  
34 Theft of a Firearm (RCW 9A.56.300)  
35 Unlawful Storage of Ammonia (RCW  
36 69.55.020)

1 V Abandonment of dependent person 1  
2 (RCW 9A.42.060)  
3 Advancing money or property for  
4 extortionate extension of credit  
5 (RCW 9A.82.030)  
6 Bail Jumping with class A Felony  
7 (RCW 9A.76.170(3)(b))  
8 Child Molestation 3 (RCW 9A.44.089)  
9 Criminal Mistreatment 1 (RCW  
10 9A.42.020)  
11 Custodial Sexual Misconduct 1 (RCW  
12 9A.44.160)  
13 Domestic Violence Court Order  
14 Violation (RCW 10.99.040,  
15 10.99.050, 26.09.300, 26.10.220,  
16 26.26.138, 26.50.110, 26.52.070,  
17 or 74.34.145)  
18 Extortion 1 (RCW 9A.56.120)  
19 Extortionate Extension of Credit  
20 (RCW 9A.82.020)  
21 Extortionate Means to Collect  
22 Extensions of Credit (RCW  
23 9A.82.040)  
24 Incest 2 (RCW 9A.64.020(2))  
25 Kidnapping 2 (RCW 9A.40.030)  
26 Perjury 1 (RCW 9A.72.020)  
27 Persistent prison misbehavior (RCW  
28 9.94.070)  
29 Possession of a Stolen Firearm (RCW  
30 9A.56.310)  
31 Rape 3 (RCW 9A.44.060)  
32 Rendering Criminal Assistance 1  
33 (RCW 9A.76.070)  
34 Sexual Misconduct with a Minor 1  
35 (RCW 9A.44.093)  
36 Sexually Violating Human Remains  
37 (RCW 9A.44.105)



1 Stalking (RCW 9A.46.110)  
2 Taking Motor Vehicle Without  
3 Permission 1 (RCW 9A.56.070)  
4 IV Arson 2 (RCW 9A.48.030)  
5 Assault 2 (RCW 9A.36.021)  
6 Assault by Watercraft (RCW  
7 79A.60.060)  
8 Bribing a Witness/Bribe Received by  
9 Witness (RCW 9A.72.090,  
10 9A.72.100)  
11 Cheating 1 (RCW 9.46.1961)  
12 Commercial Bribery (RCW  
13 9A.68.060)  
14 Counterfeiting (RCW 9.16.035(4))  
15 Endangerment with a Controlled  
16 Substance (RCW 9A.42.100)  
17 Escape 1 (RCW 9A.76.110)  
18 Hit and Run--Injury (RCW  
19 46.52.020(4)(b))  
20 Hit and Run with Vessel--Injury  
21 Accident (RCW 79A.60.200(3))  
22 Identity Theft 1 (RCW 9.35.020(2))  
23 Indecent Exposure to Person Under  
24 Age Fourteen (subsequent sex  
25 offense) (RCW 9A.88.010)  
26 Influencing Outcome of Sporting  
27 Event (RCW 9A.82.070)  
28 Malicious Harassment (RCW  
29 9A.36.080)  
30 Residential Burglary (RCW  
31 9A.52.025)  
32 Robbery 2 (RCW 9A.56.210)  
33 Theft of Livestock 1 (RCW 9A.56.080)  
34 Threats to Bomb (RCW 9.61.160)  
35 Trafficking in Stolen Property 1 (RCW  
36 9A.82.050)

1 Unlawful factoring of a credit card or  
2 payment card transaction (RCW  
3 9A.56.290(4)(b))  
4 Unlawful transaction of health  
5 coverage as a health care service  
6 contractor (RCW 48.44.016(3))  
7 Unlawful transaction of health  
8 coverage as a health maintenance  
9 organization (RCW 48.46.033(3))  
10 Unlawful transaction of insurance  
11 business (RCW 48.15.023(3))  
12 Unlicensed practice as an insurance  
13 professional (RCW 48.17.063(3))  
14 Use of Proceeds of Criminal  
15 Profiteering (RCW 9A.82.080 (1)  
16 and (2))  
17 Vehicular Assault, by being under the  
18 influence of intoxicating liquor or  
19 any drug, or by the operation or  
20 driving of a vehicle in a reckless  
21 manner (RCW 46.61.522)  
22 Willful Failure to Return from  
23 Furlough (RCW 72.66.060)  
24 III Abandonment of dependent person 2  
25 (RCW 9A.42.070)  
26 Assault 3 (RCW 9A.36.031)  
27 Assault of a Child 3 (RCW 9A.36.140)  
28 Bail Jumping with class B or C Felony  
29 (RCW 9A.76.170(3)(c))  
30 Burglary 2 (RCW 9A.52.030)  
31 Communication with a Minor for  
32 Immoral Purposes (RCW  
33 9.68A.090)  
34 Criminal Gang Intimidation (RCW  
35 9A.46.120)  
36 Criminal Mistreatment 2 (RCW  
37 9A.42.030)

1 Custodial Assault (RCW 9A.36.100)  
2 Escape 2 (RCW 9A.76.120)  
3 Extortion 2 (RCW 9A.56.130)  
4 Harassment (RCW 9A.46.020)  
5 Intimidating a Public Servant (RCW  
6 9A.76.180)  
7 Introducing Contraband 2 (RCW  
8 9A.76.150)  
9 Malicious Injury to Railroad Property  
10 (RCW 81.60.070)  
11 Patronizing a Juvenile Prostitute  
12 (RCW 9.68A.100)  
13 Perjury 2 (RCW 9A.72.030)  
14 Possession of Incendiary Device (RCW  
15 9.40.120)  
16 Possession of Machine Gun or Short-  
17 Barreled Shotgun or Rifle (RCW  
18 9.41.190)  
19 Promoting Prostitution 2 (RCW  
20 9A.88.080)  
21 Securities Act violation (RCW  
22 21.20.400)  
23 Tampering with a Witness (RCW  
24 9A.72.120)  
25 Telephone Harassment (subsequent  
26 conviction or threat of death)  
27 (RCW 9.61.230(2))  
28 Theft of Livestock 2 (RCW 9A.56.083)  
29 Trafficking in Stolen Property 2 (RCW  
30 9A.82.055)  
31 Unlawful Imprisonment (RCW  
32 9A.40.040)  
33 Unlawful possession of firearm in the  
34 second degree (RCW 9.41.040(2))

1 Vehicular Assault, by the operation or  
2 driving of a vehicle with disregard  
3 for the safety of others (RCW  
4 46.61.522)  
5 Willful Failure to Return from Work  
6 Release (RCW 72.65.070)  
7 II Computer Trespass 1 (RCW  
8 9A.52.110)  
9 Counterfeiting (RCW 9.16.035(3))  
10 Escape from Community Custody  
11 (RCW 72.09.310)  
12 Health Care False Claims (RCW  
13 48.80.030)  
14 Identity Theft 2 (RCW 9.35.020(3))  
15 Improperly Obtaining Financial  
16 Information (RCW 9.35.010)  
17 Malicious Mischief 1 (RCW  
18 9A.48.070)  
19 Possession of Stolen Property 1 (RCW  
20 9A.56.150)  
21 Theft 1 (RCW 9A.56.030)  
22 Theft of Rental, Leased, or Lease-  
23 purchased Property (valued at one  
24 thousand five hundred dollars or  
25 more) (RCW 9A.56.096(5)(a))  
26 Trafficking in Insurance Claims (RCW  
27 48.30A.015)  
28 Unlawful factoring of a credit card or  
29 payment card transaction (RCW  
30 9A.56.290(4)(a))  
31 Unlawful Practice of Law (RCW  
32 2.48.180)  
33 Unlicensed Practice of a Profession or  
34 Business (RCW 18.130.190(7))  
35 I Attempting to Elude a Pursuing Police  
36 Vehicle (RCW 46.61.024)

1 False Verification for Welfare (RCW  
2 74.08.055)  
3 Forgery (RCW 9A.60.020)  
4 Fraudulent Creation or Revocation of a  
5 Mental Health Advance Directive  
6 (RCW 9A.60.060)  
7 Malicious Mischief 2 (RCW  
8 9A.48.080)  
9 Mineral Trespass (RCW 78.44.330)  
10 Possession of Stolen Property 2 (RCW  
11 9A.56.160)  
12 Reckless Burning 1 (RCW 9A.48.040)  
13 Taking Motor Vehicle Without  
14 Permission 2 (RCW 9A.56.075)  
15 Theft 2 (RCW 9A.56.040)  
16 Theft of Rental, Leased, or Lease-  
17 purchased Property (valued at two  
18 hundred fifty dollars or more but  
19 less than one thousand five  
20 hundred dollars) (RCW  
21 9A.56.096(5)(b))  
22 Transaction of insurance business  
23 beyond the scope of licensure  
24 (RCW 48.17.063(4))  
25 Unlawful Issuance of Checks or Drafts  
26 (RCW 9A.56.060)  
27 Unlawful Possession of Fictitious  
28 Identification (RCW 9A.56.320)  
29 Unlawful Possession of Instruments of  
30 Financial Fraud (RCW  
31 9A.56.320)  
32 Unlawful Possession of Payment  
33 Instruments (RCW 9A.56.320)  
34 Unlawful Possession of a Personal  
35 Identification Device (RCW  
36 9A.56.320)

1 Unlawful Production of Payment  
2 Instruments (RCW 9A.56.320)  
3 Unlawful Trafficking in Food Stamps  
4 (RCW 9.91.142)  
5 Unlawful Use of Food Stamps (RCW  
6 9.91.144)  
7 Vehicle Prowl 1 (RCW 9A.52.095)

8 **Sec. 10.** RCW 9.94A.535 and 2003 c 267 s 4 are each amended to read  
9 as follows:

10 The court may impose a sentence outside the standard sentence range  
11 for an offense if it finds, considering the purpose of this chapter,  
12 that there are substantial and compelling reasons justifying an  
13 exceptional sentence. Whenever a sentence outside the standard  
14 sentence range is imposed, the court shall set forth the reasons for  
15 its decision in written findings of fact and conclusions of law. A  
16 sentence outside the standard sentence range shall be a determinate  
17 sentence unless it is imposed on an offender sentenced under RCW  
18 9.94A.712. An exceptional sentence imposed on an offender sentenced  
19 under RCW 9.94A.712 shall be to a minimum term set by the court and a  
20 maximum term equal to the statutory maximum sentence for the offense of  
21 conviction under chapter 9A.20 RCW.

22 If the sentencing court finds that an exceptional sentence outside  
23 the standard sentence range should be imposed, the sentence is subject  
24 to review only as provided for in RCW 9.94A.585(4).

25 A departure from the standards in RCW 9.94A.589 (1) and (2)  
26 governing whether sentences are to be served consecutively or  
27 concurrently is an exceptional sentence subject to the limitations in  
28 this section, and may be appealed by the offender or the state as set  
29 forth in RCW 9.94A.585 (2) through (6).

30 The following are illustrative factors which the court may consider  
31 in the exercise of its discretion to impose an exceptional sentence.  
32 The following are illustrative only and are not intended to be  
33 exclusive reasons for exceptional sentences.

34 (1) Mitigating Circumstances

35 (a) To a significant degree, the victim was an initiator, willing  
36 participant, aggressor, or provoker of the incident.

1 (b) Before detection, the defendant compensated, or made a good  
2 faith effort to compensate, the victim of the criminal conduct for any  
3 damage or injury sustained.

4 (c) The defendant committed the crime under duress, coercion,  
5 threat, or compulsion insufficient to constitute a complete defense but  
6 which significantly affected his or her conduct.

7 (d) The defendant, with no apparent predisposition to do so, was  
8 induced by others to participate in the crime.

9 (e) The defendant's capacity to appreciate the wrongfulness of his  
10 or her conduct, or to conform his or her conduct to the requirements of  
11 the law, was significantly impaired. Voluntary use of drugs or alcohol  
12 is excluded.

13 (f) The offense was principally accomplished by another person and  
14 the defendant manifested extreme caution or sincere concern for the  
15 safety or well-being of the victim.

16 (g) The operation of the multiple offense policy of RCW 9.94A.589  
17 results in a presumptive sentence that is clearly excessive in light of  
18 the purpose of this chapter, as expressed in RCW 9.94A.010.

19 (h) The defendant or the defendant's children suffered a continuing  
20 pattern of physical or sexual abuse by the victim of the offense and  
21 the offense is a response to that abuse.

22 (2) Aggravating Circumstances

23 (a) The defendant's conduct during the commission of the current  
24 offense manifested deliberate cruelty to the victim.

25 (b) The defendant knew or should have known that the victim of the  
26 current offense was particularly vulnerable or incapable of resistance  
27 due to extreme youth, advanced age, disability, or ill health.

28 (c) The current offense was a violent offense, and the defendant  
29 knew that the victim of the current offense was pregnant.

30 (d) The current offense was a major economic offense or series of  
31 offenses, so identified by a consideration of any of the following  
32 factors:

33 (i) The current offense involved multiple victims or multiple  
34 incidents per victim;

35 (ii) The current offense involved attempted or actual monetary loss  
36 substantially greater than typical for the offense;

37 (iii) The current offense involved a high degree of sophistication  
38 or planning or occurred over a lengthy period of time; or

1 (iv) The defendant used his or her position of trust, confidence,  
2 or fiduciary responsibility to facilitate the commission of the current  
3 offense.

4 (e) The current offense was a major violation of the Uniform  
5 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
6 trafficking in controlled substances, which was more onerous than the  
7 typical offense of its statutory definition: The presence of ANY of  
8 the following may identify a current offense as a major VUCSA:

9 (i) The current offense involved at least three separate  
10 transactions in which controlled substances were sold, transferred, or  
11 possessed with intent to do so;

12 (ii) The current offense involved an attempted or actual sale or  
13 transfer of controlled substances in quantities substantially larger  
14 than for personal use;

15 (iii) The current offense involved the manufacture of controlled  
16 substances for use by other parties;

17 (iv) The circumstances of the current offense reveal the offender  
18 to have occupied a high position in the drug distribution hierarchy;

19 (v) The current offense involved a high degree of sophistication or  
20 planning, occurred over a lengthy period of time, or involved a broad  
21 geographic area of disbursement; or

22 (vi) The offender used his or her position or status to facilitate  
23 the commission of the current offense, including positions of trust,  
24 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
25 other medical professional).

26 (f) The current offense included a finding of sexual motivation  
27 pursuant to RCW 9.94A.835.

28 (g) The offense was part of an ongoing pattern of sexual abuse of  
29 the same victim under the age of eighteen years manifested by multiple  
30 incidents over a prolonged period of time.

31 (h) The current offense involved domestic violence, as defined in  
32 RCW 10.99.020, and one or more of the following was present:

33 (i) The offense was part of an ongoing pattern of psychological,  
34 physical, or sexual abuse of the victim manifested by multiple  
35 incidents over a prolonged period of time;

36 (ii) The offense occurred within sight or sound of the victim's or  
37 the offender's minor children under the age of eighteen years; or



1 (iii) The offender's conduct during the commission of the current  
2 offense manifested deliberate cruelty or intimidation of the victim.

3 (i) The operation of the multiple offense policy of RCW 9.94A.589  
4 results in a presumptive sentence that is clearly too lenient in light  
5 of the purpose of this chapter, as expressed in RCW 9.94A.010.

6 (j) The defendant's prior unscored misdemeanor or prior unscored  
7 foreign criminal history results in a presumptive sentence that is  
8 clearly too lenient in light of the purpose of this chapter, as  
9 expressed in RCW 9.94A.010.

10 (k) The offense resulted in the pregnancy of a child victim of  
11 rape.

12 (l) The defendant knew that the victim of the current offense was  
13 a youth who was not residing with a legal custodian and the defendant  
14 established or promoted the relationship for the primary purpose of  
15 victimization.

16 (m) The offense was committed with the intent to obstruct or impair  
17 human or animal health care or agricultural or forestry research or  
18 commercial production.

19 (n) The current offense is trafficking in the first degree or  
20 trafficking in the second degree and any victim was a minor at the time  
21 of the offense.

22 (o) The offense was committed in violation of chapter 9A.-- RCW  
23 (sections 1 through 4 of this act) and resulted in the death of a human  
24 or the death or destruction of an animal.

25 NEW SECTION. Sec. 11. Sections 1 through 4 of this act constitute  
26 a new chapter in Title 9A RCW.

27 NEW SECTION. Sec. 12. This act takes effect July 1, 2004.

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