
SENATE BILL 6114

State of Washington

58th Legislature

2004 Regular Session

By Senators Stevens, Winsley, Oke, Schmidt, Honeyford, Mulliken, Parlette, Finkbeiner, Deccio, Swecker, Zarelli, Morton, Hewitt, Sheahan, Horn, Rasmussen, Roach and Benton

Read first time 01/12/2004. Referred to Committee on Judiciary.

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; adding a new chapter to Title 9A
4 RCW; prescribing penalties; and providing an effective date.

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

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

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

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

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

1 (g) Any other services involving the use of animals.

2 (3) "Activity involving natural resources" means any lawful
3 activity involving the use of a natural resource with an economic
4 value, including mining, foresting, harvesting, or processing natural
5 resources.

6 (4) "Animal facility" means a vehicle, building, structure,
7 research facility, nature preserve, or other premises where an animal
8 is lawfully:

9 (a) Housed, exhibited, bred, or offered for sale, including a zoo,
10 amusement park, or preserve, or a location at which a circus or a rodeo
11 or other competitive event is held; or

12 (b) Used for scientific purposes, including research, testing, and
13 experiments.

14 (5) "Animal rights or ecological terrorist organization" means any
15 association, organization, entity, coalition, or combination of two or
16 more persons with the primary or incidental purpose of supporting any
17 politically motivated activity through intimidation, coercion, fear, or
18 other means that is intended to obstruct, impede, or deter any person
19 from participating in an activity involving animals, activity involving
20 natural resources, animal facility, research facility, or the lawful
21 activity of mining, foresting, harvesting, gathering, or processing
22 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) "Natural resource" means a material source of wealth, such as
33 timber, fresh water, or a mineral deposit, that occurs in a natural
34 state and has economic value.

35 (8) "Political motivation" means an intent to influence a
36 governmental entity or the public to take a specific political action,
37 or to protest the actions of a governmental entity, corporation,
38 organization, or the public at large.

1 NEW SECTION. **Sec. 2.** (1) An animal or ecological terrorist
2 organization or any person acting on its behalf or at its request or
3 for its benefit or any individual whose intent to commit the activity
4 was politically motivated is prohibited from:

5 (a) Depriving the owner of an animal or natural resource from
6 lawfully participating in an activity involving animals or an activity
7 involving natural resources by:

8 (i) Obstructing the lawful use of an animal, natural resource, or
9 other property from the owner permanently or for such a period of time
10 that a significant portion of the value or enjoyment of the animal,
11 natural resource, or property is lost to the owner;

12 (ii) Taking or detaining an animal, natural resource, or other
13 property and agreeing to restore it only upon reward or other
14 compensation; or

15 (iii) Damaging or disposing of an animal, natural resource, or
16 other property or to so alter its condition or usefulness that the
17 value of the animal, natural resource, or other property is
18 substantially reduced.

19 (b) Obstructing or impeding the use of an animal facility or the
20 use of a natural resource without the effective consent of the owner
21 by:

22 (i) Damaging or destroying an animal or research facility or other
23 property in or on the premises;

24 (ii) Entering an animal or research facility that is at the time
25 closed to the public;

26 (iii) Remaining concealed in an animal or research facility with
27 the intent to commit an act prohibited by this chapter;

28 (iv) Entering an animal or research facility and committing or
29 attempting to commit an act prohibited by this chapter;

30 (v) Entering an animal or research facility to take pictures by
31 photograph, video camera, or other means with the intent to commit
32 criminal activities or defame the facility or its owner;

33 (vi) Entering or remaining on the premises of an animal or research
34 facility if the person or organization:

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

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

37 (c) Participating in or supporting animal or ecological terrorism,
38 including raising, soliciting, collecting, or providing any person with

1 material, financial support, or other resources such as lodging,
2 training, safe houses, false documentation, or identification,
3 communications, equipment, or transportation that will be used in whole
4 or in part to encourage, plan, prepare, carry out, publicize, promote,
5 or aid an act of animal or ecological terrorism, the concealment of, or
6 an escape from an act of animal or ecological terrorism.

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

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

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

13 (c) An employee of an animal control authority or a recognized
14 animal shelter or humane society acting in the course and scope of his
15 or her employment.

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

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

24 (3) Any person convicted of an act that violates section 2 of this
25 act and such act intentionally or negligently results in bodily harm to
26 any individual, the penalty classification shall be elevated one
27 degree.

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

31 (5) A person who is injured or whose property has been damaged as
32 a result of a violation of section 2 of this act may bring against the
33 person who caused the damage a civil cause of action to recover:

34 (a) An amount equal to three times all economic damages to include
35 the cost of lost or damaged property, records, the cost of repeating
36 all interrupted or invalidated experiments, loss of profits or other
37 consequential damages; and

1 (b) Court costs and reasonable attorneys' fees.

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

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

18 Unless the context requires the contrary, the definitions in this
19 section apply throughout this chapter.

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

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

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

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

30 (b) "Beneficial interest" does not include the interest of a
31 stockholder in a corporation or the interest of a partner in a general
32 partnership or limited partnership.

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

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

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

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

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

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

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

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

20 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,
21 9A.56.080, and 9A.56.083;

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

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

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

27 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
28 9A.68.050;

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

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

31 (l) Unlawful production of payment instruments, unlawful possession
32 of payment instruments, unlawful possession of a personal
33 identification device, unlawful possession of fictitious
34 identification, or unlawful possession of instruments of financial
35 fraud, as defined in RCW 9A.56.320;

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

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

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

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

4 (q) Delivery or manufacture of controlled substances or possession
5 with intent to deliver or manufacture controlled substances under
6 chapter 69.50 RCW;

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

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

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

10 (u) Obstructing criminal investigations or prosecutions in
11 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
12 9A.76.070, or 9A.76.180;

13 (v) Fraud in the purchase or sale of securities, as defined in RCW
14 21.20.010;

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

16 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,
17 9.68A.050, and 9.68A.060;

18 (y) Promoting prostitution, as defined in RCW 9A.88.070 and
19 9A.88.080;

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

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

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

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

24 (dd) Commercial telephone solicitation in violation of RCW
25 19.158.040(1);

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

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

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

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

30 (ii) Unlicensed practice of a profession or business, as defined in
31 RCW 18.130.190(7);

32 (jj) Improperly obtaining financial information, as defined in RCW
33 9.35.010;

34 (kk) Identity theft, as defined in RCW 9.35.020;

35 (ll) Unlawful shipment of cigarettes in violation of RCW
36 70.155.105(6) (a) or (b); (~~or~~)

37 (mm) Unlawful shipment of cigarettes in violation of RCW
38 82.24.110(2); or

1 (nn) A violation of chapter 9A.-- RCW (sections 1 through 4 of this
2 act).

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

5 (6) "Debtor" means a person to whom an extension of credit is made
6 or a person who guarantees the repayment of an extension of credit or
7 in any manner undertakes to indemnify the creditor against loss
8 resulting from the failure of a person to whom an extension is made to
9 repay the same.

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

15 (8) "Enterprise" includes any individual, sole proprietorship,
16 partnership, corporation, business trust, or other profit or nonprofit
17 legal entity, and includes any union, association, or group of
18 individuals associated in fact although not a legal entity, and both
19 illicit and licit enterprises and governmental and nongovernmental
20 entities.

21 (9) "Extortionate extension of credit" means an extension of credit
22 with respect to which it is the understanding of the creditor and the
23 debtor at the time the extension is made that delay in making repayment
24 or failure to make repayment could result in the use of violence or
25 other criminal means to cause harm to the person, reputation, or
26 property of any person.

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

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

34 (12) "Pattern of criminal profiteering activity" means engaging in
35 at least three acts of criminal profiteering, one of which occurred
36 after July 1, 1985, and the last of which occurred within five years,
37 excluding any period of imprisonment, after the commission of the
38 earliest act of criminal profiteering. In order to constitute a

1 pattern, the three acts must have the same or similar intent, results,
2 accomplices, principals, victims, or methods of commission, or be
3 otherwise interrelated by distinguishing characteristics including a
4 nexus to the same enterprise, and must not be isolated events.
5 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
6 any person other than the attorney general or county prosecuting
7 attorney in which one or more acts of fraud in the purchase or sale of
8 securities are asserted as acts of criminal profiteering activity, it
9 is a condition to civil liability under RCW 9A.82.100 that the
10 defendant has been convicted in a criminal proceeding of fraud in the
11 purchase or sale of securities under RCW 21.20.400 or under the laws of
12 another state or of the United States requiring the same elements of
13 proof, but such conviction need not relate to any act or acts asserted
14 as acts of criminal profiteering activity in such civil action under
15 RCW 9A.82.100.

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

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

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

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

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

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

33 (19) "Traffic" means to sell, transfer, distribute, dispense, or
34 otherwise dispose of stolen property to another person, or to buy,
35 receive, possess, or obtain control of stolen property, with intent to
36 sell, transfer, distribute, dispense, or otherwise dispose of the
37 property to another person.

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

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

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

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

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

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

10 (ii) A trustee of any testamentary trust;

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

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

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

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

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

20 (ii) Chapter 9.46 RCW relating to gambling;

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

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

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

27 During the pendency of any criminal case charging a violation of
28 RCW 9A.82.060 or 9A.82.080, ~~(($\text{\textcircled{e}}$))~~ an offense defined in RCW 9A.40.100,
29 or an offense, including an anticipatory or completed offense, or a
30 lawfully obtained and otherwise admissible confession to have completed
31 an offense, that is defined in chapter 9A.-- RCW (sections 1 through 4
32 of this act), whether or not committed for financial gain, the superior
33 court may, in addition to its other powers, issue an order pursuant to
34 RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation
35 of RCW 9A.82.060 or 9A.82.080, ~~(($\text{\textcircled{e}}$))~~ an offense defined in RCW
36 9A.40.100, or an offense, including an anticipatory or completed
37 offense, or a lawfully obtained and otherwise admissible confession to

1 have completed an offense, that is defined in chapter 9A.-- RCW
2 (sections 1 through 4 of this act), whether or not committed for
3 financial gain, the superior court may, in addition to its other powers
4 of disposition, issue an order pursuant to RCW 9A.82.100.

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

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

18 (b) The attorney general or county prosecuting attorney may file an
19 action: (i) On behalf of those persons injured or, respectively, on
20 behalf of the state or county if the entity has sustained damages, or
21 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering
22 activity, or an offense defined in RCW 9A.40.100, or an offense,
23 including an anticipatory or completed offense, or a lawfully obtained
24 and otherwise admissible confession to have completed an offense, that
25 is defined in chapter 9A.-- RCW (sections 1 through 4 of this act),
26 whether or not committed for financial gain, or a violation of RCW
27 9A.82.060 or 9A.82.080.

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

32 (d) In an action filed to prevent, restrain, or remedy a pattern of
33 criminal profiteering activity, or an offense defined in RCW 9A.40.100,
34 or an offense, including an anticipatory or completed offense, or a
35 lawfully obtained and otherwise admissible confession to have completed
36 an offense, that is defined in chapter 9A.-- RCW (sections 1 through 4
37 of this act), whether or not committed for financial gain, or a

1 violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the
2 violation, may impose a civil penalty not exceeding two hundred fifty
3 thousand dollars, in addition to awarding the cost of the suit,
4 including reasonable investigative and attorney's fees.

5 (2) The superior court has jurisdiction to prevent, restrain, and
6 remedy a pattern of criminal profiteering, or an offense defined in RCW
7 9A.40.100, or an offense, including an anticipatory or completed
8 offense, or a lawfully obtained and otherwise admissible confession to
9 have completed an offense, that is defined in chapter 9A.-- RCW
10 (sections 1 through 4 of this act), whether or not committed for
11 financial gain, or a violation of RCW 9A.82.060 or 9A.82.080 after
12 making provision for the rights of all innocent persons affected by the
13 violation and after hearing or trial, as appropriate, by issuing
14 appropriate orders.

15 (3) Prior to a determination of liability, orders issued under
16 subsection (2) of this section may include, but are not limited to,
17 entering restraining orders or prohibitions or taking such other
18 actions, including the acceptance of satisfactory performance bonds, in
19 connection with any property or other interest subject to damages,
20 forfeiture, or other restraints pursuant to this section as the court
21 deems proper. The orders may also include attachment, receivership, or
22 injunctive relief in regard to personal or real property pursuant to
23 Title 7 RCW. In shaping the reach or scope of receivership,
24 attachment, or injunctive relief, the superior court shall provide for
25 the protection of bona fide interests in property, including community
26 property, of persons who were not involved in the violation of this
27 chapter, except to the extent that such interests or property were
28 acquired or used in such a way as to be subject to forfeiture under RCW
29 9A.82.100(4)(f).

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

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

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

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

2 (d) Ordering the payment of actual damages sustained to those
3 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an
4 offense defined in RCW 9A.40.100, or an offense, including an
5 anticipatory or completed offense, or a lawfully obtained and otherwise
6 admissible confession to have completed an offense, that is defined in
7 chapter 9A.-- RCW (sections 1 through 4 of this act), whether or not
8 committed for financial gain, or an act of criminal profiteering that
9 is part of a pattern of criminal profiteering, and in the court's
10 discretion, increasing the payment to an amount not exceeding three
11 times the actual damages sustained.

12 (e) Ordering the payment of all costs and expenses of the
13 prosecution and investigation of a pattern of criminal profiteering, or
14 an offense defined in RCW 9A.40.100, or an offense, including an
15 anticipatory or completed offense, or a lawfully obtained and otherwise
16 admissible confession to have completed an offense, that is defined in
17 chapter 9A.-- RCW (sections 1 through 4 of this act), whether or not
18 committed for financial gain, activity or a violation of RCW 9A.82.060
19 or 9A.82.080, civil and criminal, incurred by the state or county,
20 including any costs of defense provided at public expense, as
21 appropriate to the state general fund or the antiprofitteering revolving
22 fund of the county.

23 (f) Ordering forfeiture first as restitution to any person damaged
24 by an act of criminal profiteering that is part of a pattern of
25 criminal profiteering, or by an offense defined in RCW 9A.40.100, or an
26 offense, including an anticipatory or completed offense, or a lawfully
27 obtained and otherwise admissible confession to have completed an
28 offense, that is defined in chapter 9A.-- RCW (sections 1 through 4 of
29 this act), whether or not committed for financial gain, then to the
30 state general fund or antiprofitteering revolving fund of the county, as
31 appropriate, to the extent not already ordered to be paid in other
32 damages, of the following:

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

37 (ii) Any property, contractual right, or claim against property

1 used to influence any enterprise that a person has established,
2 operated, controlled, conducted, or participated in the conduct of, in
3 violation of RCW 9A.82.060 or 9A.82.080.

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

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

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

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

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

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

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

10 (7) The initiation of civil proceedings under this section shall be
11 commenced within three years after discovery of the pattern of criminal
12 profiteering activity or after the pattern should reasonably have been
13 discovered or, in the case of an offense that is defined in RCW
14 9A.40.100 or chapter 9A.-- RCW (sections 1 through 4 of this act),
15 within three years after the final disposition of any criminal charges
16 relating to the offense, whichever is later.

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

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

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

1 (11) Except in cases filed by a county prosecuting attorney, the
2 attorney general may, upon timely application, intervene in any civil
3 action or proceeding brought under this section if the attorney general
4 certifies that in the attorney general's opinion the action is of
5 special public importance. Upon intervention, the attorney general may
6 assert any available claim and is entitled to the same relief as if the
7 attorney general had instituted a separate action.

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

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

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

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

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

35 (1) The state, upon filing a criminal action under RCW 9A.82.060 or
36 9A.82.080 or for an offense defined in RCW 9A.40.100, or an offense,
37 including an anticipatory or completed offense, or a lawfully obtained

1 and otherwise admissible confession to have completed an offense, that
2 is defined in chapter 9A.-- RCW (sections 1 through 4 of this act),
3 whether or not committed for financial gain, or a civil action under
4 RCW 9A.82.100, may file in accordance with this section a criminal
5 profiteering lien. A filing fee or other charge is not required for
6 filing a criminal profiteering lien.

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

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

12 (b) In the discretion of the attorney general or county prosecuting
13 attorney filing the lien, any aliases or fictitious names of the
14 defendant named in the lien;

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

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

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

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

25 (g) The amount that the state claims in the action or, with respect
26 to property or other interests that the state has requested forfeiture
27 to the state or county, a description of the property or interests
28 sought to be paid or forfeited;

29 (h) If known to the attorney general or county prosecuting attorney
30 filing the lien, a description of property that is subject to
31 forfeiture to the state or property in which the defendant has an
32 interest that is available to satisfy a judgment entered in favor of
33 the state; and

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

36 (3) The attorney general or the county prosecuting attorney filing
37 the lien may amend a lien filed under this section at any time by

1 filing an amended criminal profiteering lien in accordance with this
2 section that identifies the prior lien amended.

3 (4) The attorney general or the county prosecuting attorney filing
4 the lien shall, as soon as practical after filing a criminal
5 profiteering lien, furnish to any person named in the lien a notice of
6 the filing of the lien. Failure to furnish notice under this
7 subsection does not invalidate or otherwise affect a criminal
8 profiteering lien filed in accordance with this section.

9 (5)(a) A criminal profiteering lien is perfected against interests
10 in personal property in the same manner as a security interest in like
11 property pursuant to RCW 62A.9A-301 through 62A.9A-316 or as otherwise
12 required to perfect a security interest in like property under
13 applicable law. In the case of perfection by filing, the state shall
14 file, in lieu of a financing statement in the form prescribed by RCW
15 62A.9A-502, a notice of lien in substantially the following form:

16 NOTICE OF LIEN

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

20 Name:
21 Address:
22

23 State of Washington

24

25 By (authorized signature)

26 On receipt of such a notice from the state, a filing officer shall,
27 without payment of filing fee, file and index the notice as if it were
28 a financing statement naming the state as secured party and the
29 defendant as debtor.

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

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

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

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

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

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

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

28 (9) Upon the entry of a final judgment in favor of the state
29 providing for forfeiture of property to the state, the title of the
30 state to the property:

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

35 (b) In the case of personal property or a beneficial interest in
36 personal property, relates back to the date the personal property was
37 seized by the state, or the date of filing of a criminal profiteering
38 lien in accordance with this section, whichever is earlier, but if the

1 property was not seized and no criminal profiteering lien was filed
2 then to the date the final judgment was filed with the department of
3 licensing and, if the personal property is an aircraft, with the
4 federal aviation administration.

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

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

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

18 The court may impose a sentence outside the standard sentence range
19 for an offense if it finds, considering the purpose of this chapter,
20 that there are substantial and compelling reasons justifying an
21 exceptional sentence. Whenever a sentence outside the standard
22 sentence range is imposed, the court shall set forth the reasons for
23 its decision in written findings of fact and conclusions of law. A
24 sentence outside the standard sentence range shall be a determinate
25 sentence unless it is imposed on an offender sentenced under RCW
26 9.94A.712. An exceptional sentence imposed on an offender sentenced
27 under RCW 9.94A.712 shall be to a minimum term set by the court and a
28 maximum term equal to the statutory maximum sentence for the offense of
29 conviction under chapter 9A.20 RCW.

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

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

1 The following are illustrative factors which the court may consider
2 in the exercise of its discretion to impose an exceptional sentence.
3 The following are illustrative only and are not intended to be
4 exclusive reasons for exceptional sentences.

5 (1) Mitigating Circumstances

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

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

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

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

16 (e) The defendant's capacity to appreciate the wrongfulness of his
17 or her conduct, or to conform his or her conduct to the requirements of
18 the law, was significantly impaired. Voluntary use of drugs or alcohol
19 is excluded.

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

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

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

29 (2) Aggravating Circumstances

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

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

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

37 (d) The current offense was a major economic offense or series of

1 offenses, so identified by a consideration of any of the following
2 factors:

3 (i) The current offense involved multiple victims or multiple
4 incidents per victim;

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

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

9 (iv) The defendant used his or her position of trust, confidence,
10 or fiduciary responsibility to facilitate the commission of the current
11 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (k) The offense resulted in the pregnancy of a child victim of
18 rape.

19 (l) The defendant knew that the victim of the current offense was
20 a youth who was not residing with a legal custodian and the defendant
21 established or promoted the relationship for the primary purpose of
22 victimization.

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

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

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

32 NEW SECTION. Sec. 10. Sections 1 through 4 of this act constitute
33 a new chapter in Title 9A RCW.

34 NEW SECTION. Sec. 11. This act takes effect July 1, 2004.

--- END ---