
HOUSE BILL 2840

State of Washington

59th Legislature

2006 Regular Session

By Representatives Roach, Kirby, Pettigrew, Morrell, McCune, Pearson, Ericks, Buck, Orcutt, Kessler, Haler, Campbell, Nixon, Green, Ericksen, Woods, Alexander, Talcott, Kristiansen, Holmquist, Rodne, Serben, Buri, Skinner, Schindler, Hinkle, Jarrett, McDonald, Walsh, Springer, Sells, Armstrong, Kilmer, Bailey, Priest, Shabro and Dunn

Read first time 01/13/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to increasing the penalties for identity theft;
2 amending RCW 9.94A.030, 9.94A.030, 9.94A.540, 9A.82.090, 9A.82.100, and
3 9A.82.120; reenacting and amending RCW 9.94A.411 and 9.94A.515; adding
4 a new section to chapter 43.43 RCW; prescribing penalties; providing an
5 effective date; and providing an expiration date.

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

7 **Sec. 1.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

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

13 (2) "Collect," or any derivative thereof, "collect and remit," or
14 "collect and deliver," when used with reference to the department,
15 means that the department, either directly or through a collection
16 agreement authorized by RCW 9.94A.760, is responsible for monitoring
17 and enforcing the offender's sentence with regard to the legal
18 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

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

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

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

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

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

29 (8) "Community protection zone" means the area within eight hundred
30 eighty feet of the facilities and grounds of a public or private
31 school.

32 (9) "Community restitution" means compulsory service, without
33 compensation, performed for the benefit of the community by the
34 offender.

35 (10) "Community supervision" means a period of time during which a
36 convicted offender is subject to crime-related prohibitions and other
37 sentence conditions imposed by a court pursuant to this chapter or RCW
38 16.52.200(6) or 46.61.524. Where the court finds that any offender has

1 a chemical dependency that has contributed to his or her offense, the
2 conditions of supervision may, subject to available resources, include
3 treatment. For purposes of the interstate compact for out-of-state
4 supervision of parolees and probationers, RCW 9.95.270, community
5 supervision is the functional equivalent of probation and should be
6 considered the same as probation by other states.

7 (11) "Confinement" means total or partial confinement.

8 (12) "Conviction" means an adjudication of guilt pursuant to Titles
9 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
10 acceptance of a plea of guilty.

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

18 (14) "Criminal history" means the list of a defendant's prior
19 convictions and juvenile adjudications, whether in this state, in
20 federal court, or elsewhere.

21 (a) The history shall include, where known, for each conviction (i)
22 whether the defendant has been placed on probation and the length and
23 terms thereof; and (ii) whether the defendant has been incarcerated and
24 the length of incarceration.

25 (b) A conviction may be removed from a defendant's criminal history
26 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
27 a similar out-of-state statute, or if the conviction has been vacated
28 pursuant to a governor's pardon.

29 (c) The determination of a defendant's criminal history is distinct
30 from the determination of an offender score. A prior conviction that
31 was not included in an offender score calculated pursuant to a former
32 version of the sentencing reform act remains part of the defendant's
33 criminal history.

34 (15) "Day fine" means a fine imposed by the sentencing court that
35 equals the difference between the offender's net daily income and the
36 reasonable obligations that the offender has for the support of the
37 offender and any dependents.

1 (16) "Day reporting" means a program of enhanced supervision
2 designed to monitor the offender's daily activities and compliance with
3 sentence conditions, and in which the offender is required to report
4 daily to a specific location designated by the department or the
5 sentencing court.

6 (17) "Department" means the department of corrections.

7 (18) "Determinate sentence" means a sentence that states with
8 exactitude the number of actual years, months, or days of total
9 confinement, of partial confinement, of community supervision, the
10 number of actual hours or days of community restitution work, or
11 dollars or terms of a legal financial obligation. The fact that an
12 offender through earned release can reduce the actual period of
13 confinement shall not affect the classification of the sentence as a
14 determinate sentence.

15 (19) "Disposable earnings" means that part of the earnings of an
16 offender remaining after the deduction from those earnings of any
17 amount required by law to be withheld. For the purposes of this
18 definition, "earnings" means compensation paid or payable for personal
19 services, whether denominated as wages, salary, commission, bonuses, or
20 otherwise, and, notwithstanding any other provision of law making the
21 payments exempt from garnishment, attachment, or other process to
22 satisfy a court-ordered legal financial obligation, specifically
23 includes periodic payments pursuant to pension or retirement programs,
24 or insurance policies of any type, but does not include payments made
25 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
26 or Title 74 RCW.

27 (20) "Drug offender sentencing alternative" is a sentencing option
28 available to persons convicted of a felony offense other than a violent
29 offense or a sex offense and who are eligible for the option under RCW
30 9.94A.660.

31 (21) "Drug offense" means:

32 (a) Any felony violation of chapter 69.50 RCW except possession of
33 a controlled substance (RCW 69.50.4013) or forged prescription for a
34 controlled substance (RCW 69.50.403);

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

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

4 (22) "Earned release" means earned release from confinement as
5 provided in RCW 9.94A.728.

6 (23) "Escape" means:

7 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
8 first degree (RCW 9A.76.110), escape in the second degree (RCW
9 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
10 willful failure to return from work release (RCW 72.65.070), or willful
11 failure to be available for supervision by the department while in
12 community custody (RCW 72.09.310); or

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

16 (24) "Felony traffic offense" means:

17 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
18 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
19 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

29 (27) "Home detention" means a program of partial confinement
30 available to offenders wherein the offender is confined in a private
31 residence subject to electronic surveillance.

32 (28) "Legal financial obligation" means a sum of money that is
33 ordered by a superior court of the state of Washington for legal
34 financial obligations which may include restitution to the victim,
35 statutorily imposed crime victims' compensation fees as assessed
36 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
37 court-appointed attorneys' fees, and costs of defense, fines, and any
38 other financial obligation that is assessed to the offender as a result

1 of a felony conviction. Upon conviction for vehicular assault while
2 under the influence of intoxicating liquor or any drug, RCW
3 46.61.522(1)(b), or vehicular homicide while under the influence of
4 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
5 obligations may also include payment to a public agency of the expense
6 of an emergency response to the incident resulting in the conviction,
7 subject to RCW 38.52.430.

8 (29) "Most serious offense" means any of the following felonies or
9 a felony attempt to commit any of the following felonies:

10 (a) Any felony defined under any law as a class A felony or
11 criminal solicitation of or criminal conspiracy to commit a class A
12 felony;

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

18 (g) Identity theft in the first degree;

19 (h) Incest when committed against a child under age fourteen;

20 ~~((h))~~ (i) Indecent liberties;

21 ~~((i))~~ (j) Kidnapping in the second degree;

22 ~~((j))~~ (k) Leading organized crime;

23 ~~((k))~~ (l) Manslaughter in the first degree;

24 ~~((l))~~ (m) Manslaughter in the second degree;

25 ~~((m))~~ (n) Promoting prostitution in the first degree;

26 ~~((n))~~ (o) Rape in the third degree;

27 ~~((o))~~ (p) Robbery in the second degree;

28 ~~((p))~~ (q) Sexual exploitation;

29 ~~((q))~~ (r) Vehicular assault, when caused by the operation or
30 driving of a vehicle by a person while under the influence of
31 intoxicating liquor or any drug or by the operation or driving of a
32 vehicle in a reckless manner;

33 ~~((r))~~ (s) Vehicular homicide, when proximately caused by the
34 driving of any vehicle by any person while under the influence of
35 intoxicating liquor or any drug as defined by RCW 46.61.502, or by the
36 operation of any vehicle in a reckless manner;

37 ~~((s))~~ (t) Any other class B felony offense with a finding of
38 sexual motivation;

1 (~~(t)~~) (u) Any other felony with a deadly weapon verdict under RCW
2 9.94A.602;

3 (~~(u)~~) (v) Any felony offense in effect at any time prior to
4 December 2, 1993, that is comparable to a most serious offense under
5 this subsection, or any federal or out-of-state conviction for an
6 offense that under the laws of this state would be a felony classified
7 as a most serious offense under this subsection;

8 (~~(v)~~) (w)(i) A prior conviction for indecent liberties under RCW
9 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
10 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
11 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
12 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

13 (ii) A prior conviction for indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
15 if: (A) The crime was committed against a child under the age of
16 fourteen; or (B) the relationship between the victim and perpetrator is
17 included in the definition of indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
20 through July 27, 1997.

21 (30) "Nonviolent offense" means an offense which is not a violent
22 offense.

23 (31) "Offender" means a person who has committed a felony
24 established by state law and is eighteen years of age or older or is
25 less than eighteen years of age but whose case is under superior court
26 jurisdiction under RCW 13.04.030 or has been transferred by the
27 appropriate juvenile court to a criminal court pursuant to RCW
28 13.40.110. Throughout this chapter, the terms "offender" and
29 "defendant" are used interchangeably.

30 (32) "Partial confinement" means confinement for no more than one
31 year in a facility or institution operated or utilized under contract
32 by the state or any other unit of government, or, if home detention or
33 work crew has been ordered by the court, in an approved residence, for
34 a substantial portion of each day with the balance of the day spent in
35 the community. Partial confinement includes work release, home
36 detention, work crew, and a combination of work crew and home
37 detention.

38 (33) "Persistent offender" is an offender who:

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

3 (ii) Has, before the commission of the offense under (a) of this
4 subsection, been convicted as an offender on at least two separate
5 occasions, whether in this state or elsewhere, of felonies that under
6 the laws of this state would be considered most serious offenses and
7 would be included in the offender score under RCW 9.94A.525; provided
8 that of the two or more previous convictions, at least one conviction
9 must have occurred before the commission of any of the other most
10 serious offenses for which the offender was previously convicted; or

11 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
12 of a child in the first degree, child molestation in the first degree,
13 rape in the second degree, rape of a child in the second degree, or
14 indecent liberties by forcible compulsion; (B) any of the following
15 offenses with a finding of sexual motivation: Murder in the first
16 degree, murder in the second degree, homicide by abuse, kidnapping in
17 the first degree, kidnapping in the second degree, assault in the first
18 degree, assault in the second degree, assault of a child in the first
19 degree, or burglary in the first degree; or (C) an attempt to commit
20 any crime listed in this subsection (33)(b)(i); and

21 (ii) Has, before the commission of the offense under (b)(i) of this
22 subsection, been convicted as an offender on at least one occasion,
23 whether in this state or elsewhere, of an offense listed in (b)(i) of
24 this subsection or any federal or out-of-state offense or offense under
25 prior Washington law that is comparable to the offenses listed in
26 (b)(i) of this subsection. A conviction for rape of a child in the
27 first degree constitutes a conviction under (b)(i) of this subsection
28 only when the offender was sixteen years of age or older when the
29 offender committed the offense. A conviction for rape of a child in
30 the second degree constitutes a conviction under (b)(i) of this
31 subsection only when the offender was eighteen years of age or older
32 when the offender committed the offense.

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

35 (35) "Private school" means a school regulated under chapter
36 28A.195 or 28A.205 RCW.

37 (36) "Public school" has the same meaning as in RCW 28A.150.010.

1 (37) "Restitution" means a specific sum of money ordered by the
2 sentencing court to be paid by the offender to the court over a
3 specified period of time as payment of damages. The sum may include
4 both public and private costs.

5 (38) "Risk assessment" means the application of an objective
6 instrument supported by research and adopted by the department for the
7 purpose of assessing an offender's risk of reoffense, taking into
8 consideration the nature of the harm done by the offender, place and
9 circumstances of the offender related to risk, the offender's
10 relationship to any victim, and any information provided to the
11 department by victims. The results of a risk assessment shall not be
12 based on unconfirmed or unconfirmable allegations.

13 (39) "Serious traffic offense" means:

14 (a) Driving while under the influence of intoxicating liquor or any
15 drug (RCW 46.61.502), actual physical control while under the influence
16 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
17 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
18 or

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

22 (40) "Serious violent offense" is a subcategory of violent offense
23 and means:

24 (a)(i) Murder in the first degree;

25 (ii) Homicide by abuse;

26 (iii) Murder in the second degree;

27 (iv) Manslaughter in the first degree;

28 (v) Assault in the first degree;

29 (vi) Kidnapping in the first degree;

30 (vii) Rape in the first degree;

31 (viii) Assault of a child in the first degree; or

32 (ix) An attempt, criminal solicitation, or criminal conspiracy to
33 commit one of these felonies; or

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

37 (41) "Sex offense" means:

1 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
2 RCW 9A.44.130(11);
3 (ii) A violation of RCW 9A.64.020;
4 (iii) A felony that is a violation of chapter 9.68A RCW other than
5 RCW 9.68A.070 or 9.68A.080; or
6 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
7 criminal solicitation, or criminal conspiracy to commit such crimes;
8 (b) Any conviction for a felony offense in effect at any time prior
9 to July 1, 1976, that is comparable to a felony classified as a sex
10 offense in (a) of this subsection;
11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.835 or 13.40.135; or
13 (d) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as a sex
15 offense under (a) of this subsection.
16 (42) "Sexual motivation" means that one of the purposes for which
17 the defendant committed the crime was for the purpose of his or her
18 sexual gratification.
19 (43) "Standard sentence range" means the sentencing court's
20 discretionary range in imposing a nonappealable sentence.
21 (44) "Statutory maximum sentence" means the maximum length of time
22 for which an offender may be confined as punishment for a crime as
23 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
24 crime, or other statute defining the maximum penalty for a crime.
25 (45) "Total confinement" means confinement inside the physical
26 boundaries of a facility or institution operated or utilized under
27 contract by the state or any other unit of government for twenty-four
28 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
29 (46) "Transition training" means written and verbal instructions
30 and assistance provided by the department to the offender during the
31 two weeks prior to the offender's successful completion of the work
32 ethic camp program. The transition training shall include instructions
33 in the offender's requirements and obligations during the offender's
34 period of community custody.
35 (47) "Victim" means any person who has sustained emotional,
36 psychological, physical, or financial injury to person or property as
37 a direct result of the crime charged.
38 (48) "Violent offense" means:

1 (a) Any of the following felonies:
2 (i) Any felony defined under any law as a class A felony or an
3 attempt to commit a class A felony;
4 (ii) Criminal solicitation of or criminal conspiracy to commit a
5 class A felony;
6 (iii) Manslaughter in the first degree;
7 (iv) Manslaughter in the second degree;
8 (v) Indecent liberties if committed by forcible compulsion;
9 (vi) Kidnapping in the second degree;
10 (vii) Arson in the second degree;
11 (viii) Assault in the second degree;
12 (ix) Assault of a child in the second degree;
13 (x) Extortion in the first degree;
14 (xi) Robbery in the second degree;
15 (xii) Drive-by shooting;
16 (xiii) Vehicular assault, when caused by the operation or driving
17 of a vehicle by a person while under the influence of intoxicating
18 liquor or any drug or by the operation or driving of a vehicle in a
19 reckless manner; and
20 (xiv) Vehicular homicide, when proximately caused by the driving of
21 any vehicle by any person while under the influence of intoxicating
22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
23 any vehicle in a reckless manner;
24 (b) Any conviction for a felony offense in effect at any time prior
25 to July 1, 1976, that is comparable to a felony classified as a violent
26 offense in (a) of this subsection; and
27 (c) Any federal or out-of-state conviction for an offense that
28 under the laws of this state would be a felony classified as a violent
29 offense under (a) or (b) of this subsection.
30 (49) "Work crew" means a program of partial confinement consisting
31 of civic improvement tasks for the benefit of the community that
32 complies with RCW 9.94A.725.
33 (50) "Work ethic camp" means an alternative incarceration program
34 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
35 the cost of corrections by requiring offenders to complete a
36 comprehensive array of real-world job and vocational experiences,
37 character-building work ethics training, life management skills

1 development, substance abuse rehabilitation, counseling, literacy
2 training, and basic adult education.

3 (51) "Work release" means a program of partial confinement
4 available to offenders who are employed or engaged as a student in a
5 regular course of study at school.

6 **Sec. 2.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

12 (2) "Collect," or any derivative thereof, "collect and remit," or
13 "collect and deliver," when used with reference to the department,
14 means that the department, either directly or through a collection
15 agreement authorized by RCW 9.94A.760, is responsible for monitoring
16 and enforcing the offender's sentence with regard to the legal
17 financial obligation, receiving payment thereof from the offender, and,
18 consistent with current law, delivering daily the entire payment to the
19 superior court clerk without depositing it in a departmental account.

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

21 (4) "Community corrections officer" means an employee of the
22 department who is responsible for carrying out specific duties in
23 supervision of sentenced offenders and monitoring of sentence
24 conditions.

25 (5) "Community custody" means that portion of an offender's
26 sentence of confinement in lieu of earned release time or imposed
27 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
28 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
29 community subject to controls placed on the offender's movement and
30 activities by the department. For offenders placed on community
31 custody for crimes committed on or after July 1, 2000, the department
32 shall assess the offender's risk of reoffense and may establish and
33 modify conditions of community custody, in addition to those imposed by
34 the court, based upon the risk to community safety.

35 (6) "Community custody range" means the minimum and maximum period
36 of community custody included as part of a sentence under RCW

1 9.94A.715, as established by the commission or the legislature under
2 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

3 (7) "Community placement" means that period during which the
4 offender is subject to the conditions of community custody and/or
5 postrelease supervision, which begins either upon completion of the
6 term of confinement (postrelease supervision) or at such time as the
7 offender is transferred to community custody in lieu of earned release.
8 Community placement may consist of entirely community custody, entirely
9 postrelease supervision, or a combination of the two.

10 (8) "Community restitution" means compulsory service, without
11 compensation, performed for the benefit of the community by the
12 offender.

13 (9) "Community supervision" means a period of time during which a
14 convicted offender is subject to crime-related prohibitions and other
15 sentence conditions imposed by a court pursuant to this chapter or RCW
16 16.52.200(6) or 46.61.524. Where the court finds that any offender has
17 a chemical dependency that has contributed to his or her offense, the
18 conditions of supervision may, subject to available resources, include
19 treatment. For purposes of the interstate compact for out-of-state
20 supervision of parolees and probationers, RCW 9.95.270, community
21 supervision is the functional equivalent of probation and should be
22 considered the same as probation by other states.

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

24 (11) "Conviction" means an adjudication of guilt pursuant to Titles
25 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
26 acceptance of a plea of guilty.

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

34 (13) "Criminal history" means the list of a defendant's prior
35 convictions and juvenile adjudications, whether in this state, in
36 federal court, or elsewhere.

37 (a) The history shall include, where known, for each conviction (i)

1 whether the defendant has been placed on probation and the length and
2 terms thereof; and (ii) whether the defendant has been incarcerated and
3 the length of incarceration.

4 (b) A conviction may be removed from a defendant's criminal history
5 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
6 a similar out-of-state statute, or if the conviction has been vacated
7 pursuant to a governor's pardon.

8 (c) The determination of a defendant's criminal history is distinct
9 from the determination of an offender score. A prior conviction that
10 was not included in an offender score calculated pursuant to a former
11 version of the sentencing reform act remains part of the defendant's
12 criminal history.

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

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

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

23 (17) "Determinate sentence" means a sentence that states with
24 exactitude the number of actual years, months, or days of total
25 confinement, of partial confinement, of community supervision, the
26 number of actual hours or days of community restitution work, or
27 dollars or terms of a legal financial obligation. The fact that an
28 offender through earned release can reduce the actual period of
29 confinement shall not affect the classification of the sentence as a
30 determinate sentence.

31 (18) "Disposable earnings" means that part of the earnings of an
32 offender remaining after the deduction from those earnings of any
33 amount required by law to be withheld. For the purposes of this
34 definition, "earnings" means compensation paid or payable for personal
35 services, whether denominated as wages, salary, commission, bonuses, or
36 otherwise, and, notwithstanding any other provision of law making the
37 payments exempt from garnishment, attachment, or other process to
38 satisfy a court-ordered legal financial obligation, specifically

1 includes periodic payments pursuant to pension or retirement programs,
2 or insurance policies of any type, but does not include payments made
3 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
4 or Title 74 RCW.

5 (19) "Drug offender sentencing alternative" is a sentencing option
6 available to persons convicted of a felony offense other than a violent
7 offense or a sex offense and who are eligible for the option under RCW
8 9.94A.660.

9 (20) "Drug offense" means:

10 (a) Any felony violation of chapter 69.50 RCW except possession of
11 a controlled substance (RCW 69.50.4013) or forged prescription for a
12 controlled substance (RCW 69.50.403);

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

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

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

21 (22) "Escape" means:

22 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
23 first degree (RCW 9A.76.110), escape in the second degree (RCW
24 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
25 willful failure to return from work release (RCW 72.65.070), or willful
26 failure to be available for supervision by the department while in
27 community custody (RCW 72.09.310); or

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

31 (23) "Felony traffic offense" means:

32 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
33 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
34 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

34 (g) Identity theft in the first degree;

35 (h) Incest when committed against a child under age fourteen;

36 ~~((h))~~ (i) Indecent liberties;

37 ~~((i))~~ (j) Kidnapping in the second degree;

38 ~~((j))~~ (k) Leading organized crime;

1 ~~((k))~~ (l) Manslaughter in the first degree;
2 ~~((l))~~ (m) Manslaughter in the second degree;
3 ~~((m))~~ (n) Promoting prostitution in the first degree;
4 ~~((n))~~ (o) Rape in the third degree;
5 ~~((o))~~ (p) Robbery in the second degree;
6 ~~((p))~~ (q) Sexual exploitation;
7 ~~((q))~~ (r) Vehicular assault, when caused by the operation or
8 driving of a vehicle by a person while under the influence of
9 intoxicating liquor or any drug or by the operation or driving of a
10 vehicle in a reckless manner;
11 ~~((r))~~ (s) Vehicular homicide, when proximately caused by the
12 driving of any vehicle by any person while under the influence of
13 intoxicating liquor or any drug as defined by RCW 46.61.502, or by the
14 operation of any vehicle in a reckless manner;
15 ~~((s))~~ (t) Any other class B felony offense with a finding of
16 sexual motivation;
17 ~~((t))~~ (u) Any other felony with a deadly weapon verdict under RCW
18 9.94A.602;
19 ~~((u))~~ (v) Any felony offense in effect at any time prior to
20 December 2, 1993, that is comparable to a most serious offense under
21 this subsection, or any federal or out-of-state conviction for an
22 offense that under the laws of this state would be a felony classified
23 as a most serious offense under this subsection;
24 ~~((v))~~ (w)(i) A prior conviction for indecent liberties under RCW
25 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
26 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
27 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
28 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
29 (ii) A prior conviction for indecent liberties under RCW
30 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
31 if: (A) The crime was committed against a child under the age of
32 fourteen; or (B) the relationship between the victim and perpetrator is
33 included in the definition of indecent liberties under RCW
34 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
35 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
36 through July 27, 1997.
37 (29) "Nonviolent offense" means an offense which is not a violent
38 offense.

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

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

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

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

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

27 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
28 of a child in the first degree, child molestation in the first degree,
29 rape in the second degree, rape of a child in the second degree, or
30 indecent liberties by forcible compulsion; (B) any of the following
31 offenses with a finding of sexual motivation: Murder in the first
32 degree, murder in the second degree, homicide by abuse, kidnapping in
33 the first degree, kidnapping in the second degree, assault in the first
34 degree, assault in the second degree, assault of a child in the first
35 degree, or burglary in the first degree; or (C) an attempt to commit
36 any crime listed in this subsection (32)(b)(i); and

37 (ii) Has, before the commission of the offense under (b)(i) of this
38 subsection, been convicted as an offender on at least one occasion,

1 whether in this state or elsewhere, of an offense listed in (b)(i) of
2 this subsection or any federal or out-of-state offense or offense under
3 prior Washington law that is comparable to the offenses listed in
4 (b)(i) of this subsection. A conviction for rape of a child in the
5 first degree constitutes a conviction under (b)(i) of this subsection
6 only when the offender was sixteen years of age or older when the
7 offender committed the offense. A conviction for rape of a child in
8 the second degree constitutes a conviction under (b)(i) of this
9 subsection only when the offender was eighteen years of age or older
10 when the offender committed the offense.

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

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

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

25 (36) "Serious traffic offense" means:

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

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

34 (37) "Serious violent offense" is a subcategory of violent offense
35 and means:

36 (a)(i) Murder in the first degree;

37 (ii) Homicide by abuse;

38 (iii) Murder in the second degree;

1 (iv) Manslaughter in the first degree;
2 (v) Assault in the first degree;
3 (vi) Kidnapping in the first degree;
4 (vii) Rape in the first degree;
5 (viii) Assault of a child in the first degree; or
6 (ix) An attempt, criminal solicitation, or criminal conspiracy to
7 commit one of these felonies; or
8 (b) Any federal or out-of-state conviction for an offense that
9 under the laws of this state would be a felony classified as a serious
10 violent offense under (a) of this subsection.
11 (38) "Sex offense" means:
12 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
13 RCW 9A.44.130(11);
14 (ii) A violation of RCW 9A.64.020;
15 (iii) A felony that is a violation of chapter 9.68A RCW other than
16 RCW 9.68A.070 or 9.68A.080; or
17 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
18 criminal solicitation, or criminal conspiracy to commit such crimes;
19 (b) Any conviction for a felony offense in effect at any time prior
20 to July 1, 1976, that is comparable to a felony classified as a sex
21 offense in (a) of this subsection;
22 (c) A felony with a finding of sexual motivation under RCW
23 9.94A.835 or 13.40.135; or
24 (d) Any federal or out-of-state conviction for an offense that
25 under the laws of this state would be a felony classified as a sex
26 offense under (a) of this subsection.
27 (39) "Sexual motivation" means that one of the purposes for which
28 the defendant committed the crime was for the purpose of his or her
29 sexual gratification.
30 (40) "Standard sentence range" means the sentencing court's
31 discretionary range in imposing a nonappealable sentence.
32 (41) "Statutory maximum sentence" means the maximum length of time
33 for which an offender may be confined as punishment for a crime as
34 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
35 crime, or other statute defining the maximum penalty for a crime.
36 (42) "Total confinement" means confinement inside the physical
37 boundaries of a facility or institution operated or utilized under

1 contract by the state or any other unit of government for twenty-four
2 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

3 (43) "Transition training" means written and verbal instructions
4 and assistance provided by the department to the offender during the
5 two weeks prior to the offender's successful completion of the work
6 ethic camp program. The transition training shall include instructions
7 in the offender's requirements and obligations during the offender's
8 period of community custody.

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

12 (45) "Violent offense" means:

13 (a) Any of the following felonies:

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

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

18 (iii) Manslaughter in the first degree;

19 (iv) Manslaughter in the second degree;

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

21 (vi) Kidnapping in the second degree;

22 (vii) Arson in the second degree;

23 (viii) Assault in the second degree;

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

25 (x) Extortion in the first degree;

26 (xi) Robbery in the second degree;

27 (xii) Drive-by shooting;

28 (xiii) Vehicular assault, when caused by the operation or driving
29 of a vehicle by a person while under the influence of intoxicating
30 liquor or any drug or by the operation or driving of a vehicle in a
31 reckless manner; and

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

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

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

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

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

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

17 **Sec. 3.** RCW 9.94A.540 and 2005 c 437 s 2 are each amended to read
18 as follows:

19 (1) Except to the extent provided in subsection (3) of this
20 section, the following minimum terms of total confinement are mandatory
21 and shall not be varied or modified under RCW 9.94A.535:

22 (a) An offender convicted of the crime of murder in the first
23 degree shall be sentenced to a term of total confinement not less than
24 twenty years.

25 (b) An offender convicted of the crime of assault in the first
26 degree or assault of a child in the first degree where the offender
27 used force or means likely to result in death or intended to kill the
28 victim shall be sentenced to a term of total confinement not less than
29 five years.

30 (c) An offender convicted of the crime of rape in the first degree
31 shall be sentenced to a term of total confinement not less than five
32 years.

33 (d) An offender convicted of the crime of sexually violent predator
34 escape shall be sentenced to a minimum term of total confinement not
35 less than sixty months.

36 (e) An offender convicted of the crime of identity theft in the

1 first degree shall be sentenced to a minimum term of total confinement
2 not less than twenty-four months.

3 (f) An offender convicted of the crime of identity theft in the
4 second degree shall be sentenced to a minimum term of total confinement
5 not less than twelve months.

6 (2) During such minimum terms of total confinement, no offender
7 subject to the provisions of this section is eligible for community
8 custody, earned release time, furlough, home detention, partial
9 confinement, work crew, work release, or any other form of early
10 release authorized under RCW 9.94A.728, or any other form of authorized
11 leave of absence from the correctional facility while not in the direct
12 custody of a corrections officer. The provisions of this subsection
13 shall not apply: (a) In the case of an offender in need of emergency
14 medical treatment; (b) for the purpose of commitment to an inpatient
15 treatment facility in the case of an offender convicted of the crime of
16 rape in the first degree; or (c) for an extraordinary medical placement
17 when authorized under RCW 9.94A.728(4).

18 (3)(a) Subsection (1) of this section shall not be applied in
19 sentencing of juveniles tried as adults pursuant to RCW
20 13.04.030(1)(e)(i).

21 (b) This subsection (3) applies only to crimes committed on or
22 after July 24, 2005.

23 **Sec. 4.** RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are
24 each reenacted and amended to read as follows:

25 (1) Decision not to prosecute.

26 STANDARD: A prosecuting attorney may decline to prosecute, even
27 though technically sufficient evidence to prosecute exists, in
28 situations where prosecution would serve no public purpose, would
29 defeat the underlying purpose of the law in question or would result in
30 decreased respect for the law.

31 GUIDELINE/COMMENTARY:

32 Examples

33 The following are examples of reasons not to prosecute which could
34 satisfy the standard.

35 (a) Contrary to Legislative Intent - It may be proper to decline to
36 charge where the application of criminal sanctions would be clearly

1 contrary to the intent of the legislature in enacting the particular
2 statute.

3 (b) Antiquated Statute - It may be proper to decline to charge
4 where the statute in question is antiquated in that:

5 (i) It has not been enforced for many years; and

6 (ii) Most members of society act as if it were no longer in
7 existence; and

8 (iii) It serves no deterrent or protective purpose in today's
9 society; and

10 (iv) The statute has not been recently reconsidered by the
11 legislature.

12 This reason is not to be construed as the basis for declining cases
13 because the law in question is unpopular or because it is difficult to
14 enforce.

15 (c) De Minimis Violation - It may be proper to decline to charge
16 where the violation of law is only technical or insubstantial and where
17 no public interest or deterrent purpose would be served by prosecution.

18 (d) Confinement on Other Charges - It may be proper to decline to
19 charge because the accused has been sentenced on another charge to a
20 lengthy period of confinement; and

21 (i) Conviction of the new offense would not merit any additional
22 direct or collateral punishment;

23 (ii) The new offense is either a misdemeanor or a felony which is
24 not particularly aggravated; and

25 (iii) Conviction of the new offense would not serve any significant
26 deterrent purpose.

27 (e) Pending Conviction on Another Charge - It may be proper to
28 decline to charge because the accused is facing a pending prosecution
29 in the same or another county; and

30 (i) Conviction of the new offense would not merit any additional
31 direct or collateral punishment;

32 (ii) Conviction in the pending prosecution is imminent;

33 (iii) The new offense is either a misdemeanor or a felony which is
34 not particularly aggravated; and

35 (iv) Conviction of the new offense would not serve any significant
36 deterrent purpose.

37 (f) High Disproportionate Cost of Prosecution - It may be proper to
38 decline to charge where the cost of locating or transporting, or the

1 burden on, prosecution witnesses is highly disproportionate to the
2 importance of prosecuting the offense in question. This reason should
3 be limited to minor cases and should not be relied upon in serious
4 cases.

5 (g) Improper Motives of Complainant - It may be proper to decline
6 charges because the motives of the complainant are improper and
7 prosecution would serve no public purpose, would defeat the underlying
8 purpose of the law in question or would result in decreased respect for
9 the law.

10 (h) Immunity - It may be proper to decline to charge where immunity
11 is to be given to an accused in order to prosecute another where the
12 accused's information or testimony will reasonably lead to the
13 conviction of others who are responsible for more serious criminal
14 conduct or who represent a greater danger to the public interest.

15 (i) Victim Request - It may be proper to decline to charge because
16 the victim requests that no criminal charges be filed and the case
17 involves the following crimes or situations:

18 (i) Assault cases where the victim has suffered little or no
19 injury;

20 (ii) Crimes against property, not involving violence, where no
21 major loss was suffered;

22 (iii) Where doing so would not jeopardize the safety of society.

23 Care should be taken to insure that the victim's request is freely
24 made and is not the product of threats or pressure by the accused.

25 The presence of these factors may also justify the decision to
26 dismiss a prosecution which has been commenced.

27 Notification

28 The prosecutor is encouraged to notify the victim, when practical,
29 and the law enforcement personnel, of the decision not to prosecute.

30 (2) Decision to prosecute.

31 (a) STANDARD:

32 Crimes against persons will be filed if sufficient admissible
33 evidence exists, which, when considered with the most plausible,
34 reasonably foreseeable defense that could be raised under the evidence,
35 would justify conviction by a reasonable and objective fact-finder.
36 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
37 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
38 9A.64.020 the prosecutor should avoid prefiling agreements or

1 diversions intended to place the accused in a program of treatment or
2 counseling, so that treatment, if determined to be beneficial, can be
3 provided pursuant to RCW 9.94A.670.

4 Crimes against property/other crimes will be filed if the
5 admissible evidence is of such convincing force as to make it probable
6 that a reasonable and objective fact-finder would convict after hearing
7 all the admissible evidence and the most plausible defense that could
8 be raised.

9 See table below for the crimes within these categories.

10 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

11 CRIMES AGAINST PERSONS

- 12 Aggravated Murder
- 13 1st Degree Murder
- 14 2nd Degree Murder
- 15 1st Degree Manslaughter
- 16 2nd Degree Manslaughter
- 17 1st Degree Kidnapping
- 18 2nd Degree Kidnapping
- 19 1st Degree Assault
- 20 2nd Degree Assault
- 21 3rd Degree Assault
- 22 1st Degree Assault of a Child
- 23 2nd Degree Assault of a Child
- 24 3rd Degree Assault of a Child
- 25 1st Degree Rape
- 26 2nd Degree Rape
- 27 3rd Degree Rape
- 28 1st Degree Rape of a Child
- 29 2nd Degree Rape of a Child
- 30 3rd Degree Rape of a Child
- 31 1st Degree Robbery
- 32 2nd Degree Robbery
- 33 1st Degree Arson
- 34 1st Degree Burglary
- 35 1st Degree Identity Theft
- 36 2nd Degree Identity Theft
- 37 1st Degree Extortion
- 38 2nd Degree Extortion

1 Indecent Liberties
2 Incest
3 Vehicular Homicide
4 Vehicular Assault
5 1st Degree Child Molestation
6 2nd Degree Child Molestation
7 3rd Degree Child Molestation
8 1st Degree Promoting Prostitution
9 Intimidating a Juror
10 Communication with a Minor
11 Intimidating a Witness
12 Intimidating a Public Servant
13 Bomb Threat (if against person)
14 Unlawful Imprisonment
15 Promoting a Suicide Attempt
16 Riot (if against person)
17 Stalking
18 Custodial Assault
19 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
20 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
21 Counterfeiting (if a violation of RCW 9.16.035(4))
22 CRIMES AGAINST PROPERTY/OTHER CRIMES
23 2nd Degree Arson
24 1st Degree Escape
25 2nd Degree Escape
26 2nd Degree Burglary
27 1st Degree Theft
28 2nd Degree Theft
29 1st Degree Perjury
30 2nd Degree Perjury
31 1st Degree Introducing Contraband
32 2nd Degree Introducing Contraband
33 1st Degree Possession of Stolen Property
34 2nd Degree Possession of Stolen Property
35 Bribery
36 Bribing a Witness
37 Bribe received by a Witness
38 Bomb Threat (if against property)

1 1st Degree Malicious Mischief
2 2nd Degree Malicious Mischief
3 1st Degree Reckless Burning
4 Taking a Motor Vehicle without Authorization
5 Forgery
6 2nd Degree Promoting Prostitution
7 Tampering with a Witness
8 Trading in Public Office
9 Trading in Special Influence
10 Receiving/Granting Unlawful Compensation
11 Bigamy
12 Eluding a Pursuing Police Vehicle
13 Willful Failure to Return from Furlough
14 Escape from Community Custody
15 Riot (if against property)
16 1st Degree Theft of Livestock
17 2nd Degree Theft of Livestock

18 ALL OTHER UNCLASSIFIED FELONIES

19 Selection of Charges/Degree of Charge

20 (i) The prosecutor should file charges which adequately describe
21 the nature of defendant's conduct. Other offenses may be charged only
22 if they are necessary to ensure that the charges:

23 (A) Will significantly enhance the strength of the state's case at
24 trial; or

25 (B) Will result in restitution to all victims.

26 (ii) The prosecutor should not overcharge to obtain a guilty plea.

27 Overcharging includes:

28 (A) Charging a higher degree;

29 (B) Charging additional counts.

30 This standard is intended to direct prosecutors to charge those
31 crimes which demonstrate the nature and seriousness of a defendant's
32 criminal conduct, but to decline to charge crimes which are not
33 necessary to such an indication. Crimes which do not merge as a matter
34 of law, but which arise from the same course of conduct, do not all
35 have to be charged.

36 (b) GUIDELINES/COMMENTARY:

37 (i) Police Investigation

1 A prosecuting attorney is dependent upon law enforcement agencies
2 to conduct the necessary factual investigation which must precede the
3 decision to prosecute. The prosecuting attorney shall ensure that a
4 thorough factual investigation has been conducted before a decision to
5 prosecute is made. In ordinary circumstances the investigation should
6 include the following:

7 (A) The interviewing of all material witnesses, together with the
8 obtaining of written statements whenever possible;

9 (B) The completion of necessary laboratory tests; and

10 (C) The obtaining, in accordance with constitutional requirements,
11 of the suspect's version of the events.

12 If the initial investigation is incomplete, a prosecuting attorney
13 should insist upon further investigation before a decision to prosecute
14 is made, and specify what the investigation needs to include.

15 (ii) Exceptions

16 In certain situations, a prosecuting attorney may authorize filing
17 of a criminal complaint before the investigation is complete if:

18 (A) Probable cause exists to believe the suspect is guilty; and

19 (B) The suspect presents a danger to the community or is likely to
20 flee if not apprehended; or

21 (C) The arrest of the suspect is necessary to complete the
22 investigation of the crime.

23 In the event that the exception to the standard is applied, the
24 prosecuting attorney shall obtain a commitment from the law enforcement
25 agency involved to complete the investigation in a timely manner. If
26 the subsequent investigation does not produce sufficient evidence to
27 meet the normal charging standard, the complaint should be dismissed.

28 (iii) Investigation Techniques

29 The prosecutor should be fully advised of the investigatory
30 techniques that were used in the case investigation including:

31 (A) Polygraph testing;

32 (B) Hypnosis;

33 (C) Electronic surveillance;

34 (D) Use of informants.

35 (iv) Pre-Filing Discussions with Defendant

36 Discussions with the defendant or his/her representative regarding
37 the selection or disposition of charges may occur prior to the filing
38 of charges, and potential agreements can be reached.

1 (v) Pre-Filing Discussions with Victim(s)
2 Discussions with the victim(s) or victims' representatives
3 regarding the selection or disposition of charges may occur before the
4 filing of charges. The discussions may be considered by the prosecutor
5 in charging and disposition decisions, and should be considered before
6 reaching any agreement with the defendant regarding these decisions.

7 **Sec. 5.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are
8 each reenacted and amended to read as follows:

9 TABLE 2

10 CRIMES INCLUDED WITHIN
11 EACH SERIOUSNESS LEVEL

- 12 XVI Aggravated Murder 1 (RCW
13 10.95.020)
- 14 XV Homicide by abuse (RCW 9A.32.055)
15 Malicious explosion 1 (RCW
16 70.74.280(1))
17 Murder 1 (RCW 9A.32.030)
- 18 XIV Murder 2 (RCW 9A.32.050)
19 Trafficking 1 (RCW 9A.40.100(1))
- 20 XIII Malicious explosion 2 (RCW
21 70.74.280(2))
22 Malicious placement of an explosive 1
23 (RCW 70.74.270(1))
- 24 XII Assault 1 (RCW 9A.36.011)
25 Assault of a Child 1 (RCW 9A.36.120)
26 Malicious placement of an imitation
27 device 1 (RCW 70.74.272(1)(a))
28 Rape 1 (RCW 9A.44.040)
29 Rape of a Child 1 (RCW 9A.44.073)
30 Trafficking 2 (RCW 9A.40.100(2))
- 31 XI Manslaughter 1 (RCW 9A.32.060)
32 Rape 2 (RCW 9A.44.050)
33 Rape of a Child 2 (RCW 9A.44.076)
- 34 X Child Molestation 1 (RCW 9A.44.083)

1 Indecent Liberties (with forcible
2 compulsion) (RCW
3 9A.44.100(1)(a))
4 Kidnapping 1 (RCW 9A.40.020)
5 Leading Organized Crime (RCW
6 9A.82.060(1)(a))
7 Malicious explosion 3 (RCW
8 70.74.280(3))
9 Sexually Violent Predator Escape
10 (RCW 9A.76.115)
11 IX Assault of a Child 2 (RCW 9A.36.130)
12 Explosive devices prohibited (RCW
13 70.74.180)
14 Hit and Run--Death (RCW
15 46.52.020(4)(a))
16 Homicide by Watercraft, by being
17 under the influence of intoxicating
18 liquor or any drug (RCW
19 79A.60.050)
20 Inciting Criminal Profiteering (RCW
21 9A.82.060(1)(b))
22 Malicious placement of an explosive 2
23 (RCW 70.74.270(2))
24 Robbery 1 (RCW 9A.56.200)
25 Sexual Exploitation (RCW 9.68A.040)
26 Vehicular Homicide, by being under
27 the influence of intoxicating liquor
28 or any drug (RCW 46.61.520)
29 VIII Arson 1 (RCW 9A.48.020)
30 Homicide by Watercraft, by the
31 operation of any vessel in a
32 reckless manner (RCW
33 79A.60.050)
34 Identity Theft 1 (RCW 9.35.020(2))
35 Manslaughter 2 (RCW 9A.32.070)
36 Promoting Prostitution 1 (RCW
37 9A.88.070)

1 Theft of Ammonia (RCW 69.55.010)
2 Vehicular Homicide, by the operation
3 of any vehicle in a reckless
4 manner (RCW 46.61.520)
5 VII Burglary 1 (RCW 9A.52.020)
6 Child Molestation 2 (RCW 9A.44.086)
7 Civil Disorder Training (RCW
8 9A.48.120)
9 Dealing in depictions of minor
10 engaged in sexually explicit
11 conduct (RCW 9.68A.050)
12 Drive-by Shooting (RCW 9A.36.045)
13 Homicide by Watercraft, by disregard
14 for the safety of others (RCW
15 79A.60.050)
16 Indecent Liberties (without forcible
17 compulsion) (RCW 9A.44.100(1)
18 (b) and (c))
19 Introducing Contraband 1 (RCW
20 9A.76.140)
21 Malicious placement of an explosive 3
22 (RCW 70.74.270(3))
23 Negligently Causing Death By Use of
24 a Signal Preemption Device
25 (RCW 46.37.675)
26 Sending, bringing into state depictions
27 of minor engaged in sexually
28 explicit conduct (RCW
29 9.68A.060)
30 Unlawful Possession of a Firearm in
31 the first degree (RCW
32 9.41.040(1))
33 Use of a Machine Gun in Commission
34 of a Felony (RCW 9.41.225)
35 Vehicular Homicide, by disregard for
36 the safety of others (RCW
37 46.61.520)

1 VI Bail Jumping with Murder 1 (RCW
2 9A.76.170(3)(a))
3 Bribery (RCW 9A.68.010)
4 Incest 1 (RCW 9A.64.020(1))
5 Intimidating a Judge (RCW
6 9A.72.160)
7 Intimidating a Juror/Witness (RCW
8 9A.72.110, 9A.72.130)
9 Malicious placement of an imitation
10 device 2 (RCW 70.74.272(1)(b))
11 Rape of a Child 3 (RCW 9A.44.079)
12 Theft of a Firearm (RCW 9A.56.300)
13 Unlawful Storage of Ammonia (RCW
14 69.55.020)

15 V Abandonment of dependent person 1
16 (RCW 9A.42.060)
17 Advancing money or property for
18 extortionate extension of credit
19 (RCW 9A.82.030)
20 Bail Jumping with class A Felony
21 (RCW 9A.76.170(3)(b))
22 Child Molestation 3 (RCW 9A.44.089)
23 Criminal Mistreatment 1 (RCW
24 9A.42.020)
25 Custodial Sexual Misconduct 1 (RCW
26 9A.44.160)
27 Domestic Violence Court Order
28 Violation (RCW 10.99.040,
29 10.99.050, 26.09.300, 26.10.220,
30 26.26.138, 26.50.110, 26.52.070,
31 or 74.34.145)
32 Extortion 1 (RCW 9A.56.120)
33 Extortionate Extension of Credit
34 (RCW 9A.82.020)
35 Extortionate Means to Collect
36 Extensions of Credit (RCW
37 9A.82.040)

1 Identity Theft 2 (RCW 9.35.020(3))
2 Incest 2 (RCW 9A.64.020(2))
3 Kidnapping 2 (RCW 9A.40.030)
4 Perjury 1 (RCW 9A.72.020)
5 Persistent prison misbehavior (RCW
6 9.94.070)
7 Possession of a Stolen Firearm (RCW
8 9A.56.310)
9 Rape 3 (RCW 9A.44.060)
10 Rendering Criminal Assistance 1
11 (RCW 9A.76.070)
12 Sexual Misconduct with a Minor 1
13 (RCW 9A.44.093)
14 Sexually Violating Human Remains
15 (RCW 9A.44.105)
16 Stalking (RCW 9A.46.110)
17 Taking Motor Vehicle Without
18 Permission 1 (RCW 9A.56.070)
19 IV Arson 2 (RCW 9A.48.030)
20 Assault 2 (RCW 9A.36.021)
21 Assault 3 (of a Peace Officer with a
22 Projectile Stun Gun) (RCW
23 9A.36.031(1)(h))
24 Assault by Watercraft (RCW
25 79A.60.060)
26 Bribing a Witness/Bribe Received by
27 Witness (RCW 9A.72.090,
28 9A.72.100)
29 Cheating 1 (RCW 9.46.1961)
30 Commercial Bribery (RCW
31 9A.68.060)
32 Counterfeiting (RCW 9.16.035(4))
33 Endangerment with a Controlled
34 Substance (RCW 9A.42.100)
35 Escape 1 (RCW 9A.76.110)
36 Hit and Run--Injury (RCW
37 46.52.020(4)(b))

1 Hit and Run with Vessel--Injury
2 Accident (RCW 79A.60.200(3))
3 ~~((Identity Theft 1 (RCW 9.35.020(2))))~~
4 Indecent Exposure to Person Under
5 Age Fourteen (subsequent sex
6 offense) (RCW 9A.88.010)
7 Influencing Outcome of Sporting
8 Event (RCW 9A.82.070)
9 Malicious Harassment (RCW
10 9A.36.080)
11 Residential Burglary (RCW
12 9A.52.025)
13 Robbery 2 (RCW 9A.56.210)
14 Theft of Livestock 1 (RCW 9A.56.080)
15 Threats to Bomb (RCW 9.61.160)
16 Trafficking in Stolen Property 1 (RCW
17 9A.82.050)
18 Unlawful factoring of a credit card or
19 payment card transaction (RCW
20 9A.56.290(4)(b))
21 Unlawful transaction of health
22 coverage as a health care service
23 contractor (RCW 48.44.016(3))
24 Unlawful transaction of health
25 coverage as a health maintenance
26 organization (RCW 48.46.033(3))
27 Unlawful transaction of insurance
28 business (RCW 48.15.023(3))
29 Unlicensed practice as an insurance
30 professional (RCW 48.17.063(3))
31 Use of Proceeds of Criminal
32 Profiteering (RCW 9A.82.080 (1)
33 and (2))

1 Vehicular Assault, by being under the
2 influence of intoxicating liquor or
3 any drug, or by the operation or
4 driving of a vehicle in a reckless
5 manner (RCW 46.61.522)
6 Willful Failure to Return from
7 Furlough (RCW 72.66.060)
8 III Abandonment of dependent person 2
9 (RCW 9A.42.070)
10 Assault 3 (Except Assault 3 of a Peace
11 Officer With a Projectile Stun
12 Gun) (RCW 9A.36.031 except
13 subsection (1)(h))
14 Assault of a Child 3 (RCW 9A.36.140)
15 Bail Jumping with class B or C Felony
16 (RCW 9A.76.170(3)(c))
17 Burglary 2 (RCW 9A.52.030)
18 Communication with a Minor for
19 Immoral Purposes (RCW
20 9.68A.090)
21 Criminal Gang Intimidation (RCW
22 9A.46.120)
23 Criminal Mistreatment 2 (RCW
24 9A.42.030)
25 Custodial Assault (RCW 9A.36.100)
26 Cyberstalking (subsequent conviction
27 or threat of death) (RCW
28 9.61.260(3))
29 Escape 2 (RCW 9A.76.120)
30 Extortion 2 (RCW 9A.56.130)
31 Harassment (RCW 9A.46.020)
32 Intimidating a Public Servant (RCW
33 9A.76.180)
34 Introducing Contraband 2 (RCW
35 9A.76.150)
36 Malicious Injury to Railroad Property
37 (RCW 81.60.070)

1 Negligently Causing Substantial Bodily
2 Harm By Use of a Signal
3 Preemption Device (RCW
4 46.37.674)
5 Patronizing a Juvenile Prostitute
6 (RCW 9.68A.100)
7 Perjury 2 (RCW 9A.72.030)
8 Possession of Incendiary Device (RCW
9 9.40.120)
10 Possession of Machine Gun or Short-
11 Barreled Shotgun or Rifle (RCW
12 9.41.190)
13 Promoting Prostitution 2 (RCW
14 9A.88.080)
15 Securities Act violation (RCW
16 21.20.400)
17 Tampering with a Witness (RCW
18 9A.72.120)
19 Telephone Harassment (subsequent
20 conviction or threat of death)
21 (RCW 9.61.230(2))
22 Theft of Livestock 2 (RCW 9A.56.083)
23 Trafficking in Stolen Property 2 (RCW
24 9A.82.055)
25 Unlawful Imprisonment (RCW
26 9A.40.040)
27 Unlawful possession of firearm in the
28 second degree (RCW 9.41.040(2))
29 Vehicular Assault, by the operation or
30 driving of a vehicle with disregard
31 for the safety of others (RCW
32 46.61.522)
33 Willful Failure to Return from Work
34 Release (RCW 72.65.070)
35 II Computer Trespass 1 (RCW
36 9A.52.110)
37 Counterfeiting (RCW 9.16.035(3))

1 Escape from Community Custody
2 (RCW 72.09.310)
3 Health Care False Claims (RCW
4 48.80.030)
5 (~~Identity Theft 2 (RCW 9.35.020(3))~~)
6 Improperly Obtaining Financial
7 Information (RCW 9.35.010)
8 Malicious Mischief 1 (RCW
9 9A.48.070)
10 Possession of Stolen Property 1 (RCW
11 9A.56.150)
12 Theft 1 (RCW 9A.56.030)
13 Theft of Rental, Leased, or Lease-
14 purchased Property (valued at one
15 thousand five hundred dollars or
16 more) (RCW 9A.56.096(5)(a))
17 Trafficking in Insurance Claims (RCW
18 48.30A.015)
19 Unlawful factoring of a credit card or
20 payment card transaction (RCW
21 9A.56.290(4)(a))
22 Unlawful Practice of Law (RCW
23 2.48.180)
24 Unlicensed Practice of a Profession or
25 Business (RCW 18.130.190(7))
26 I Attempting to Elude a Pursuing Police
27 Vehicle (RCW 46.61.024)
28 False Verification for Welfare (RCW
29 74.08.055)
30 Forgery (RCW 9A.60.020)
31 Fraudulent Creation or Revocation of a
32 Mental Health Advance Directive
33 (RCW 9A.60.060)
34 Malicious Mischief 2 (RCW
35 9A.48.080)
36 Mineral Trespass (RCW 78.44.330)

1 Possession of Stolen Property 2 (RCW
2 9A.56.160)
3 Reckless Burning 1 (RCW 9A.48.040)
4 Taking Motor Vehicle Without
5 Permission 2 (RCW 9A.56.075)
6 Theft 2 (RCW 9A.56.040)
7 Theft of Rental, Leased, or Lease-
8 purchased Property (valued at two
9 hundred fifty dollars or more but
10 less than one thousand five
11 hundred dollars) (RCW
12 9A.56.096(5)(b))
13 Transaction of insurance business
14 beyond the scope of licensure
15 (RCW 48.17.063(4))
16 Unlawful Issuance of Checks or Drafts
17 (RCW 9A.56.060)
18 Unlawful Possession of Fictitious
19 Identification (RCW 9A.56.320)
20 Unlawful Possession of Instruments of
21 Financial Fraud (RCW
22 9A.56.320)
23 Unlawful Possession of Payment
24 Instruments (RCW 9A.56.320)
25 Unlawful Possession of a Personal
26 Identification Device (RCW
27 9A.56.320)
28 Unlawful Production of Payment
29 Instruments (RCW 9A.56.320)
30 Unlawful Trafficking in Food Stamps
31 (RCW 9.91.142)
32 Unlawful Use of Food Stamps (RCW
33 9.91.144)
34 Vehicle Prowl 1 (RCW 9A.52.095)

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 9.35.020, 9A.82.060, or 9A.82.080, or an offense defined in RCW
2 9A.40.100, the superior court may, in addition to its other powers,
3 issue an order pursuant to RCW 9A.82.100 (2) or (3). Upon conviction
4 of a person for a violation of RCW 9.35.020, 9A.82.060, or 9A.82.080,
5 or an offense defined in RCW 9A.40.100, the superior court may, in
6 addition to its other powers of disposition, issue an order pursuant to
7 RCW 9A.82.100.

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

10 (1)(a) A person who sustains injury to his or her person, business,
11 or property by an act of criminal profiteering that is part of a
12 pattern of criminal profiteering activity, or by an offense defined in
13 RCW 9A.40.100, or by a violation of RCW 9.35.020, 9A.82.060, or
14 9A.82.080 may file an action in superior court for the recovery of
15 damages and the costs of the suit, including reasonable investigative
16 and attorney's fees.

17 (b) The attorney general or county prosecuting attorney may file an
18 action: (i) On behalf of those persons injured or, respectively, on
19 behalf of the state or county if the entity has sustained damages, or
20 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering
21 activity, or an offense defined in RCW 9A.40.100, or a violation of RCW
22 9.35.020, 9A.82.060, or 9A.82.080.

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

27 (d) In an action filed to prevent, restrain, or remedy a pattern of
28 criminal profiteering activity, or an offense defined in RCW 9A.40.100,
29 or a violation of RCW 9.35.020, 9A.82.060, or 9A.82.080, the court,
30 upon proof of the violation, may impose a civil penalty not exceeding
31 two hundred fifty thousand dollars, in addition to awarding the cost of
32 the suit, including reasonable investigative and attorney's fees.

33 (2) The superior court has jurisdiction to prevent, restrain, and
34 remedy a pattern of criminal profiteering, or an offense defined in RCW
35 9A.40.100, or a violation of RCW 9.35.020, 9A.82.060, or 9A.82.080
36 after making provision for the rights of all innocent persons affected

1 by the violation and after hearing or trial, as appropriate, by issuing
2 appropriate orders.

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

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

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

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

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

28 (d) Ordering the payment of actual damages sustained to those
29 persons injured by a violation of RCW 9.35.020, 9A.82.060, or
30 9A.82.080, or an offense defined in RCW 9A.40.100, or an act of
31 criminal profiteering that is part of a pattern of criminal
32 profiteering, and in the court's discretion, increasing the payment to
33 an amount not exceeding three times the actual damages sustained.

34 (e) Ordering the payment of all costs and expenses of the
35 prosecution and investigation of a pattern of criminal profiteering, or
36 an offense defined in RCW 9A.40.100, activity or a violation of RCW
37 9.35.020, 9A.82.060, or 9A.82.080, civil and criminal, incurred by the

1 state or county, including any costs of defense provided at public
2 expense, as appropriate to the state general fund or the
3 antiprofitereering revolving fund of the county.

4 (f) Ordering forfeiture first as restitution to any person damaged
5 by a violation of RCW 9.35.020, by an act of criminal profiteering that
6 is part of a pattern of criminal profiteering, or by an offense defined
7 in RCW 9A.40.100, then to the state general fund or antiprofitereering
8 revolving fund of the county, as appropriate, to the extent not already
9 ordered to be paid in other damages, of the following:

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

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

18 (iii) All proceeds traceable to or derived from a violation of RCW
19 9.35.020, an offense included in the pattern of criminal profiteering
20 activity, or an offense defined in RCW 9A.40.100, and all moneys,
21 negotiable instruments, securities, and other things of value
22 significantly used or intended to be used significantly to facilitate
23 commission of the offense.

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

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

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

37 (b) Any property, contractual right, or claim against property used

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

4 (c) All proceeds traceable to or derived from a violation of RCW
5 9.35.020, an offense included in the pattern of criminal profiteering
6 activity, or an offense defined in RCW 9A.40.100, and all moneys,
7 negotiable instruments, securities, and other things of value
8 significantly used or intended to be used significantly to facilitate
9 the commission of the offense.

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

19 (7) The initiation of civil proceedings under this section shall be
20 commenced within three years after discovery of the pattern of criminal
21 profiteering activity or after the pattern should reasonably have been
22 discovered or, in the case of an offense that is defined in RCW
23 9A.40.100 or a violation of RCW 9.35.020, within three years after the
24 final disposition of any criminal charges relating to the offense,
25 whichever is later.

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

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

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

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

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

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

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

1 motion may be made from time to time and shall be heard by the court on
2 an expedited basis.

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

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

7 (1) The state, upon filing a criminal action under RCW 9.35.020,
8 9A.82.060, or 9A.82.080 or for an offense defined in RCW 9A.40.100, or
9 a civil action under RCW 9A.82.100, may file in accordance with this
10 section a criminal profiteering lien. A filing fee or other charge is
11 not required for filing a criminal profiteering lien.

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

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

17 (b) In the discretion of the attorney general or county prosecuting
18 attorney filing the lien, any aliases or fictitious names of the
19 defendant named in the lien;

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

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

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

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

30 (g) The amount that the state claims in the action or, with respect
31 to property or other interests that the state has requested forfeiture
32 to the state or county, a description of the property or interests
33 sought to be paid or forfeited;

34 (h) If known to the attorney general or county prosecuting attorney
35 filing the lien, a description of property that is subject to
36 forfeiture to the state or property in which the defendant has an

1 interest that is available to satisfy a judgment entered in favor of
2 the state; and

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

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

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

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

22 NOTICE OF LIEN

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

26 Name:

27 Address:

28

29 State of Washington

30

31 By (authorized signature)

32 On receipt of such a notice from the state, a filing officer shall,
33 without payment of filing fee, file and index the notice as if it were
34 a financing statement naming the state as secured party and the
35 defendant as debtor.

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

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

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

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

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

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

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

35 (9) Upon the entry of a final judgment in favor of the state
36 providing for forfeiture of property to the state, the title of the
37 state to the property:

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

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

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

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

24 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.43 RCW
25 to read as follows:

26 The state patrol is authorized to accept private donations for the
27 purpose of supporting education, training, staffing, and equipment to
28 combat identity theft.

29 NEW SECTION. **Sec. 10.** Section 1 of this act expires July 1, 2006.

30 NEW SECTION. **Sec. 11.** Section 2 of this act takes effect July 1,
31 2006.

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