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SENATE BILL 5314

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State of Washington

59th Legislature

2005 Regular Session

By Senators Stevens, Esser, Honeyford, Johnson, Roach, Carrell, Swecker, Schmidt, Schoesler, Mulliken and Benton

Read first time 01/20/2005. Referred to Committee on Judiciary.

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

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

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

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

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

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

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

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

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

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

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

14 (5) "Animal rights or ecological terrorist organization" means any  
15 association, organization, entity, coalition, or combination of two or  
16 more persons with the primary or incidental purpose of intimidating,  
17 coercing, causing fear with the intent to obstruct, or impeding any  
18 person from participating in an activity involving animals, activity  
19 involving natural resources, or an animal facility, horticultural  
20 facility, or research facility, or the lawful activity of mining,  
21 foresting, harvesting, gathering, or processing natural resources.

22 (6) "Effective consent" means consent by the owner or by a person  
23 legally authorized to act for the owner. Consent is not effective if  
24 it is:

25 (a) Induced by force or threat;

26 (b) Given by a person that the offender knows or reasonably should  
27 have known is not an agent for the owner; or

28 (c) Given by a person who by reason of youth, mental disease, or  
29 defect, or being under the influence of drugs or alcohol is known by  
30 the offender to be unable to make reasonable decisions.

31 (7) "Horticultural facility" means any horticultural premises as  
32 defined in RCW 15.08.010, any horticultural facility as defined in RCW  
33 15.13.250, or any premises used for horticultural research or  
34 educational purposes.

35 (8) "Natural resource" means a material source of wealth, such as  
36 timber, fresh water, or a mineral deposit, that occurs in a natural  
37 state and has economic value.

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

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

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

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

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

20        (b) Obstruct or impede the use of an animal facility or  
21 horticultural facility or the use of a natural resource without the  
22 effective consent of the owner by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36        (3) "Creditor" means a person making an extension of credit or a

1 person claiming by, under, or through a person making an extension of  
2 credit.

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

- 15 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 16 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 17 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 18 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 19 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,  
20 9A.56.080, and 9A.56.083;
- 21 (f) Unlawful sale of subscription television services, as defined  
22 in RCW 9A.56.230;
- 23 (g) Theft of telecommunication services or unlawful manufacture of  
24 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- 25 (h) Child selling or child buying, as defined in RCW 9A.64.030;
- 26 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
27 9A.68.050;
- 28 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- 29 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 30 (l) Unlawful production of payment instruments, unlawful possession  
31 of payment instruments, unlawful possession of a personal  
32 identification device, unlawful possession of fictitious  
33 identification, or unlawful possession of instruments of financial  
34 fraud, as defined in RCW 9A.56.320;
- 35 (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 36 (n) Advancing money for use in an extortionate extension of credit,  
37 as defined in RCW 9A.82.030;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (ii) A trustee of any testamentary trust;

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

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

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

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

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

20 (ii) Chapter 9.46 RCW relating to gambling;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 NOTICE OF LIEN

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

20 Name: .....  
21 Address: .....  
22 .....

23 State of Washington

24 .....

25 By (authorized signature)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **Sec. 9.** RCW 9.94A.515 and 2004 c 176 s 2 and 2004 c 94 s 3 are  
17 each reenacted and amended to read as follows:

18 TABLE 2

19 CRIMES INCLUDED WITHIN  
20 EACH SERIOUSNESS LEVEL

- 21 XVI Aggravated Murder 1 (RCW  
22 10.95.020)
- 23 XV Homicide by abuse (RCW 9A.32.055)  
24 Malicious explosion 1 (RCW  
25 70.74.280(1))  
26 Murder 1 (RCW 9A.32.030)
- 27 XIV Murder 2 (RCW 9A.32.050)  
28 Trafficking 1 (RCW 9A.40.100(1))
- 29 XIII Malicious explosion 2 (RCW  
30 70.74.280(2))  
31 Malicious placement of an explosive 1  
32 (RCW 70.74.270(1))
- 33 XII Assault 1 (RCW 9A.36.011)  
34 Assault of a Child 1 (RCW 9A.36.120)

1 Malicious placement of an imitation  
2 device 1 (RCW 70.74.272(1)(a))  
3 Rape 1 (RCW 9A.44.040)  
4 Rape of a Child 1 (RCW 9A.44.073)  
5 Trafficking 2 (RCW 9A.40.100(2))  
6 XI Manslaughter 1 (RCW 9A.32.060)  
7 Rape 2 (RCW 9A.44.050)  
8 Rape of a Child 2 (RCW 9A.44.076)  
9 X Child Molestation 1 (RCW 9A.44.083)  
10 Indecent Liberties (with forcible  
11 compulsion) (RCW  
12 9A.44.100(1)(a))  
13 Kidnapping 1 (RCW 9A.40.020)  
14 Leading Organized Crime (RCW  
15 9A.82.060(1)(a))  
16 Malicious explosion 3 (RCW  
17 70.74.280(3))  
18 Sexually Violent Predator Escape  
19 (RCW 9A.76.115)  
20 IX Assault of a Child 2 (RCW 9A.36.130)  
21 Explosive devices prohibited (RCW  
22 70.74.180)  
23 Hit and Run--Death (RCW  
24 46.52.020(4)(a))  
25 Homicide by Watercraft, by being  
26 under the influence of intoxicating  
27 liquor or any drug (RCW  
28 79A.60.050)  
29 Inciting Criminal Profiteering (RCW  
30 9A.82.060(1)(b))  
31 Malicious placement of an explosive 2  
32 (RCW 70.74.270(2))  
33 Robbery 1 (RCW 9A.56.200)  
34 Sexual Exploitation (RCW 9.68A.040)

1 Vehicular Homicide, by being under  
2 the influence of intoxicating  
3 liquor or any drug (RCW  
4 46.61.520)

5 VIII Arson 1 (RCW 9A.48.020)  
6 Homicide by Watercraft, by the  
7 operation of any vessel in a  
8 reckless manner (RCW  
9 79A.60.050)

10 Manslaughter 2 (RCW 9A.32.070)  
11 Promoting Prostitution 1 (RCW  
12 9A.88.070)  
13 Theft of Ammonia (RCW 69.55.010)  
14 Vehicular Homicide, by the operation  
15 of any vehicle in a reckless  
16 manner (RCW 46.61.520)

17 VII Burglary 1 (RCW 9A.52.020)  
18 Child Molestation 2 (RCW 9A.44.086)  
19 Civil Disorder Training (RCW  
20 9A.48.120)  
21 Dealing in depictions of minor  
22 engaged in sexually explicit  
23 conduct (RCW 9.68A.050)  
24 Drive-by Shooting (RCW 9A.36.045)  
25 Homicide by Watercraft, by disregard  
26 for the safety of others (RCW  
27 79A.60.050)

28 Indecent Liberties (without forcible  
29 compulsion) (RCW 9A.44.100(1)  
30 (b) and (c))

31 Introducing Contraband 1 (RCW  
32 9A.76.140)  
33 Malicious placement of an explosive 3  
34 (RCW 70.74.270(3))

1 Sending, bringing into state depictions  
2 of minor engaged in sexually  
3 explicit conduct (RCW  
4 9.68A.060)  
5 Unlawful Possession of a Firearm in  
6 the first degree (RCW  
7 9.41.040(1))  
8 Use of a Machine Gun in Commission  
9 of a Felony (RCW 9.41.225)  
10 Vehicular Homicide, by disregard for  
11 the safety of others (RCW  
12 46.61.520)  
13 VI Animal or Ecological Terrorism,  
14 Resulting in Bodily Harm (section  
15 3(3) of this act)  
16 Bail Jumping with Murder 1 (RCW  
17 9A.76.170(3)(a))  
18 Bribery (RCW 9A.68.010)  
19 Incest 1 (RCW 9A.64.020(1))  
20 Intimidating a Judge (RCW  
21 9A.72.160)  
22 Intimidating a Juror/Witness (RCW  
23 9A.72.110, 9A.72.130)  
24 Malicious placement of an imitation  
25 device 2 (RCW 70.74.272(1)(b))  
26 Rape of a Child 3 (RCW 9A.44.079)  
27 Theft of a Firearm (RCW 9A.56.300)  
28 Unlawful Storage of Ammonia (RCW  
29 69.55.020)  
30 V Abandonment of dependent person 1  
31 (RCW 9A.42.060)  
32 Advancing money or property for  
33 extortionate extension of credit  
34 (RCW 9A.82.030)  
35 Bail Jumping with class A Felony  
36 (RCW 9A.76.170(3)(b))  
37 Child Molestation 3 (RCW 9A.44.089)

1 Criminal Mistreatment 1 (RCW  
2 9A.42.020)  
3 Custodial Sexual Misconduct 1 (RCW  
4 9A.44.160)  
5 Domestic Violence Court Order  
6 Violation (RCW 10.99.040,  
7 10.99.050, 26.09.300, 26.10.220,  
8 26.26.138, 26.50.110, 26.52.070,  
9 or 74.34.145)  
10 Extortion 1 (RCW 9A.56.120)  
11 Extortionate Extension of Credit  
12 (RCW 9A.82.020)  
13 Extortionate Means to Collect  
14 Extensions of Credit (RCW  
15 9A.82.040)  
16 Incest 2 (RCW 9A.64.020(2))  
17 Kidnapping 2 (RCW 9A.40.030)  
18 Perjury 1 (RCW 9A.72.020)  
19 Persistent prison misbehavior (RCW  
20 9.94.070)  
21 Possession of a Stolen Firearm (RCW  
22 9A.56.310)  
23 Rape 3 (RCW 9A.44.060)  
24 Rendering Criminal Assistance 1  
25 (RCW 9A.76.070)  
26 Sexual Misconduct with a Minor 1  
27 (RCW 9A.44.093)  
28 Sexually Violating Human Remains  
29 (RCW 9A.44.105)  
30 Stalking (RCW 9A.46.110)  
31 Taking Motor Vehicle Without  
32 Permission 1 (RCW 9A.56.070)  
33 IV Arson 2 (RCW 9A.48.030)  
34 Assault 2 (RCW 9A.36.021)  
35 Assault by Watercraft (RCW  
36 79A.60.060)



1 Bribing a Witness/Bribe Received by  
2 Witness (RCW 9A.72.090,  
3 9A.72.100)  
4 Cheating 1 (RCW 9.46.1961)  
5 Commercial Bribery (RCW  
6 9A.68.060)  
7 Counterfeiting (RCW 9.16.035(4))  
8 Endangerment with a Controlled  
9 Substance (RCW 9A.42.100)  
10 Escape 1 (RCW 9A.76.110)  
11 Hit and Run--Injury (RCW  
12 46.52.020(4)(b))  
13 Hit and Run with Vessel--Injury  
14 Accident (RCW 79A.60.200(3))  
15 Identity Theft 1 (RCW 9.35.020(2))  
16 Indecent Exposure to Person Under  
17 Age Fourteen (subsequent sex  
18 offense) (RCW 9A.88.010)  
19 Influencing Outcome of Sporting  
20 Event (RCW 9A.82.070)  
21 Malicious Harassment (RCW  
22 9A.36.080)  
23 Residential Burglary (RCW  
24 9A.52.025)  
25 Robbery 2 (RCW 9A.56.210)  
26 Theft of Livestock 1 (RCW 9A.56.080)  
27 Threats to Bomb (RCW 9.61.160)  
28 Trafficking in Stolen Property 1 (RCW  
29 9A.82.050)  
30 Unlawful factoring of a credit card or  
31 payment card transaction (RCW  
32 9A.56.290(4)(b))  
33 Unlawful transaction of health  
34 coverage as a health care service  
35 contractor (RCW 48.44.016(3))

1 Unlawful transaction of health  
2 coverage as a health maintenance  
3 organization (RCW 48.46.033(3))  
4 Unlawful transaction of insurance  
5 business (RCW 48.15.023(3))  
6 Unlicensed practice as an insurance  
7 professional (RCW 48.17.063(3))  
8 Use of Proceeds of Criminal  
9 Profiteering (RCW 9A.82.080 (1)  
10 and (2))  
11 Vehicular Assault, by being under the  
12 influence of intoxicating liquor or  
13 any drug, or by the operation or  
14 driving of a vehicle in a reckless  
15 manner (RCW 46.61.522)  
16 Willful Failure to Return from  
17 Furlough (RCW 72.66.060)  
18 III Abandonment of dependent person 2  
19 (RCW 9A.42.070)  
20 Assault 3 (RCW 9A.36.031)  
21 Assault of a Child 3 (RCW 9A.36.140)  
22 Bail Jumping with class B or C Felony  
23 (RCW 9A.76.170(3)(c))  
24 Burglary 2 (RCW 9A.52.030)  
25 Communication with a Minor for  
26 Immoral Purposes (RCW  
27 9.68A.090)  
28 Criminal Gang Intimidation (RCW  
29 9A.46.120)  
30 Criminal Mistreatment 2 (RCW  
31 9A.42.030)  
32 Custodial Assault (RCW 9A.36.100)  
33 Cyberstalking (subsequent conviction  
34 or threat of death) (RCW  
35 9.61.260(3))  
36 Escape 2 (RCW 9A.76.120)  
37 Extortion 2 (RCW 9A.56.130)

1 Harassment (RCW 9A.46.020)  
2 Intimidating a Public Servant (RCW  
3 9A.76.180)  
4 Introducing Contraband 2 (RCW  
5 9A.76.150)  
6 Malicious Injury to Railroad Property  
7 (RCW 81.60.070)  
8 Patronizing a Juvenile Prostitute  
9 (RCW 9.68A.100)  
10 Perjury 2 (RCW 9A.72.030)  
11 Possession of Incendiary Device (RCW  
12 9.40.120)  
13 Possession of Machine Gun or Short-  
14 Barreled Shotgun or Rifle (RCW  
15 9.41.190)  
16 Promoting Prostitution 2 (RCW  
17 9A.88.080)  
18 Securities Act violation (RCW  
19 21.20.400)  
20 Tampering with a Witness (RCW  
21 9A.72.120)  
22 Telephone Harassment (subsequent  
23 conviction or threat of death)  
24 (RCW 9.61.230(2))  
25 Theft of Livestock 2 (RCW 9A.56.083)  
26 Trafficking in Stolen Property 2 (RCW  
27 9A.82.055)  
28 Unlawful Imprisonment (RCW  
29 9A.40.040)  
30 Unlawful possession of firearm in the  
31 second degree (RCW 9.41.040(2))  
32 Vehicular Assault, by the operation or  
33 driving of a vehicle with disregard  
34 for the safety of others (RCW  
35 46.61.522)  
36 Willful Failure to Return from Work  
37 Release (RCW 72.65.070)

1 II Computer Trespass 1 (RCW  
2 9A.52.110)  
3 Counterfeiting (RCW 9.16.035(3))  
4 Escape from Community Custody  
5 (RCW 72.09.310)  
6 Health Care False Claims (RCW  
7 48.80.030)  
8 Identity Theft 2 (RCW 9.35.020(3))  
9 Improperly Obtaining Financial  
10 Information (RCW 9.35.010)  
11 Malicious Mischief 1 (RCW  
12 9A.48.070)  
13 Possession of Stolen Property 1 (RCW  
14 9A.56.150)  
15 Theft 1 (RCW 9A.56.030)  
16 Theft of Rental, Leased, or Lease-  
17 purchased Property (valued at one  
18 thousand five hundred dollars or  
19 more) (RCW 9A.56.096(5)(a))  
20 Trafficking in Insurance Claims (RCW  
21 48.30A.015)  
22 Unlawful factoring of a credit card or  
23 payment card transaction (RCW  
24 9A.56.290(4)(a))  
25 Unlawful Practice of Law (RCW  
26 2.48.180)  
27 Unlicensed Practice of a Profession or  
28 Business (RCW 18.130.190(7))  
29 I Attempting to Elude a Pursuing Police  
30 Vehicle (RCW 46.61.024)  
31 False Verification for Welfare (RCW  
32 74.08.055)  
33 Forgery (RCW 9A.60.020)  
34 Fraudulent Creation or Revocation of a  
35 Mental Health Advance Directive  
36 (RCW 9A.60.060)

1 Malicious Mischief 2 (RCW  
2 9A.48.080)  
3 Mineral Trespass (RCW 78.44.330)  
4 Possession of Stolen Property 2 (RCW  
5 9A.56.160)  
6 Reckless Burning 1 (RCW 9A.48.040)  
7 Taking Motor Vehicle Without  
8 Permission 2 (RCW 9A.56.075)  
9 Theft 2 (RCW 9A.56.040)  
10 Theft of Rental, Leased, or Lease-  
11 purchased Property (valued at two  
12 hundred fifty dollars or more but  
13 less than one thousand five  
14 hundred dollars) (RCW  
15 9A.56.096(5)(b))  
16 Transaction of insurance business  
17 beyond the scope of licensure  
18 (RCW 48.17.063(4))  
19 Unlawful Issuance of Checks or Drafts  
20 (RCW 9A.56.060)  
21 Unlawful Possession of Fictitious  
22 Identification (RCW 9A.56.320)  
23 Unlawful Possession of Instruments of  
24 Financial Fraud (RCW  
25 9A.56.320)  
26 Unlawful Possession of Payment  
27 Instruments (RCW 9A.56.320)  
28 Unlawful Possession of a Personal  
29 Identification Device (RCW  
30 9A.56.320)  
31 Unlawful Production of Payment  
32 Instruments (RCW 9A.56.320)  
33 Unlawful Trafficking in Food Stamps  
34 (RCW 9.91.142)  
35 Unlawful Use of Food Stamps (RCW  
36 9.91.144)  
37 Vehicle Prowl 1 (RCW 9A.52.095)

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

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

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

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

23       The following are illustrative factors which the court may consider  
24 in the exercise of its discretion to impose an exceptional sentence.  
25 The following are illustrative only and are not intended to be  
26 exclusive reasons for exceptional sentences.

27       (1) Mitigating Circumstances

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

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

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

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

1 (e) The defendant's capacity to appreciate the wrongfulness of his  
2 or her conduct, or to conform his or her conduct to the requirements of  
3 the law, was significantly impaired. Voluntary use of drugs or alcohol  
4 is excluded.

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

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

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

14 (2) Aggravating Circumstances

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

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

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

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

25 (i) The current offense involved multiple victims or multiple  
26 incidents per victim;

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

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

31 (iv) The defendant used his or her position of trust, confidence,  
32 or fiduciary responsibility to facilitate the commission of the current  
33 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 (k) The offense resulted in the pregnancy of a child victim of  
2 rape.

3 (l) The defendant knew that the victim of the current offense was  
4 a youth who was not residing with a legal custodian and the defendant  
5 established or promoted the relationship for the primary purpose of  
6 victimization.

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

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

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

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

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