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**SUBSTITUTE SENATE BILL 5669**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Padden, Kohl-Welles, Smith, Hargrove, Pearson, Darneille, Bailey, Nelson, Becker, Benton, Brown, Baumgartner, Conway, Roach, and Holmquist Newbry)

READ FIRST TIME 02/19/13.

1           AN ACT Relating to trafficking; amending RCW 9.68A.090, 9.68A.100,  
2 9.68A.101, 9.68A.102, 9.68A.103, 9A.44.020, 9A.44.100, 9A.44.128,  
3 9A.44.150, 9A.82.010, 9A.88.110, and 13.34.132; reenacting and amending  
4 RCW 9A.40.100; prescribing penalties; and providing an effective date.

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

6           **Sec. 1.** RCW 9.68A.090 and 2006 c 139 s 1 are each amended to read  
7 as follows:

8           (1) Except as provided in subsection (2) of this section, a person  
9 who communicates with a minor for immoral purposes, or a person who  
10 communicates with someone the person believes to be a minor for immoral  
11 purposes, is guilty of a gross misdemeanor.

12           (2) A person who communicates with a minor for immoral purposes is  
13 guilty of a class C felony punishable according to chapter 9A.20 RCW if  
14 the person has previously been convicted under this section or of a  
15 felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of  
16 any other felony sexual offense in this or any other state or if the  
17 person communicates with a minor or with someone the person believes to  
18 be a minor for immoral purposes, including the purchase or sale of

1 commercial sex acts and sex trafficking, through the sending of an  
2 electronic communication.

3 (3) For the purposes of this section, "electronic communication"  
4 has the same meaning as defined in RCW 9.61.260.

5 **Sec. 2.** RCW 9.68A.100 and 2010 c 289 s 13 are each amended to read  
6 as follows:

7 (1) A person is guilty of commercial sexual abuse of a minor if:

8 (a) He or she pays a fee to a minor or a third person as  
9 compensation for a minor having engaged in sexual conduct with him or  
10 her;

11 (b) He or she pays or agrees to pay a fee to a minor or a third  
12 person pursuant to an understanding that in return therefore such minor  
13 will engage in sexual conduct with him or her; or

14 (c) He or she solicits, offers, or requests to engage in sexual  
15 conduct with a minor in return for a fee.

16 (2) Commercial sexual abuse of a minor is a class B felony  
17 punishable under chapter 9A.20 RCW.

18 (3) In addition to any other penalty provided under chapter 9A.20  
19 RCW, a person guilty of commercial sexual abuse of a minor is subject  
20 to the provisions under RCW 9A.88.130 and 9A.88.140.

21 (4) Consent of a minor to the sexual conduct does not constitute a  
22 defense to any offense listed in this section.

23 (5) For purposes of this section, "sexual conduct" means sexual  
24 intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

25 **Sec. 3.** RCW 9.68A.101 and 2012 c 144 s 1 are each amended to read  
26 as follows:

27 (1) A person is guilty of promoting commercial sexual abuse of a  
28 minor if he or she knowingly advances commercial sexual abuse or a  
29 sexually explicit act of a minor or profits from a minor engaged in  
30 sexual conduct or a sexually explicit act.

31 (2) Promoting commercial sexual abuse of a minor is a class A  
32 felony.

33 (3) For the purposes of this section:

34 (a) A person "advances commercial sexual abuse of a minor" if,  
35 acting other than as a minor receiving compensation for personally  
36 rendered sexual conduct or as a person engaged in commercial sexual

1 abuse of a minor, he or she causes or aids a person to commit or engage  
2 in commercial sexual abuse of a minor, procures or solicits customers  
3 for commercial sexual abuse of a minor, provides persons or premises  
4 for the purposes of engaging in commercial sexual abuse of a minor,  
5 operates or assists in the operation of a house or enterprise for the  
6 purposes of engaging in commercial sexual abuse of a minor, or engages  
7 in any other conduct designed to institute, aid, cause, assist, or  
8 facilitate an act or enterprise of commercial sexual abuse of a minor.

9 (b) A person "profits from commercial sexual abuse of a minor" if,  
10 acting other than as a minor receiving compensation for personally  
11 rendered sexual conduct, he or she accepts or receives money or other  
12 property pursuant to an agreement or understanding with any person  
13 whereby he or she participates or will participate in the proceeds of  
14 commercial sexual abuse of a minor.

15 (c) A person "advances a sexually explicit act of a minor" if he or  
16 she causes or aids a sexually explicit act of a minor, procures or  
17 solicits customers for a sexually explicit act of a minor, provides  
18 persons or premises for the purposes of a sexually explicit act of a  
19 minor, or engages in any other conduct designed to institute, aid,  
20 cause, assist, or facilitate a sexually explicit act of a minor.

21 (d) A "sexually explicit act" is a public, private, or live  
22 photographed, recorded, or videotaped act or show intended to arouse or  
23 satisfy the sexual desires or appeal to the prurient interests of  
24 patrons and for which something of value is given or received.

25 (e) A "patron" is a person who pays or agrees to pay a fee to  
26 another person as compensation for a sexually explicit act of a minor  
27 or who solicits or requests a sexually explicit act of a minor in  
28 return for a fee.

29 (4) Consent of a minor to the sexually explicit act or sexual  
30 conduct does not constitute a defense to any offense listed in this  
31 section.

32 (5) For purposes of this section, "sexual conduct" means sexual  
33 intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

34 **Sec. 4.** RCW 9.68A.102 and 2007 c 368 s 5 are each amended to read  
35 as follows:

36 (1) A person commits the offense of promoting travel for commercial  
37 sexual abuse of a minor if he or she knowingly sells or offers to sell

1 travel services that include or facilitate travel for the purpose of  
2 engaging in what would be commercial sexual abuse of a minor or  
3 promoting commercial sexual abuse of a minor, if occurring in this  
4 state.

5 (2) Promoting travel for commercial sexual abuse of a minor is a  
6 class C felony.

7 (3) Consent of a minor to the travel for commercial sexual abuse,  
8 or the sexually explicit act or sexual conduct itself, does not  
9 constitute a defense to any offense listed in this section.

10 (4) For purposes of this section, "travel services" has the same  
11 meaning as defined in RCW 19.138.021.

12 **Sec. 5.** RCW 9.68A.103 and 2007 c 368 s 7 are each amended to read  
13 as follows:

14 (1) A person is guilty of permitting commercial sexual abuse of a  
15 minor if, having possession or control of premises which he or she  
16 knows are being used for the purpose of commercial sexual abuse of a  
17 minor, he or she fails without lawful excuse to make reasonable effort  
18 to halt or abate such use and to make a reasonable effort to notify law  
19 enforcement of such use.

20 (2) Permitting commercial sexual abuse of a minor is a gross  
21 misdemeanor.

22 (3) Consent of a minor to the sexually explicit act or sexual  
23 conduct does not constitute a defense to any offense listed in this  
24 section.

25 **Sec. 6.** RCW 9A.40.100 and 2012 c 144 s 2 and 2012 c 134 s 1 are  
26 each reenacted and amended to read as follows:

27 (1)(a) A person is guilty of trafficking in the first degree when:

28 (i) Such person:

29 (A) Recruits, harbors, transports, transfers, provides, obtains,  
30 buys, purchases, or receives by any means another person knowing, or in  
31 reckless disregard of the fact, that force, fraud, or coercion as  
32 defined in RCW 9A.36.070 will be used to cause the person to engage in  
33 forced labor, involuntary servitude, a sexually explicit act, or a  
34 commercial sex act, or that the person has not attained the age of  
35 eighteen years and is caused to engage in a commercial sex act; or

1 (B) Benefits financially or by receiving anything of value from  
2 participation in a venture that has engaged in acts set forth in  
3 (a)(i)(A) of this subsection; and

4 (ii) The acts or venture set forth in (a)(i) of this subsection:

5 (A) Involve committing or attempting to commit kidnapping;

6 (B) Involve a finding of sexual motivation under RCW 9.94A.835;

7 (C) Involve the illegal harvesting or sale of human organs; or

8 (D) Result in a death.

9 (b) Trafficking in the first degree is a class A felony.

10 (2)(a) A person is guilty of trafficking in the second degree when  
11 such person:

12 (i) Recruits, harbors, transports, transfers, provides, obtains,  
13 buys, purchases, or receives by any means another person knowing, or in  
14 reckless disregard of the fact, that force, fraud, or coercion as  
15 defined in RCW 9A.36.070 will be used to cause the person to engage in  
16 forced labor, involuntary servitude, a sexually explicit act, or a  
17 commercial sex act, or that the person has not attained the age of  
18 eighteen years and is caused to engaged in a commercial sex act; or

19 (ii) Benefits financially or by receiving anything of value from  
20 participation in a venture that has engaged in acts set forth in (a)(i)  
21 of this subsection.

22 (b) Trafficking in the second degree is a class A felony.

23 (3)(a) A person who is either convicted or given a deferred  
24 sentence or a deferred prosecution or who has entered into a statutory  
25 or nonstatutory diversion agreement as a result of an arrest for a  
26 violation of a trafficking crime shall be assessed a ((three)) ten  
27 thousand dollar fee.

28 (b) The court shall not reduce, waive, or suspend payment of all or  
29 part of the fee assessed in this section unless it finds, on the  
30 record, that the offender does not have the ability to pay the fee in  
31 which case it may reduce the fee by an amount up to two-thirds of the  
32 maximum allowable fee.

33 (c) Fees assessed under this section shall be collected by the  
34 clerk of the court and remitted to the treasurer of the county where  
35 the offense occurred for deposit in the county general fund, except in  
36 cases in which the offense occurred in a city or town that provides for  
37 its own law enforcement, in which case these amounts shall be remitted  
38 to the treasurer of the city or town for deposit in the general fund of

1 the city or town. Revenue from the fees must be used for local efforts  
2 to reduce the commercial sale of sex including, but not limited to,  
3 increasing enforcement of commercial sex laws.

4 (i) At least fifty percent of the revenue from fees imposed under  
5 this section must be spent on prevention, including education programs  
6 for offenders, such as john school, and rehabilitative services, such  
7 as mental health and substance abuse counseling, parenting skills,  
8 training, housing relief, education, vocational training, drop-in  
9 centers, and employment counseling.

10 (ii) Revenues from these fees are not subject to the distribution  
11 requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or  
12 35.20.220.

13 (4) If the victim of any offense identified in this section is a  
14 minor, force, fraud, or coercion are not necessary elements of an  
15 offense and consent to the sexually explicit act or commercial sex act  
16 does not constitute a defense.

17 (5) For purposes of this section((7)):

18 (a) "Commercial sex act" means any sex act, on account of which  
19 anything of value is given or received by any person; and

20 (b) "Sexually explicit act" means a public, private, or live  
21 photographed, recorded, or videotaped act or show intended to arouse or  
22 satisfy the sexual desires or appeal to the prurient interests of  
23 patrons.

24 **Sec. 7.** RCW 9A.44.020 and 1975 1st ex.s. c 14 s 2 are each amended  
25 to read as follows:

26 (1) In order to convict a person of any crime defined in this  
27 chapter it shall not be necessary that the testimony of the alleged  
28 victim be corroborated.

29 (2) Evidence of the victim's past sexual behavior including but not  
30 limited to the victim's marital history, divorce history, or general  
31 reputation for promiscuity, nonchastity, or sexual mores contrary to  
32 community standards is inadmissible on the issue of credibility and is  
33 inadmissible to prove the victim's consent except as provided in  
34 subsection (3) of this section, but when the perpetrator and the victim  
35 have engaged in sexual intercourse with each other in the past, and  
36 when the past behavior is material to the issue of consent, evidence

1 concerning the past behavior between the perpetrator and the victim may  
2 be admissible on the issue of consent to the offense.

3 (3) In any prosecution for the crime of rape, sex trafficking  
4 pursuant to RCW 9A.40.100, or any of the offenses in chapter 9.68A RCW,  
5 or for an attempt to commit, or an assault with an intent to commit any  
6 such crime evidence of the victim's past sexual behavior including but  
7 not limited to the victim's marital behavior, divorce history, or  
8 general reputation for promiscuity, nonchastity, or sexual mores  
9 contrary to community standards is not admissible if offered to attack  
10 the credibility of the victim and is admissible on the issue of  
11 consent, except where prohibited in the underlying criminal offense,  
12 only pursuant to the following procedure:

13 (a) A written pretrial motion shall be made by the defendant to the  
14 court and prosecutor stating that the defense has an offer of proof of  
15 the relevancy of evidence of the past sexual behavior of the victim  
16 proposed to be presented and its relevancy on the issue of the consent  
17 of the victim.

18 (b) The written motion shall be accompanied by an affidavit or  
19 affidavits in which the offer of proof shall be stated.

20 (c) If the court finds that the offer of proof is sufficient, the  
21 court shall order a hearing out of the presence of the jury, if any,  
22 and the hearing shall be closed except to the necessary witnesses, the  
23 defendant, counsel, and those who have a direct interest in the case or  
24 in the work of the court.

25 (d) At the conclusion of the hearing, if the court finds that the  
26 evidence proposed to be offered by the defendant regarding the past  
27 sexual behavior of the victim is relevant to the issue of the victim's  
28 consent; is not inadmissible because its probative value is  
29 substantially outweighed by the probability that its admission will  
30 create a substantial danger of undue prejudice; and that its exclusion  
31 would result in denial of substantial justice to the defendant; the  
32 court shall make an order stating what evidence may be introduced by  
33 the defendant, which order may include the nature of the questions to  
34 be permitted. The defendant may then offer evidence pursuant to the  
35 order of the court.

36 (4) Nothing in this section shall be construed to prohibit cross-  
37 examination of the victim on the issue of past sexual behavior when the  
38 prosecution presents evidence in its case in chief tending to prove the

1 nature of the victim's past sexual behavior, but the court may require  
2 a hearing pursuant to subsection (3) of this section concerning such  
3 evidence.

4 **Sec. 8.** RCW 9A.44.100 and 2007 c 20 s 2 are each amended to read  
5 as follows:

6 (1) A person is guilty of indecent liberties when he or she  
7 knowingly causes another person who is not his or her spouse to have  
8 sexual contact with him or her or another:

9 (a) By forcible compulsion;

10 (b) When the other person is incapable of consent by reason of  
11 being mentally defective, mentally incapacitated, or physically  
12 helpless;

13 (c) When the victim is a person with a developmental disability and  
14 the perpetrator is a person who is not married to the victim and who:

15 (i) Has supervisory authority over the victim; or

16 (ii) Was providing transportation, within the course of his or her  
17 employment, to the victim at the time of the offense;

18 (d) When the perpetrator is a health care provider, the victim is  
19 a client or patient, and the sexual contact occurs during a treatment  
20 session, consultation, interview, or examination. It is an affirmative  
21 defense that the defendant must prove by a preponderance of the  
22 evidence that the client or patient consented to the sexual contact  
23 with the knowledge that the sexual contact was not for the purpose of  
24 treatment;

25 (e) When the victim is a resident of a facility for persons with a  
26 mental disorder or chemical dependency and the perpetrator is a person  
27 who is not married to the victim and has supervisory authority over the  
28 victim; or

29 (f) When the victim is a frail elder or vulnerable adult and the  
30 perpetrator is a person who is not married to the victim and who:

31 (i) Has a significant relationship with the victim; or

32 (ii) Was providing transportation, within the course of his or her  
33 employment, to the victim at the time of the offense.

34 (2)(a) Except as provided in (b) of this subsection, indecent  
35 liberties is a class B felony.

36 (b) Indecent liberties by forcible compulsion is a class A felony.



1       (3) If the victim of any offense identified in this section is a  
2 minor, consent of the minor to the sexual contact does not constitute  
3 a defense.

4       **Sec. 9.** RCW 9A.44.128 and 2012 c 134 s 2 are each amended to read  
5 as follows:

6       For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200,  
7 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

8       (1) "Business day" means any day other than Saturday, Sunday, or a  
9 legal local, state, or federal holiday.

10       (2) "Conviction" means any adult conviction or juvenile  
11 adjudication for a sex offense or kidnapping offense.

12       (3) "Disqualifying offense" means a conviction for: Any offense  
13 that is a felony; a sex offense as defined in this section; a crime  
14 against children or persons as defined in RCW 43.43.830(~~(+5)~~) (7) and  
15 9.94A.411(2)(a); an offense with a domestic violence designation as  
16 provided in RCW 10.99.020; permitting the commercial sexual abuse of a  
17 minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88  
18 RCW.

19       (4) "Employed" or "carries on a vocation" means employment that is  
20 full time or part time for a period of time exceeding fourteen days, or  
21 for an aggregate period of time exceeding thirty days during any  
22 calendar year. A person is employed or carries on a vocation whether  
23 the person's employment is financially compensated, volunteered, or for  
24 the purpose of government or educational benefit.

25       (5) "Fixed residence" means a building that a person lawfully and  
26 habitually uses as living quarters a majority of the week. Uses as  
27 living quarters means to conduct activities consistent with the common  
28 understanding of residing, such as sleeping; eating; keeping personal  
29 belongings; receiving mail; and paying utilities, rent, or mortgage.  
30 A nonpermanent structure including, but not limited to, a motor home,  
31 travel trailer, camper, or boat may qualify as a residence provided it  
32 is lawfully and habitually used as living quarters a majority of the  
33 week, primarily kept at one location with a physical address, and the  
34 location it is kept at is either owned or rented by the person or used  
35 by the person with the permission of the owner or renter. A shelter  
36 program may qualify as a residence provided it is a shelter program

1 designed to provide temporary living accommodations for the homeless,  
2 provides an offender with a personally assigned living space, and the  
3 offender is permitted to store belongings in the living space.

4 (6) "In the community" means residing outside of confinement or  
5 incarceration for a disqualifying offense.

6 (7) "Institution of higher education" means any public or private  
7 institution dedicated to postsecondary education, including any  
8 college, university, community college, trade, or professional school.

9 (8) "Kidnapping offense" means:

10 (a) The crimes of kidnapping in the first degree, kidnapping in the  
11 second degree, and unlawful imprisonment, as defined in chapter 9A.40  
12 RCW, where the victim is a minor and the offender is not the minor's  
13 parent;

14 (b) Any offense that is, under chapter 9A.28 RCW, a criminal  
15 attempt, criminal solicitation, or criminal conspiracy to commit an  
16 offense that is classified as a kidnapping offense under this  
17 subsection; and

18 (c) Any federal or out-of-state conviction for: An offense for  
19 which the person would be required to register as a kidnapping offender  
20 if residing in the state of conviction; or, if not required to register  
21 in the state of conviction, an offense that under the laws of this  
22 state would be classified as a kidnapping offense under this  
23 subsection.

24 (9) "Lacks a fixed residence" means the person does not have a  
25 living situation that meets the definition of a fixed residence and  
26 includes, but is not limited to, a shelter program designed to provide  
27 temporary living accommodations for the homeless, an outdoor sleeping  
28 location, or locations where the person does not have permission to  
29 stay.

30 (10) "Sex offense" means:

31 (a) Any offense defined as a sex offense by RCW 9.94A.030;

32 (b) Any violation under RCW 9A.44.096 (sexual misconduct with a  
33 minor in the second degree);

34 (c) Any violation under RCW 9A.40.100 (trafficking);

35 (d) Any violation under RCW 9.68A.100 (commercial sexual abuse of  
36 a minor);

37 (e) Any violation under RCW 9.68A.102 (promoting travel for  
38 commercial sexual abuse of a minor);

1        (f) Any violation under RCW 9.68A.090 (communication with a minor  
2 for immoral purposes);

3        ~~((d))~~ (g) A violation under RCW 9A.88.070 (promoting prostitution  
4 in the first degree) or RCW 9A.88.080 (promoting prostitution in the  
5 second degree) if the person has a prior conviction for one of these  
6 offenses;

7        ~~((e))~~ (h) Any gross misdemeanor that is, under chapter 9A.28 RCW,  
8 a criminal attempt, criminal solicitation, or criminal conspiracy to  
9 commit an offense that is classified as a sex offense under RCW  
10 9.94A.030 or this subsection;

11        ~~((f))~~ (i) Any out-of-state conviction for an offense for which  
12 the person would be required to register as a sex offender while  
13 residing in the state of conviction; or, if not required to register in  
14 the state of conviction, an offense that under the laws of this state  
15 would be classified as a sex offense under this subsection;

16        ~~((g))~~ (j) Any federal conviction classified as a sex offense  
17 under 42 U.S.C. Sec. 16911 (SORNA);

18        ~~((h))~~ (k) Any military conviction for a sex offense. This  
19 includes sex offenses under the uniform code of military justice, as  
20 specified by the United States secretary of defense;

21        ~~((i))~~ (l) Any conviction in a foreign country for a sex offense  
22 if it was obtained with sufficient safeguards for fundamental fairness  
23 and due process for the accused under guidelines or regulations  
24 established pursuant to 42 U.S.C. Sec. 16912.

25        (11) "School" means a public or private school regulated under  
26 Title 28A RCW or chapter 72.40 RCW.

27        (12) "Student" means a person who is enrolled, on a full-time or  
28 part-time basis, in any school or institution of higher education.

29        **Sec. 10.** RCW 9A.44.150 and 2005 c 455 s 1 are each amended to read  
30 as follows:

31        (1) On motion of the prosecuting attorney in a criminal proceeding,  
32 the court may order that a child under the age of ~~((ten))~~ fourteen may  
33 testify in a room outside the presence of the defendant and the jury  
34 while one-way closed-circuit television equipment simultaneously  
35 projects the child's testimony into another room so the defendant and  
36 the jury can watch and hear the child testify if:

37        (a) The testimony will:

1 (i) Describe an act or attempted act of sexual contact performed  
2 with or on the child witness by another person or with or on a child  
3 other than the child witness by another person;

4 (ii) Describe an act or attempted act of physical abuse against the  
5 child witness by another person or against a child other than the child  
6 witness by another person; ((~~or~~))

7 (iii) Involve a violation of RCW 9A.40.100 (trafficking) or any  
8 offense identified in chapter 9.68A RCW (sexual exploitation of  
9 children); or

10 (iv) Describe a violent offense as defined by RCW 9.94A.030  
11 committed against a person known by or familiar to the child witness or  
12 by a person known by or familiar to the child witness;

13 (b) The testimony is taken during the criminal proceeding;

14 (c) The court finds by substantial evidence, in a hearing conducted  
15 outside the presence of the jury, that requiring the child witness to  
16 testify in the presence of the defendant will cause the child to suffer  
17 serious emotional or mental distress that will prevent the child from  
18 reasonably communicating at the trial. If the defendant is excluded  
19 from the presence of the child, the jury must also be excluded;

20 (d) As provided in ((~~subsection (1)~~))(a) and (b) of this  
21 subsection, the court may allow a child witness to testify in the  
22 presence of the defendant but outside the presence of the jury, via  
23 closed-circuit television, if the court finds, upon motion and hearing  
24 outside the presence of the jury, that the child will suffer serious  
25 emotional distress that will prevent the child from reasonably  
26 communicating at the trial in front of the jury, or, that although the  
27 child may be able to reasonably communicate at trial in front of the  
28 jury, the child will suffer serious emotional or mental distress from  
29 testifying in front of the jury. If the child is able to communicate  
30 in front of the defendant but not the jury the defendant will remain in  
31 the room with the child while the jury is excluded from the room;

32 (e) The court finds that the prosecutor has made all reasonable  
33 efforts to prepare the child witness for testifying, including  
34 informing the child or the child's parent or guardian about community  
35 counseling services, giving court tours, and explaining the trial  
36 process. If the prosecutor fails to demonstrate that preparations were  
37 implemented or the prosecutor in good faith attempted to implement  
38 them, the court shall deny the motion;

1 (f) The court balances the strength of the state's case without the  
2 testimony of the child witness against the defendant's constitutional  
3 rights and the degree of infringement of the closed-circuit television  
4 procedure on those rights;

5 (g) The court finds that no less restrictive method of obtaining  
6 the testimony exists that can adequately protect the child witness from  
7 the serious emotional or mental distress;

8 (h) When the court allows the child witness to testify outside the  
9 presence of the defendant, the defendant can communicate constantly  
10 with the defense attorney by electronic transmission and be granted  
11 reasonable court recesses during the child's testimony for person-to-  
12 person consultation with the defense attorney;

13 (i) The court can communicate with the attorneys by an audio system  
14 so that the court can rule on objections and otherwise control the  
15 proceedings;

16 (j) All parties in the room with the child witness are on camera  
17 and can be viewed by all other parties. If viewing all participants is  
18 not possible, the court shall describe for the viewers the location of  
19 the prosecutor, defense attorney, and other participants in relation to  
20 the child;

21 (k) The court finds that the television equipment is capable of  
22 making an accurate reproduction and the operator of the equipment is  
23 competent to operate the equipment; and

24 (l) The court imposes reasonable guidelines upon the parties for  
25 conducting the filming to avoid trauma to the child witness or abuse of  
26 the procedure for tactical advantage.

27 The prosecutor, defense attorney, and a neutral and trained  
28 victim's advocate, if any, shall always be in the room where the child  
29 witness is testifying. The court in the court's discretion depending  
30 on the circumstances and whether the jury or defendant or both are  
31 excluded from the room where the child is testifying, may remain or may  
32 not remain in the room with the child.

33 (2) During the hearing conducted under subsection (1) of this  
34 section to determine whether the child witness may testify outside the  
35 presence of the defendant and/or the jury, the court may conduct the  
36 observation and examination of the child outside the presence of the  
37 defendant if:

1 (a) The prosecutor alleges and the court concurs that the child  
2 witness will be unable to testify in front of the defendant or will  
3 suffer severe emotional or mental distress if forced to testify in  
4 front of the defendant;

5 (b) The defendant can observe and hear the child witness by closed-  
6 circuit television;

7 (c) The defendant can communicate constantly with the defense  
8 attorney during the examination of the child witness by electronic  
9 transmission and be granted reasonable court recesses during the  
10 child's examination for person-to-person consultation with the defense  
11 attorney; and

12 (d) The court finds the closed-circuit television is capable of  
13 making an accurate reproduction and the operator of the equipment is  
14 competent to operate the equipment. Whenever possible, all the parties  
15 in the room with the child witness shall be on camera so that the  
16 viewers can see all the parties. If viewing all participants is not  
17 possible, then the court shall describe for the viewers the location of  
18 the prosecutor, defense attorney, and other participants in relation to  
19 the child.

20 (3) The court shall make particularized findings on the record  
21 articulating the factors upon which the court based its decision to  
22 allow the child witness to testify via closed-circuit television  
23 pursuant to this section. The factors the court may consider include,  
24 but are not limited to, a consideration of the child's age, physical  
25 health, emotional stability, expressions by the child of fear of  
26 testifying in open court or in front of the defendant, the relationship  
27 of the defendant to the child, and the court's observations of the  
28 child's inability to reasonably communicate in front of the defendant  
29 or in open court. The court's findings shall identify the impact the  
30 factors have upon the child's ability to testify in front of the jury  
31 or the defendant or both and the specific nature of the emotional or  
32 mental trauma the child would suffer. The court shall determine  
33 whether the source of the trauma is the presence of the defendant, the  
34 jury, or both, and shall limit the use of the closed-circuit television  
35 accordingly.

36 (4) This section does not apply if the defendant is an attorney pro  
37 se unless the defendant has a court-appointed attorney assisting the  
38 defendant in the defense.

1 (5) This section may not preclude the presence of both the child  
2 witness and the defendant in the courtroom together for purposes of  
3 establishing or challenging the identification of the defendant when  
4 identification is a legitimate issue in the proceeding.

5 (6) The Washington supreme court may adopt rules of procedure  
6 regarding closed-circuit television procedures.

7 (7) All recorded tapes of testimony produced by closed-circuit  
8 television equipment shall be subject to any protective order of the  
9 court for the purpose of protecting the privacy of the child witness.

10 (8) Nothing in this section creates a right of the child witness to  
11 a closed-circuit television procedure in lieu of testifying in open  
12 court.

13 (9) The state shall bear the costs of the closed-circuit television  
14 procedure.

15 (10) A child witness may or may not be a victim in the proceeding.

16 (11) Nothing in this section precludes the court, under other  
17 circumstances arising under subsection (1)(a) of this section, from  
18 allowing a child to testify outside the presence of the defendant and  
19 the jury so long as the testimony is presented in accordance with the  
20 standards and procedures required in this section.

21 **Sec. 11.** RCW 9A.82.010 and 2012 c 139 s 1 are each amended to read  
22 as follows:

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

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

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

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

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

35 (b) "Beneficial interest" does not include the interest of a  
36 stockholder in a corporation or the interest of a partner in a general  
37 partnership or limited partnership.

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

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

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

8 (4) "Criminal profiteering" means any act, including any  
9 anticipatory or completed offense, committed for financial gain, that  
10 is chargeable or indictable under the laws of the state in which the  
11 act occurred and, if the act occurred in a state other than this state,  
12 would be chargeable or indictable under the laws of this state had the  
13 act occurred in this state and punishable as a felony and by  
14 imprisonment for more than one year, regardless of whether the act is  
15 charged or indicted, as any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (nn) Unauthorized sale or procurement of telephone records in  
2 violation of RCW 9.26A.140;

3 (oo) Theft with the intent to resell, as defined in RCW 9A.56.340;

4 (pp) Organized retail theft, as defined in RCW 9A.56.350;

5 (qq) Mortgage fraud, as defined in RCW 19.144.080;

6 (rr) Commercial sexual abuse of a minor, as defined in RCW  
7 9.68A.100; (~~or~~)

8 (ss) Promoting commercial sexual abuse of a minor, as defined in  
9 RCW 9.68A.101; or

10 (tt) Trafficking, as defined in RCW 9A.40.100, promoting travel for  
11 commercial sexual abuse of a minor, as defined in RCW 9.68A.102, and  
12 permitting commercial sexual abuse of a minor, as defined in RCW  
13 9.68A.103.

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

16 (6) "Debtor" means a person to whom an extension of credit is made  
17 or a person who guarantees the repayment of an extension of credit or  
18 in any manner undertakes to indemnify the creditor against loss  
19 resulting from the failure of a person to whom an extension is made to  
20 repay the same.

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

26 (8) "Enterprise" includes any individual, sole proprietorship,  
27 partnership, corporation, business trust, or other profit or nonprofit  
28 legal entity, and includes any union, association, or group of  
29 individuals associated in fact although not a legal entity, and both  
30 illicit and licit enterprises and governmental and nongovernmental  
31 entities.

32 (9) "Extortionate extension of credit" means an extension of credit  
33 with respect to which it is the understanding of the creditor and the  
34 debtor at the time the extension is made that delay in making repayment  
35 or failure to make repayment could result in the use of violence or  
36 other criminal means to cause harm to the person, reputation, or  
37 property of any person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (ii) A trustee of any testamentary trust;

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

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

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

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

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

32 (ii) Chapter 9.46 RCW relating to gambling;

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

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

1       **Sec. 12.** RCW 9A.88.110 and 1988 c 146 s 4 are each amended to read  
2 as follows:

3       (1) A person is guilty of patronizing a prostitute if:

4       (a) Pursuant to a prior understanding, he or she pays a fee to  
5 another person as compensation for such person or a third person having  
6 engaged in sexual conduct with him or her; or

7       (b) He or she pays or agrees to pay a fee to another person  
8 pursuant to an understanding that in return therefor such person will  
9 engage in sexual conduct with him or her; or

10       (c) He or she solicits or requests another person to engage in  
11 sexual conduct with him or her in return for a fee.

12       (2) For purposes of this section, "sexual conduct" has the meaning  
13 given in RCW 9A.88.030.

14       (3) Patronizing a prostitute is a misdemeanor.

15       (4) If the person patronizing a prostitute is a minor, the offense  
16 shall be prosecuted under RCW 9.68A.100 or 9A.44.100.

17       **Sec. 13.** RCW 13.34.132 and 2011 c 309 s 28 are each amended to  
18 read as follows:

19       A court may order that a petition seeking termination of the parent  
20 and child relationship be filed if the following requirements are met:

21       (1) The court has removed the child from his or her home pursuant  
22 to RCW 13.34.130;

23       (2) Termination is recommended by the department or the supervising  
24 agency;

25       (3) Termination is in the best interests of the child; and

26       (4) Because of the existence of aggravated circumstances,  
27 reasonable efforts to unify the family are not required.  
28 Notwithstanding the existence of aggravated circumstances, reasonable  
29 efforts may be required if the court or department determines it is in  
30 the best interests of the child. In determining whether aggravated  
31 circumstances exist by clear, cogent, and convincing evidence, the  
32 court shall consider one or more of the following:

33       (a) Conviction of the parent of rape of the child in the first,  
34 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
35 9A.44.079;

36       (b) Conviction of the parent of criminal mistreatment of the child

1 in the first or second degree as defined in RCW 9A.42.020 and  
2 9A.42.030;

3 (c) Conviction of the parent of one of the following assault  
4 crimes, when the child is the victim: Assault in the first or second  
5 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child  
6 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

7 (d) Conviction of the parent of murder, manslaughter, or homicide  
8 by abuse of the child's other parent, sibling, or another child;

9 (e) Conviction of the parent of attempting, soliciting, or  
10 conspiring to commit a crime listed in (a), (b), (c), or (d) of this  
11 subsection;

12 (f) A finding by a court that a parent is a sexually violent  
13 predator as defined in RCW 71.09.020;

14 (g) Failure of the parent to complete available treatment ordered  
15 under this chapter or the equivalent laws of another state, where such  
16 failure has resulted in a prior termination of parental rights to  
17 another child and the parent has failed to effect significant change in  
18 the interim. In the case of a parent of an Indian child, as defined in  
19 RCW 13.38.040, the court shall also consider tribal efforts to assist  
20 the parent in completing treatment and make it possible for the child  
21 to return home;

22 (h) An infant under three years of age has been abandoned;

23 (i) Conviction of the parent, when a child has been born of the  
24 offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest  
25 under RCW 9A.64.020, with sexual motivation.

26 NEW SECTION. **Sec. 14.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 15.** This act takes effect August 1, 2013.

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