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**SUBSTITUTE SENATE BILL 6704**

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**State of Washington 57th Legislature**

**2002 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Kline, Hargrove, Kastama, Winsley, Oke, Keiser and Johnson)

READ FIRST TIME 02/08/2002.

1 AN ACT Relating to the state's measured response to terrorism;  
2 amending RCW 9.94A.535, 10.95.040, 9A.04.080, 9A.20.021, 70.74.285,  
3 9A.82.090, 9A.82.100, and 9A.82.120; reenacting and amending RCW  
4 9.94A.030, 9.94A.515, and 9A.82.010; adding a new section to chapter  
5 10.95 RCW; adding a new section to chapter 9.94A RCW; adding a new  
6 section to chapter 9A.20 RCW; adding a new chapter to Title 9A RCW;  
7 creating a new section; repealing RCW 69.40.010, 69.40.015, 69.40.020,  
8 and 69.40.025; and prescribing penalties.

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

10 NEW SECTION. **Sec. 1.** The legislature intends to provide law  
11 enforcement and judicial agencies with the capacity to prevent and  
12 prosecute acts committed with terrorist intent. The legislature  
13 declares that the statutes creating crimes in this act are to be  
14 construed with lenity and in all respects to be done with deference to  
15 each person's state and federal constitutional guarantees.

16 NEW SECTION. **Sec. 2.** For the purposes of this chapter:

1 (1) "Terrorist intent" means the intent to unlawfully use physical  
2 force or violence against persons or property, private or public, to  
3 intimidate or coerce an agency or the civilian population at large.

4 (2) "Agency" means "agency" as defined in RCW 42.17.020.

5 (3) "Population at large" means persons not selected on the basis  
6 of their individual identities or personal characteristics.

7 NEW SECTION. **Sec. 3.** (1) A person is guilty of a hoax terrorist  
8 act if he or she knowingly and falsely:

9 (a) Claims to have committed a crime with terrorist intent; or

10 (b) Makes any statement or takes any other action that causes or is  
11 intended to cause a reasonable belief that a crime with terrorist  
12 intent has been or will be committed.

13 (2) A hoax terrorist act is a felony with terrorist intent.

14 (3) A hoax terrorist act is a class A felony.

15 **Sec. 4.** RCW 9.94A.535 and 2001 2nd sp.s. c 12 s 314 are each  
16 amended to read as follows:

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

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

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

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

5       (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

29       (2) Aggravating Circumstances

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

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

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

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

1 (i) The current offense involved multiple victims or multiple  
2 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (k) The offense resulted in the pregnancy of a child victim of  
16 rape.

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

21 (m) The current offense was committed with terrorist intent as  
22 defined in section 2 of this act. This subsection (2)(m) does not  
23 apply to crimes committed under chapter 70.74 RCW or committed under  
24 section 3, 10, or 11 of this act.

25 **Sec. 5.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s  
26 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

27 Unless the context clearly requires otherwise, the definitions in  
28 this section apply throughout this chapter.

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

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

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

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

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

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

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

27 (8) "Community service" means compulsory service, without  
28 compensation, performed for the benefit of the community by the  
29 offender.

30 (9) "Community supervision" means a period of time during which a  
31 convicted offender is subject to crime-related prohibitions and other  
32 sentence conditions imposed by a court pursuant to this chapter or RCW  
33 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
34 a chemical dependency that has contributed to his or her offense, the  
35 conditions of supervision may, subject to available resources, include  
36 treatment. For purposes of the interstate compact for out-of-state  
37 supervision of parolees and probationers, RCW 9.95.270, community  
38 supervision is the functional equivalent of probation and should be  
39 considered the same as probation by other states.

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

2 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
3 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
4 acceptance of a plea of guilty.

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

12 (13) "Criminal history" means the list of a defendant's prior  
13 convictions and juvenile adjudications, whether in this state, in  
14 federal court, or elsewhere. The history shall include, where known,  
15 for each conviction (a) whether the defendant has been placed on  
16 probation and the length and terms thereof; and (b) whether the  
17 defendant has been incarcerated and the length of incarceration.

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

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

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

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

36 (18) "Disposable earnings" means that part of the earnings of an  
37 offender remaining after the deduction from those earnings of any  
38 amount required by law to be withheld. For the purposes of this  
39 definition, "earnings" means compensation paid or payable for personal

1 services, whether denominated as wages, salary, commission, bonuses, or  
2 otherwise, and, notwithstanding any other provision of law making the  
3 payments exempt from garnishment, attachment, or other process to  
4 satisfy a court-ordered legal financial obligation, specifically  
5 includes periodic payments pursuant to pension or retirement programs,  
6 or insurance policies of any type, but does not include payments made  
7 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
8 or Title 74 RCW.

9 (19) "Drug offender sentencing alternative" is a sentencing option  
10 available to persons convicted of a felony offense other than a violent  
11 offense or a sex offense and who are eligible for the option under RCW  
12 9.94A.660.

13 (20) "Drug offense" means:

14 (a) Any felony violation of chapter 69.50 RCW except possession of  
15 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
16 controlled substance (RCW 69.50.403);

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

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

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

25 (22) "Escape" means:

26 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
27 first degree (RCW 9A.76.110), escape in the second degree (RCW  
28 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
29 willful failure to return from work release (RCW 72.65.070), or willful  
30 failure to be available for supervision by the department while in  
31 community custody (RCW 72.09.310); or

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

35 (23) "Felony traffic offense" means:

36 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
37 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
38 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

29 (a) Any felony defined under any law as a class A felony or  
30 criminal solicitation of or criminal conspiracy to commit a class A  
31 felony;

32 (b) Assault in the second degree;

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

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

37 (g) Incest when committed against a child under age fourteen;

38 (h) Indecent liberties;

39 (i) Kidnapping in the second degree;

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

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

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

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

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

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

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

37 (ii) Has, before the commission of the offense under (b)(i) of this  
38 subsection, been convicted as an offender on at least one occasion,  
39 whether in this state or elsewhere, of an offense listed in (b)(i) of

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

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

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

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

24 (36) "Serious traffic offense" means:

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

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

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

- 35 (a)(i) Murder in the first degree;
- 36 (ii) Homicide by abuse;
- 37 (iii) Murder in the second degree;
- 38 (iv) Manslaughter in the first degree;
- 39 (v) Assault in the first degree;

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

1        (43) "Total confinement" means confinement inside the physical  
2 boundaries of a facility or institution operated or utilized under  
3 contract by the state or any other unit of government for twenty-four  
4 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5        (~~(43)~~) (44) "Transition training" means written and verbal  
6 instructions and assistance provided by the department to the offender  
7 during the two weeks prior to the offender's successful completion of  
8 the work ethic camp program. The transition training shall include  
9 instructions in the offender's requirements and obligations during the  
10 offender's period of community custody.

11        (~~(44)~~) (45) "Victim" means any person who has sustained  
12 emotional, psychological, physical, or financial injury to person or  
13 property as a direct result of the crime charged.

14        (~~(45)~~) (46) "Violent offense" means:

15        (a) Any of the following felonies:

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

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

20        (iii) Manslaughter in the first degree;

21        (iv) Manslaughter in the second degree;

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

23        (vi) Kidnapping in the second degree;

24        (vii) Arson in the second degree;

25        (viii) Assault in the second degree;

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

27        (x) Extortion in the first degree;

28        (xi) Robbery in the second degree;

29        (xii) Drive-by shooting;

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

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

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

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

7 (~~(46)~~) (47) "Work crew" means a program of partial confinement  
8 consisting of civic improvement tasks for the benefit of the community  
9 that complies with RCW 9.94A.725.

10 (~~(47)~~) (48) "Work ethic camp" means an alternative incarceration  
11 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
12 lower the cost of corrections by requiring offenders to complete a  
13 comprehensive array of real-world job and vocational experiences,  
14 character-building work ethics training, life management skills  
15 development, substance abuse rehabilitation, counseling, literacy  
16 training, and basic adult education.

17 (~~(48)~~) (49) "Work release" means a program of partial confinement  
18 available to offenders who are employed or engaged as a student in a  
19 regular course of study at school.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.95 RCW  
21 to read as follows:

22 A person is guilty of aggravated murder in the first degree if he  
23 or she is a terrorist offender as defined by RCW 9.94A.030 and shall be  
24 punished in accordance with the provisions of this chapter.

25 **Sec. 7.** RCW 10.95.040 and 1981 c 138 s 4 are each amended to read  
26 as follows:

27 (1) If a person is charged with aggravated first degree murder as  
28 defined by RCW 10.95.020 or section 6 of this act, the prosecuting  
29 attorney shall file written notice of a special sentencing proceeding  
30 to determine whether or not the death penalty should be imposed when  
31 there is reason to believe that there are not sufficient mitigating  
32 circumstances to merit leniency.

33 (2) The notice of special sentencing proceeding shall be filed and  
34 served on the defendant or the defendant's attorney within thirty days  
35 after the defendant's arraignment upon the charge of aggravated first  
36 degree murder unless the court, for good cause shown, extends or  
37 reopens the period for filing and service of the notice. Except with

1 the consent of the prosecuting attorney, during the period in which the  
2 prosecuting attorney may file the notice of special sentencing  
3 proceeding, the defendant may not tender a plea of guilty to the charge  
4 of aggravated first degree murder nor may the court accept a plea of  
5 guilty to the charge of aggravated first degree murder or any lesser  
6 included offense.

7 (3) If a notice of special sentencing proceeding is not filed and  
8 served as provided in this section, the prosecuting attorney may not  
9 request the death penalty.

10 **Sec. 8.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s  
11 4, 2001 c 217 s 12, and 2001 c 17 s 1 are each reenacted and amended to  
12 read as follows:

13 TABLE 2

14 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

15	XVI	Aggravated Murder 1 (RCW 10.95.020)
16	XV	Homicide by abuse (RCW 9A.32.055)
17		Malicious explosion 1 (RCW 70.74.280(1))
18		Murder 1 (RCW 9A.32.030)
19		<u>Releasing radioactive material (section 11</u>
20		<u>of this act)</u>
21		<u>Unlawful use of agents for terrorist</u>
22		<u>purposes (section 10 of this act)</u>
23	XIV	Murder 2 (RCW 9A.32.050)
24	XIII	Malicious explosion 2 (RCW 70.74.280(2))
25		Malicious placement of an explosive 1 (RCW
26		70.74.270(1))
27	XII	Assault 1 (RCW 9A.36.011)
28		Assault of a Child 1 (RCW 9A.36.120)
29		Malicious placement of an imitation device
30		1 (RCW 70.74.272(1)(a))
31		Rape 1 (RCW 9A.44.040)
32		Rape of a Child 1 (RCW 9A.44.073)
33	XI	Manslaughter 1 (RCW 9A.32.060)
34		Rape 2 (RCW 9A.44.050)

1 Rape of a Child 2 (RCW 9A.44.076)

2 X Child Molestation 1 (RCW 9A.44.083)

3 Indecent Liberties (with forcible

4 compulsion) (RCW 9A.44.100(1)(a))

5 Kidnapping 1 (RCW 9A.40.020)

6 Leading Organized Crime (RCW

7 9A.82.060(1)(a))

8 Malicious explosion 3 (RCW 70.74.280(3))

9 Manufacture of methamphetamine (RCW

10 69.50.401(a)(1)(ii))

11 Over 18 and deliver heroin,

12 methamphetamine, a narcotic from

13 Schedule I or II, or flunitrazepam

14 from Schedule IV to someone under 18

15 (RCW 69.50.406)

16 Sexually Violent Predator Escape (RCW

17 9A.76.115)

18 IX Assault of a Child 2 (RCW 9A.36.130)

19 Controlled Substance Homicide (RCW

20 69.50.415)

21 Explosive devices prohibited (RCW

22 70.74.180)

23 Hit and Run--Death (RCW 46.52.020(4)(a))

24 Hoax terrorist act (section 3 of this act)

25 Homicide by Watercraft, by being under the

26 influence of intoxicating liquor or

27 any drug (RCW 79A.60.050)

28 Inciting Criminal Profiteering (RCW

29 9A.82.060(1)(b))

30 Malicious placement of an explosive 2 (RCW

31 70.74.270(2))

32 Over 18 and deliver narcotic from Schedule

33 III, IV, or V or a nonnarcotic, except

34 flunitrazepam or methamphetamine, from

35 Schedule I-V to someone under 18 and 3

36 years junior (RCW 69.50.406)

37 Robbery 1 (RCW 9A.56.200)

38 Sexual Exploitation (RCW 9.68A.040)

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

4 VIII Arson 1 (RCW 9A.48.020)  
5 Deliver or possess with intent to deliver  
6 methamphetamine (RCW  
7 69.50.401(a)(1)(ii))  
8 Homicide by Watercraft, by the operation of  
9 any vessel in a reckless manner (RCW  
10 79A.60.050)  
11 Manslaughter 2 (RCW 9A.32.070)  
12 Manufacture, deliver, or possess with  
13 intent to deliver amphetamine (RCW  
14 69.50.401(a)(1)(ii))  
15 Manufacture, deliver, or possess with  
16 intent to deliver heroin or cocaine  
17 (RCW 69.50.401(a)(1)(i))  
18 Possession of Ephedrine, Pseudoephedrine,  
19 or Anhydrous Ammonia with intent to  
20 manufacture methamphetamine (RCW  
21 69.50.440)  
22 Promoting Prostitution 1 (RCW 9A.88.070)  
23 Selling for profit (controlled or  
24 counterfeit) any controlled substance  
25 (RCW 69.50.410)  
26 Theft of Anhydrous Ammonia (RCW 69.55.010)  
27 Vehicular Homicide, by the operation of any  
28 vehicle in a reckless manner (RCW  
29 46.61.520)

30 VII Burglary 1 (RCW 9A.52.020)  
31 Child Molestation 2 (RCW 9A.44.086)  
32 Dealing in depictions of minor engaged in  
33 sexually explicit conduct (RCW  
34 9.68A.050)  
35 Drive-by Shooting (RCW 9A.36.045)  
36 Homicide by Watercraft, by disregard for  
37 the safety of others (RCW 79A.60.050)

1 Indecent Liberties (without forcible  
2 compulsion) (RCW 9A.44.100(1) (b) and  
3 (c))  
4 Introducing Contraband 1 (RCW 9A.76.140)  
5 Involving a minor in drug dealing (RCW  
6 69.50.401(f))  
7 Malicious placement of an explosive 3 (RCW  
8 70.74.270(3))  
9 Sending, bringing into state depictions of  
10 minor engaged in sexually explicit  
11 conduct (RCW 9.68A.060)  
12 Unlawful Possession of a Firearm in the  
13 first degree (RCW 9.41.040(1)(a))  
14 Use of a Machine Gun in Commission of a  
15 Felony (RCW 9.41.225)  
16 Vehicular Homicide, by disregard for the  
17 safety of others (RCW 46.61.520)

18 VI Bail Jumping with Murder 1 (RCW  
19 9A.76.170(3)(a))  
20 Bribery (RCW 9A.68.010)  
21 Incest 1 (RCW 9A.64.020(1))  
22 Intimidating a Judge (RCW 9A.72.160)  
23 Intimidating a Juror/Witness (RCW  
24 9A.72.110, 9A.72.130)  
25 Malicious placement of an imitation device  
26 2 (RCW 70.74.272(1)(b))  
27 Manufacture, deliver, or possess with  
28 intent to deliver narcotics from  
29 Schedule I or II (except heroin or  
30 cocaine) or flunitrazepam from  
31 Schedule IV (RCW 69.50.401(a)(1)(i))  
32 Rape of a Child 3 (RCW 9A.44.079)  
33 Theft of a Firearm (RCW 9A.56.300)  
34 Unlawful Storage of Anhydrous Ammonia (RCW  
35 69.55.020)

36 V Abandonment of dependent person 1 (RCW  
37 9A.42.060)

1 Advancing money or property for  
2 extortionate extension of credit (RCW  
3 9A.82.030)  
4 Bail Jumping with class A Felony (RCW  
5 9A.76.170(3)(b))  
6 Child Molestation 3 (RCW 9A.44.089)  
7 Criminal Mistreatment 1 (RCW 9A.42.020)  
8 Custodial Sexual Misconduct 1 (RCW  
9 9A.44.160)  
10 Delivery of imitation controlled substance  
11 by person eighteen or over to person  
12 under eighteen (RCW 69.52.030(2))  
13 Domestic Violence Court Order Violation  
14 (RCW 10.99.040, 10.99.050, 26.09.300,  
15 26.10.220, 26.26.138, 26.50.110,  
16 26.52.070, or 74.34.145)  
17 Extortion 1 (RCW 9A.56.120)  
18 Extortionate Extension of Credit (RCW  
19 9A.82.020)  
20 Extortionate Means to Collect Extensions of  
21 Credit (RCW 9A.82.040)  
22 Incest 2 (RCW 9A.64.020(2))  
23 Kidnapping 2 (RCW 9A.40.030)  
24 Perjury 1 (RCW 9A.72.020)  
25 Persistent prison misbehavior (RCW  
26 9.94.070)  
27 Possession of a Stolen Firearm (RCW  
28 9A.56.310)  
29 Rape 3 (RCW 9A.44.060)  
30 Rendering Criminal Assistance 1 (RCW  
31 9A.76.070)  
32 Sexual Misconduct with a Minor 1 (RCW  
33 9A.44.093)  
34 Sexually Violating Human Remains (RCW  
35 9A.44.105)  
36 Stalking (RCW 9A.46.110)  
37 IV Arson 2 (RCW 9A.48.030)  
38 Assault 2 (RCW 9A.36.021)  
39 Assault by Watercraft (RCW 79A.60.060)

1 Bribing a Witness/Bribe Received by Witness  
2 (RCW 9A.72.090, 9A.72.100)  
3 Commercial Bribery (RCW 9A.68.060)  
4 Counterfeiting (RCW 9.16.035(4))  
5 Escape 1 (RCW 9A.76.110)  
6 Hit and Run--Injury (RCW 46.52.020(4)(b))  
7 Hit and Run with Vessel--Injury Accident  
8 (RCW 79A.60.200(3))  
9 Identity Theft 1 (RCW 9.35.020(2)(a))  
10 Indecent Exposure to Person Under Age  
11 Fourteen (subsequent sex offense) (RCW  
12 9A.88.010)  
13 Influencing Outcome of Sporting Event (RCW  
14 9A.82.070)  
15 Knowingly Trafficking in Stolen Property  
16 (RCW 9A.82.050(2))  
17 Malicious Harassment (RCW 9A.36.080)  
18 Manufacture, deliver, or possess with  
19 intent to deliver narcotics from  
20 Schedule III, IV, or V or nonnarcotics  
21 from Schedule I-V (except marijuana,  
22 amphetamine, methamphetamines, or  
23 flunitrazepam) (RCW 69.50.401(a)(1)  
24 (iii) through (v))  
25 Residential Burglary (RCW 9A.52.025)  
26 Robbery 2 (RCW 9A.56.210)  
27 Theft of Livestock 1 (RCW 9A.56.080)  
28 Threats to Bomb (RCW 9.61.160)  
29 Use of Proceeds of Criminal Profiteering  
30 (RCW 9A.82.080 (1) and (2))  
31 Vehicular Assault, by being under the  
32 influence of intoxicating liquor or  
33 any drug, or by the operation or  
34 driving of a vehicle in a reckless  
35 manner (RCW 46.61.522)  
36 Willful Failure to Return from Furlough  
37 (RCW 72.66.060)  
38 III Abandonment of dependent person 2 (RCW  
39 9A.42.070)

1 Assault 3 (RCW 9A.36.031)  
2 Assault of a Child 3 (RCW 9A.36.140)  
3 Bail Jumping with class B or C Felony (RCW  
4 9A.76.170(3)(c))  
5 Burglary 2 (RCW 9A.52.030)  
6 Communication with a Minor for Immoral  
7 Purposes (RCW 9.68A.090)  
8 Criminal Gang Intimidation (RCW 9A.46.120)  
9 Criminal Mistreatment 2 (RCW 9A.42.030)  
10 Custodial Assault (RCW 9A.36.100)  
11 Delivery of a material in lieu of a  
12 controlled substance (RCW  
13 69.50.401(c))  
14 Escape 2 (RCW 9A.76.120)  
15 Extortion 2 (RCW 9A.56.130)  
16 Harassment (RCW 9A.46.020)  
17 Intimidating a Public Servant (RCW  
18 9A.76.180)  
19 Introducing Contraband 2 (RCW 9A.76.150)  
20 Maintaining a Dwelling or Place for  
21 Controlled Substances (RCW  
22 69.50.402(a)(6))  
23 Malicious Injury to Railroad Property (RCW  
24 81.60.070)  
25 Manufacture, deliver, or possess with  
26 intent to deliver marijuana (RCW  
27 69.50.401(a)(1)(iii))  
28 Manufacture, distribute, or possess with  
29 intent to distribute an imitation  
30 controlled substance (RCW  
31 69.52.030(1))  
32 Patronizing a Juvenile Prostitute (RCW  
33 9.68A.100)  
34 Perjury 2 (RCW 9A.72.030)  
35 Possession of Incendiary Device (RCW  
36 9.40.120)  
37 Possession of Machine Gun or Short-Barreled  
38 Shotgun or Rifle (RCW 9.41.190)  
39 Promoting Prostitution 2 (RCW 9A.88.080)

1 Recklessly Trafficking in Stolen Property  
2 (RCW 9A.82.050(1))  
3 Securities Act violation (RCW 21.20.400)  
4 Tampering with a Witness (RCW 9A.72.120)  
5 Telephone Harassment (subsequent conviction  
6 or threat of death) (RCW 9.61.230)  
7 Theft of Livestock 2 (RCW 9A.56.080)  
8 Unlawful Imprisonment (RCW 9A.40.040)  
9 Unlawful possession of firearm in the  
10 second degree (RCW 9.41.040(1)(b))  
11 Unlawful Use of Building for Drug Purposes  
12 (RCW 69.53.010)  
13 Vehicular Assault, by the operation or  
14 driving of a vehicle with disregard  
15 for the safety of others (RCW  
16 46.61.522)  
17 Willful Failure to Return from Work Release  
18 (RCW 72.65.070)

19 II Computer Trespass 1 (RCW 9A.52.110)  
20 Counterfeiting (RCW 9.16.035(3))  
21 Create, deliver, or possess a counterfeit  
22 controlled substance (RCW  
23 69.50.401(b))  
24 Escape from Community Custody (RCW  
25 72.09.310)  
26 Health Care False Claims (RCW 48.80.030)  
27 Identity Theft 2 (RCW 9.35.020(2)(b))  
28 Improperly Obtaining Financial Information  
29 (RCW 9.35.010)  
30 Malicious Mischief 1 (RCW 9A.48.070)  
31 Possession of controlled substance that is  
32 either heroin or narcotics from  
33 Schedule I or II or flunitrazepam from  
34 Schedule IV (RCW 69.50.401(d))  
35 Possession of phencyclidine (PCP) (RCW  
36 69.50.401(d))  
37 Possession of Stolen Property 1 (RCW  
38 9A.56.150)  
39 Theft 1 (RCW 9A.56.030)

1 Theft of Rental, Leased, or Lease-purchased  
2 Property (valued at one thousand five  
3 hundred dollars or more) (RCW  
4 9A.56.096(4))  
5 Trafficking in Insurance Claims (RCW  
6 48.30A.015)  
7 Unlawful Practice of Law (RCW 2.48.180)  
8 Unlicensed Practice of a Profession or  
9 Business (RCW 18.130.190(7))  
10 I Attempting to Elude a Pursuing Police  
11 Vehicle (RCW 46.61.024)  
12 False Verification for Welfare (RCW  
13 74.08.055)  
14 Forged Prescription (RCW 69.41.020)  
15 Forged Prescription for a Controlled  
16 Substance (RCW 69.50.403)  
17 Forgery (RCW 9A.60.020)  
18 Malicious Mischief 2 (RCW 9A.48.080)  
19 Possess Controlled Substance that is a  
20 Narcotic from Schedule III, IV, or V  
21 or Non-narcotic from Schedule I-V  
22 (except phencyclidine or  
23 flunitrazepam) (RCW 69.50.401(d))  
24 Possession of Stolen Property 2 (RCW  
25 9A.56.160)  
26 Reckless Burning 1 (RCW 9A.48.040)  
27 Taking Motor Vehicle Without Permission  
28 (RCW 9A.56.070)  
29 Theft 2 (RCW 9A.56.040)  
30 Theft of Rental, Leased, or Lease-purchased  
31 Property (valued at two hundred fifty  
32 dollars or more but less than one  
33 thousand five hundred dollars) (RCW  
34 9A.56.096(4))  
35 Unlawful Issuance of Checks or Drafts (RCW  
36 9A.56.060)  
37 Unlawful Use of Food Stamps (RCW 9.91.140  
38 (2) and (3))  
39 Vehicle Prowl 1 (RCW 9A.52.095)

1       **Sec. 9.** RCW 9A.04.080 and 1998 c 221 s 2 are each amended to read  
2 as follows:

3       (1) Prosecutions for criminal offenses shall not be commenced after  
4 the periods prescribed in this section.

5       (a) The following offenses may be prosecuted at any time after  
6 their commission:

7       (i) Murder;

8       (ii) Homicide by abuse;

9       (iii) Arson if a death results;

10       (iv) Vehicular homicide;

11       (v) Vehicular assault if a death results;

12       (vi) Hit-and-run injury-accident if a death results (RCW  
13 46.52.020(4));

14       (vii) Any felony committed with terrorist intent, as defined in  
15 section 2 of this act.

16       (b) The following offenses shall not be prosecuted more than ten  
17 years after their commission:

18       (i) Any felony committed by a public officer if the commission is  
19 in connection with the duties of his or her office or constitutes a  
20 breach of his or her public duty or a violation of the oath of office;

21       (ii) Arson if no death results; or

22       (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is  
23 reported to a law enforcement agency within one year of its commission;  
24 except that if the victim is under fourteen years of age when the rape  
25 is committed and the rape is reported to a law enforcement agency  
26 within one year of its commission, the violation may be prosecuted up  
27 to three years after the victim's eighteenth birthday or up to ten  
28 years after the rape's commission, whichever is later. If a violation  
29 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape  
30 may not be prosecuted: (A) More than three years after its commission  
31 if the violation was committed against a victim fourteen years of age  
32 or older; or (B) more than three years after the victim's eighteenth  
33 birthday or more than seven years after the rape's commission,  
34 whichever is later, if the violation was committed against a victim  
35 under fourteen years of age.

36       (c) Violations of the following statutes shall not be prosecuted  
37 more than three years after the victim's eighteenth birthday or more  
38 than seven years after their commission, whichever is later: RCW

1 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,  
2 9A.44.100(1)(b), or 9A.64.020.

3 (d) The following offenses shall not be prosecuted more than six  
4 years after their commission: Violations of RCW 9A.82.060 or  
5 9A.82.080.

6 (e) The following offenses shall not be prosecuted more than five  
7 years after their commission: Any class C felony under chapter 74.09,  
8 82.36, or 82.38 RCW.

9 (f) Bigamy shall not be prosecuted more than three years after the  
10 time specified in RCW 9A.64.010.

11 (g) A violation of RCW 9A.56.030 must not be prosecuted more than  
12 three years after the discovery of the offense when the victim is a tax  
13 exempt corporation under 26 U.S.C. Sec. 501(c)(3).

14 (h) No other felony may be prosecuted more than three years after  
15 its commission; except that in a prosecution under RCW 9A.44.115, if  
16 the person who was viewed, photographed, or filmed did not realize at  
17 the time that he or she was being viewed, photographed, or filmed, the  
18 prosecution must be commenced within two years of the time the person  
19 who was viewed or in the photograph or film first learns that he or she  
20 was viewed, photographed, or filmed.

21 (i) No gross misdemeanor may be prosecuted more than two years  
22 after its commission.

23 (j) No misdemeanor may be prosecuted more than one year after its  
24 commission.

25 (2) The periods of limitation prescribed in subsection (1) of this  
26 section do not run during any time when the person charged is not  
27 usually and publicly resident within this state.

28 (3) If, before the end of a period of limitation prescribed in  
29 subsection (1) of this section, an indictment has been found or a  
30 complaint or an information has been filed, and the indictment,  
31 complaint, or information is set aside, then the period of limitation  
32 is extended by a period equal to the length of time from the finding or  
33 filing to the setting aside.

34 NEW SECTION. **Sec. 10.** (1) A person is guilty of unlawful use of  
35 agents for terrorist purposes if the person willfully and with  
36 terrorist intent places, introduces, broadcasts, disseminates, or  
37 releases any biological agent, chemical agent, or toxin in: (a) The  
38 air; (b) any food prepared for the use of a human being; (c) any water

1 system; (d) any heating, ventilation, or cooling system; (e) any  
2 habitable building; (f) any motor vehicle, street car, or train, as  
3 defined in RCW 47.04.010; or (g) any vessel, as defined in RCW  
4 88.02.010.

5 (2) For the purposes of this section:

6 (a) "Biological agent" means any microorganism, virus, infectious  
7 substance, or biological product that may be engineered as a result of  
8 biotechnology, or any naturally occurring microorganism, virus,  
9 infectious substance, biological product, or toxin or vector, or any  
10 naturally occurring or bioengineered component thereof, capable of  
11 causing:

12 (i) Death, disease, or other biological malfunction in a human, an  
13 animal, a plant, or another living organism;

14 (ii) Deterioration of food, water equipment, supplies, or material  
15 of any kind; or

16 (iii) Significant deterioration of the environment.

17 (b) "Chemical agent" means any weapon, device, material, or  
18 substance that is designed or intended to cause widespread death or  
19 physical injury through the release, dissemination, or impact of toxic  
20 or poisonous chemicals or precursors of toxic or poisonous chemicals.

21 (c) "Habitable building" means any building in which persons may  
22 reside or assemble for recreational or employment purposes.

23 (d) "Toxin" means the toxic material of plants, animals,  
24 microorganisms, viruses, fungi, or infectious substances, or a  
25 recombinant molecule, whatever its origin or method of production,  
26 including:

27 (i) Any poisonous substance or biological product that may be  
28 engineered as a result of biotechnology produced by a living organism;  
29 or

30 (ii) Any poisonous isomer or biological product, homolog, or  
31 derivative of such a substance.

32 (3) Unlawful use of agents for terrorist purposes is a class A  
33 felony.

34 NEW SECTION. **Sec. 11.** (1) A person is guilty of releasing  
35 radioactive material with terrorist intent if the person releases,  
36 broadcasts, or disseminates ionizing radiation with terrorist intent.

37 (2) Releasing radioactive material with terrorist intent is a class  
38 A felony.

1        NEW SECTION.    **Sec. 12.**    A new section is added to chapter 9.94A RCW  
2 to read as follows:

3        (1) The prosecuting attorney may file a special allegation of  
4 terrorist intent in any criminal case, other than violations of the  
5 Washington state explosives act, chapter 70.74 RCW, or section 3, 10,  
6 or 11 of this act, when sufficient admissible evidence exists that  
7 would justify a finding of terrorist intent by a reasonable and  
8 objective fact finder.

9        (2) If the special allegation is filed, the state shall prove  
10 beyond a reasonable doubt that the accused committed the crime with  
11 terrorist intent, as defined in section 2 of this act. The court shall  
12 make a finding of fact of whether or not terrorist intent was present  
13 at the time of the commission of the crime, or if a jury trial is had,  
14 the jury shall, if it finds the defendant guilty, also find a special  
15 verdict as to whether or not the defendant committed the crime with  
16 terrorist intent. This finding shall not be applied to violations of  
17 the Washington state explosives act, chapter 70.74 RCW, or section 3,  
18 10, or 11 of this act.

19        (3) The prosecuting attorney shall not withdraw the special  
20 allegation of terrorist intent without approval of the court through an  
21 order of dismissal of the special allegation. The court shall not  
22 dismiss the special allegation unless it finds that such an order is  
23 necessary to correct an error in the initial charging decision or  
24 unless there are evidentiary problems that make proving the special  
25 allegation doubtful.

26        NEW SECTION.    **Sec. 13.**    A new section is added to chapter 9A.20 RCW  
27 to read as follows:

28        (1) Notwithstanding the provisions of RCW 9A.20.021, no person  
29 convicted of a classified felony with a finding of terrorist intent as  
30 provided under section 12 of this act shall be punished by confinement  
31 or fine exceeding the following:

32        (a) For a class B felony, by confinement in a state correctional  
33 institution for a term of life imprisonment, or by a fine in an amount  
34 fixed by the court of fifty thousand dollars, or by both such  
35 confinement and fine; or

36        (b) For a class C felony, by confinement in a state correctional  
37 institution for a term of ten years, or by a fine in an amount fixed by

1 the court of ten thousand dollars, or by both such confinement and  
2 fine.

3 (2) This section applies to only those crimes committed on or after  
4 the effective date of this act.

5 **Sec. 14.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to  
6 read as follows:

7 (1) Felony. Except when section 13 of this act applies, no person  
8 convicted of a classified felony shall be punished by confinement or  
9 fine exceeding the following:

10 (a) For a class A felony, by confinement in a state correctional  
11 institution for a term of life imprisonment, or by a fine in an amount  
12 fixed by the court of fifty thousand dollars, or by both such  
13 confinement and fine;

14 (b) For a class B felony, by confinement in a state correctional  
15 institution for a term of ten years, or by a fine in an amount fixed by  
16 the court of twenty thousand dollars, or by both such confinement and  
17 fine;

18 (c) For a class C felony, by confinement in a state correctional  
19 institution for five years, or by a fine in an amount fixed by the  
20 court of ten thousand dollars, or by both such confinement and fine.

21 (2) Gross misdemeanor. Every person convicted of a gross  
22 misdemeanor defined in Title 9A RCW shall be punished by imprisonment  
23 in the county jail for a maximum term fixed by the court of not more  
24 than one year, or by a fine in an amount fixed by the court of not more  
25 than five thousand dollars, or by both such imprisonment and fine.

26 (3) Misdemeanor. Every person convicted of a misdemeanor defined  
27 in Title 9A RCW shall be punished by imprisonment in the county jail  
28 for a maximum term fixed by the court of not more than ninety days, or  
29 by a fine in an amount fixed by the court of not more than one thousand  
30 dollars, or by both such imprisonment and fine.

31 (4) This section applies to only those crimes committed on or after  
32 July 1, 1984.

33 **Sec. 15.** RCW 70.74.285 and 1997 c 120 s 4 are each amended to read  
34 as follows:

35 For the purposes of RCW 70.74.270, 70.74.272, and 70.74.280  
36 "terrorist act" means ~~((an act that is intended to: (1) Intimidate or~~  
37 ~~coerce a civilian population; (2) influence the policy of a branch or~~

1 ~~level of government by intimidation or coercion; (3) affect the conduct~~  
2 ~~of a branch or level of government by intimidation or coercion; or (4)~~  
3 ~~retaliate against a branch or level of government for a policy or~~  
4 ~~conduct of the government)) the intent to unlawfully use physical force~~  
5 ~~or violence against persons or property to intimidate or coerce an~~  
6 ~~agency or the civilian population at large.~~

7 (2) "Agency" means "agency" as defined in RCW 42.17.020.

8 (3) "Population at large" means persons not selected on the basis  
9 of their individual identities or personal characteristics.

10 **Sec. 16.** RCW 9A.82.010 and 2001 c 222 s 3 and 2001 c 217 s 11 are  
11 each reenacted and amended to read as follows:

12 Unless the context requires the contrary, the definitions in this  
13 section apply throughout this chapter.

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

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

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

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

24 (b) "Beneficial interest" does not include the interest of a  
25 stockholder in a corporation or the interest of a partner in a general  
26 partnership or limited partnership.

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

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

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

34 (4) "Criminal profiteering" means any act, including any  
35 anticipatory or completed offense, committed for financial gain, that  
36 is chargeable or indictable under the laws of the state in which the  
37 act occurred and, if the act occurred in a state other than this state,  
38 would be chargeable or indictable under the laws of this state had the

1 act occurred in this state and punishable as a felony and by  
2 imprisonment for more than one year, regardless of whether the act is  
3 charged or indicted, as any of the following:

- 4 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 5 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 6 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 7 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 8 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and  
9 9A.56.080;
- 10 (f) Unlawful sale of subscription television services, as defined  
11 in RCW 9A.56.230;
- 12 (g) Theft of telecommunication services or unlawful manufacture of  
13 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- 14 (h) Child selling or child buying, as defined in RCW 9A.64.030;
- 15 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
16 9A.68.050;
- 17 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- 18 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 19 (l) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 20 (m) Advancing money for use in an extortionate extension of credit,  
21 as defined in RCW 9A.82.030;
- 22 (n) Collection of an extortionate extension of credit, as defined  
23 in RCW 9A.82.040;
- 24 (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- 25 (p) Delivery or manufacture of controlled substances or possession  
26 with intent to deliver or manufacture controlled substances under  
27 chapter 69.50 RCW;
- 28 (q) Trafficking in stolen property, as defined in RCW 9A.82.050;
- 29 (r) Leading organized crime, as defined in RCW 9A.82.060;
- 30 (s) Money laundering, as defined in RCW 9A.83.020;
- 31 (t) Obstructing criminal investigations or prosecutions in  
32 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
33 9A.76.070, or 9A.76.180;
- 34 (u) Fraud in the purchase or sale of securities, as defined in RCW  
35 21.20.010;
- 36 (v) Promoting pornography, as defined in RCW 9.68.140;
- 37 (w) Sexual exploitation of children, as defined in RCW 9.68A.040,  
38 9.68A.050, and 9.68A.060;

1 (x) Promoting prostitution, as defined in RCW 9A.88.070 and  
2 9A.88.080;

3 (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

4 (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

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

6 (bb) A pattern of equity skimming, as defined in RCW 61.34.020;

7 (cc) Commercial telephone solicitation in violation of RCW  
8 19.158.040(1);

9 (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;

10 (ee) Unlawful practice of law, as defined in RCW 2.48.180;

11 (ff) Commercial bribery, as defined in RCW 9A.68.060;

12 (gg) Health care false claims, as defined in RCW 48.80.030;

13 (hh) Unlicensed practice of a profession or business, as defined in  
14 RCW 18.130.190(7);

15 (ii) Improperly obtaining financial information, as defined in RCW  
16 9.35.010; (~~oe~~)

17 (jj) Identity theft, as defined in RCW 9.35.020; or

18 (kk) Any felony act committed with terrorist intent, including  
19 anticipatory and completed acts, whether or not committed for financial  
20 gain.

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

23 (6) "Debtor" means a person to whom an extension of credit is made  
24 or a person who guarantees the repayment of an extension of credit or  
25 in any manner undertakes to indemnify the creditor against loss  
26 resulting from the failure of a person to whom an extension is made to  
27 repay the same.

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

33 (8) "Enterprise" includes any individual, sole proprietorship,  
34 partnership, corporation, business trust, or other profit or nonprofit  
35 legal entity, and includes any union, association, or group of  
36 individuals associated in fact although not a legal entity, and both  
37 illicit and licit enterprises and governmental and nongovernmental  
38 entities.

1 (9) "Extortionate extension of credit" means an extension of credit  
2 with respect to which it is the understanding of the creditor and the  
3 debtor at the time the extension is made that delay in making repayment  
4 or failure to make repayment could result in the use of violence or  
5 other criminal means to cause harm to the person, reputation, or  
6 property of any person.

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

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

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

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

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

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

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

7 (17) "Terrorist intent" means "terrorist intent" as defined in  
8 section 2 of this act or RCW 70.74.285.

9 (18) "To collect an extension of credit" means to induce in any way  
10 a person to make repayment thereof.

11 (~~(18)~~) (19) "To extend credit" means to make or renew a loan or  
12 to enter into an agreement, tacit or express, whereby the repayment or  
13 satisfaction of a debt or claim, whether acknowledged or disputed,  
14 valid or invalid, and however arising, may or shall be deferred.

15 (~~(19)~~) (20) "Traffic" means to sell, transfer, distribute,  
16 dispense, or otherwise dispose of stolen property to another person, or  
17 to buy, receive, possess, or obtain control of stolen property, with  
18 intent to sell, transfer, distribute, dispense, or otherwise dispose of  
19 the property to another person.

20 (~~(20)~~) (21)(a) "Trustee" means:

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

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

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

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

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

30 (ii) A trustee of any testamentary trust;

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

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

34 (~~(21)~~) (22) "Unlawful debt" means any money or other thing of  
35 value constituting principal or interest of a debt that is legally  
36 unenforceable in the state in full or in part because the debt was  
37 incurred or contracted:

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

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

- 1 (ii) Chapter 9.46 RCW relating to gambling;  
2 (b) In a gambling activity in violation of federal law; or  
3 (c) In connection with the business of lending money or a thing of  
4 value at a rate that is at least twice the permitted rate under the  
5 applicable state or federal law relating to usury.

6 **Sec. 17.** RCW 9A.82.090 and 2001 c 222 s 13 are each amended to  
7 read as follows:

8 During the pendency of any criminal case charging a violation of  
9 RCW 9A.82.060 or a violation of RCW 9A.82.080, or any offense committed  
10 with terrorist intent whether or not committed for financial gain, the  
11 superior court may, in addition to its other powers, issue an order  
12 pursuant to RCW 9A.82.100 (2) or (3). Upon conviction of a person for  
13 a violation of RCW 9A.82.060 or a violation of RCW 9A.82.080, or any  
14 offense committed with terrorist intent whether or not committed for  
15 financial gain, the superior court may, in addition to its other powers  
16 of disposition, issue an order pursuant to RCW 9A.82.100.

17 **Sec. 18.** RCW 9A.82.100 and 2001 c 222 s 14 are each amended to  
18 read as follows:

19 (1)(a) A person who sustains injury to his or her person, business,  
20 or property by an act of criminal profiteering that is part of a  
21 pattern of criminal profiteering activity, or any offense committed  
22 with terrorist intent whether or not committed for financial gain, or  
23 by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in  
24 superior court for the recovery of damages and the costs of the suit,  
25 including reasonable investigative and attorney's fees.

26 (b) The attorney general or county prosecuting attorney may file an  
27 action: (i) On behalf of those persons injured or, respectively, on  
28 behalf of the state or county if the entity has sustained damages, or  
29 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering  
30 activity, or any offense committed with terrorist intent whether or not  
31 committed for financial gain, or a violation of RCW 9A.82.060 or  
32 9A.82.080.

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

1 (d) In an action filed to prevent, restrain, or remedy a pattern of  
2 criminal profiteering activity, or any offense committed with terrorist  
3 intent whether or not committed for financial gain, or a violation of  
4 RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may  
5 impose a civil penalty not exceeding two hundred fifty thousand  
6 dollars, in addition to awarding the cost of the suit, including  
7 reasonable investigative and attorney's fees.

8 (2) The superior court has jurisdiction to prevent, restrain, and  
9 remedy a pattern of criminal profiteering, or any offense committed  
10 with terrorist intent whether or not committed for financial gain, or  
11 a violation of RCW 9A.82.060 or 9A.82.080 after making provision for  
12 the rights of all innocent persons affected by the violation and after  
13 hearing or trial, as appropriate, by issuing appropriate orders.

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

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

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

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

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

1 (d) Ordering the payment of actual damages sustained to those  
2 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or any  
3 offense committed with terrorist intent whether or not committed for  
4 financial gain, or an act of criminal profiteering that is part of a  
5 pattern of criminal profiteering, and in the court's discretion,  
6 increasing the payment to an amount not exceeding three times the  
7 actual damages sustained.

8 (e) Ordering the payment of all costs and expenses of the  
9 prosecution and investigation of a pattern of criminal profiteering  
10 activity, or any offense committed with terrorist intent whether or not  
11 committed for financial gain, or a violation of RCW 9A.82.060 or  
12 9A.82.080, civil and criminal, incurred by the state or county,  
13 including any costs of defense provided at public expense, as  
14 appropriate to the state general fund or the antiprofitteering revolving  
15 fund of the county.

16 (f) Ordering forfeiture first as restitution to any person damaged  
17 by an act of criminal profiteering, or any offense committed with  
18 terrorist intent whether or not committed for financial gain, that is  
19 part of a pattern of criminal profiteering then to the state general  
20 fund or antiprofitteering revolving fund of the county, as appropriate,  
21 to the extent not already ordered to be paid in other damages, of the  
22 following:

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

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

31 (iii) All proceeds traceable to or derived from an offense included  
32 in the pattern of criminal profiteering activity, or any offense  
33 committed with terrorist intent whether or not committed for financial  
34 gain, and all moneys, negotiable instruments, securities, and other  
35 things of value significantly used or intended to be used significantly  
36 to facilitate commission of the offense.

37 (g) Ordering payment to the state general fund or antiprofitteering  
38 revolving fund of the county, as appropriate, of an amount equal to the

1 gain a person has acquired or maintained through an offense included in  
2 the definition of criminal profiteering.

3 (5) In addition to or in lieu of an action under this section, the  
4 attorney general or county prosecuting attorney may file an action for  
5 forfeiture to the state general fund or antiprofitteering revolving fund  
6 of the county, as appropriate, to the extent not already ordered paid  
7 pursuant to this section, of the following:

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

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

16 (c) All proceeds traceable to or derived from an offense included  
17 in the pattern of criminal profiteering activity, or any offense  
18 committed with terrorist intent whether or not committed for financial  
19 gain, and all moneys, negotiable instruments, securities, and other  
20 things of value significantly used or intended to be used significantly  
21 to facilitate the commission of the offense.

22 (6) A defendant convicted in any criminal proceeding is precluded  
23 in any civil proceeding from denying the essential allegations of the  
24 criminal offense proven in the criminal trial in which the defendant  
25 was convicted. For the purposes of this subsection, a conviction shall  
26 be deemed to have occurred upon a verdict, finding, or plea of guilty,  
27 notwithstanding the fact that appellate review of the conviction and  
28 sentence has been or may be sought. If a subsequent reversal of the  
29 conviction occurs, any judgment that was based upon that conviction may  
30 be reopened upon motion of the defendant.

31 (7) The initiation of civil proceedings under this section shall be  
32 commenced within three years after discovery of the pattern of criminal  
33 profiteering activity or after the pattern should reasonably have been  
34 discovered, or in the case of any offense committed with terrorist  
35 intent, within three years after final disposition of any criminal  
36 charges relating to the offense, whichever is later.

37 (8) The attorney general or county prosecuting attorney may, in a  
38 civil action brought pursuant to this section, file with the clerk of  
39 the superior court a certificate stating that the case is of special

1 public importance. A copy of that certificate shall be furnished  
2 immediately by the clerk to the presiding chief judge of the superior  
3 court in which the action is pending and, upon receipt of the copy, the  
4 judge shall immediately designate a judge to hear and determine the  
5 action. The judge so designated shall promptly assign the action for  
6 hearing, participate in the hearings and determination, and cause the  
7 action to be expedited.

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

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

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

26 (12) In addition to the attorney general's right to intervene as a  
27 party in any action under this section, the attorney general may appear  
28 as amicus curiae in any proceeding in which a claim under this section  
29 has been asserted or in which a court is interpreting RCW 9A.82.010,  
30 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

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

35 (14) Upon motion by the defendant, the court may authorize the sale  
36 or transfer of assets subject to an order or lien authorized by this  
37 chapter for the purpose of paying actual attorney's fees and costs of  
38 defense. The motion shall specify the assets for which sale or  
39 transfer is sought and shall be accompanied by the defendant's sworn

1 statement that the defendant has no other assets available for such  
2 purposes. No order authorizing such sale or transfer may be entered  
3 unless the court finds that the assets involved are not subject to  
4 possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of  
5 the motion, the court shall notify the state of the assets sought to be  
6 sold or transferred and shall hear argument on the issue of whether the  
7 assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a  
8 motion may be made from time to time and shall be heard by the court on  
9 an expedited basis.

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

12 **Sec. 19.** RCW 9A.82.120 and 2001 c 222 s 16 are each amended to  
13 read as follows:

14 (1) The state, upon filing a criminal action under RCW 9A.82.060 or  
15 9A.82.080, or any offense committed with terrorist intent whether or  
16 not committed for financial gain, or a civil action under RCW  
17 9A.82.100, may file in accordance with this section a criminal  
18 profiteering lien. A filing fee or other charge is not required for  
19 filing a criminal profiteering lien.

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

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

25 (b) In the discretion of the attorney general or county prosecuting  
26 attorney filing the lien, any aliases or fictitious names of the  
27 defendant named in the lien;

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

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

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

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

1 (g) The amount that the state claims in the action or, with respect  
2 to property or other interests that the state has requested forfeiture  
3 to the state or county, a description of the property or interests  
4 sought to be paid or forfeited;

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

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

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

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

22 (5)(a) A criminal profiteering lien is perfected against interests  
23 in personal property in the same manner as a security interest in like  
24 property pursuant to RCW 62A.9-302, 62A.9-303, 62A.9-304, 62A.9-305,  
25 and 62A.9-306 or as otherwise required to perfect a security interest  
26 in like property under applicable law. In the case of perfection by  
27 filing, the state shall file, in lieu of a financing statement in the  
28 form prescribed by RCW 62A.9-402, a notice of lien in substantially the  
29 following form:

30 NOTICE OF LIEN

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

33 Name: . . . . .  
34 Address: . . . . .  
35 . . . . .  
36 . . . . .

1 State of Washington

2 . . . . .

3 By (authorized signature)

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

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

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

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

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

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

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

35 (8) Upon entry of judgment in favor of the state, the state may  
36 proceed to execute thereon as in the case of any other judgment, except  
37 that in order to preserve the state's lien priority as provided in this  
38 section the state shall, in addition to such other notice as is  
39 required by law, give at least thirty days' notice of the execution to

1 any person possessing at the time the notice is given, an interest  
2 recorded subsequent to the date the state's lien was perfected.

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

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

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

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

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

29 NEW SECTION. **Sec. 20.** The following acts or parts of acts are  
30 each repealed:

31 (1) RCW 69.40.010 (Poison in edible products) and 1905 c 141 s 1;

32 (2) RCW 69.40.015 (Poison in edible products--Penalty) and 1905 c  
33 141 s 2;

34 (3) RCW 69.40.020 (Poison in milk or food products--Penalty) and  
35 1905 c 50 s 1; and

36 (4) RCW 69.40.025 (Supplementary to existing laws--Enforcement) and  
37 1905 c 50 s 2.

1        NEW SECTION.    **Sec. 21.**    Sections 2, 3, 10, and 11 of this act  
2    constitute a new chapter in Title 9A RCW.

--- **END** ---