
SENATE BILL 6566

State of Washington

61st Legislature

2010 Regular Session

By Senator Stevens

Read first time 01/18/10. Referred to Committee on Judiciary.

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

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

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

8 (1) "Activity involving animals" means any lawful activity
9 involving the use of animals or animal parts, including:

- 10 (a) Hunting, fishing, and trapping;
11 (b) Food production, processing, and preparation;
12 (c) Clothing manufacturing and distribution;
13 (d) Medical or other research;
14 (e) Entertainment and recreation;
15 (f) Agriculture; or
16 (g) Any other services involving the use of animals.

17 (2) "Activity involving natural resources" means any lawful
18 activity involving the use of a natural resource with an economic

1 value, including mining, foresting, harvesting, or processing natural
2 resources.

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

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

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

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

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

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

26 (a) Induced by force or threat;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Sec. 4.** RCW 9A.82.010 and 2008 c 108 s 24 are each amended to read
2 as follows:

3 Unless the context requires the contrary, the definitions in this
4 section apply throughout this chapter.

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

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

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

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

15 (b) "Beneficial interest" does not include the interest of a
16 stockholder in a corporation or the interest of a partner in a general
17 partnership or limited partnership.

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

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

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

25 (4) "Criminal profiteering" means any act, including any
26 anticipatory or completed offense, committed for financial gain, or an
27 offense, including an anticipatory or completed offense, or a lawfully
28 obtained and otherwise admissible confession to have completed an
29 offense, that is defined in chapter 9A.-- RCW (sections 1 through 3 of
30 this act), whether or not committed for financial gain, that is
31 chargeable or indictable under the laws of the state in which the act
32 occurred and, if the act occurred in a state other than this state,
33 would be chargeable or indictable under the laws of this state had the
34 act occurred in this state and punishable as a felony and by
35 imprisonment for more than one year, regardless of whether the act is
36 charged or indicted, as any of the following:

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

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

- 1 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 2 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 3 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,
4 9A.56.080, and 9A.56.083;
- 5 (f) Unlawful sale of subscription television services, as defined
6 in RCW 9A.56.230;
- 7 (g) Theft of telecommunication services or unlawful manufacture of
8 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- 9 (h) Child selling or child buying, as defined in RCW 9A.64.030;
- 10 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
11 9A.68.050;
- 12 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- 13 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 14 (l) Unlawful production of payment instruments, unlawful possession
15 of payment instruments, unlawful possession of a personal
16 identification device, unlawful possession of fictitious
17 identification, or unlawful possession of instruments of financial
18 fraud, as defined in RCW 9A.56.320;
- 19 (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 20 (n) Advancing money for use in an extortionate extension of credit,
21 as defined in RCW 9A.82.030;
- 22 (o) Collection of an extortionate extension of credit, as defined
23 in RCW 9A.82.040;
- 24 (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- 25 (q) Delivery or manufacture of controlled substances or possession
26 with intent to deliver or manufacture controlled substances under
27 chapter 69.50 RCW;
- 28 (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
- 29 (s) Leading organized crime, as defined in RCW 9A.82.060;
- 30 (t) Money laundering, as defined in RCW 9A.83.020;
- 31 (u) 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 (v) Fraud in the purchase or sale of securities, as defined in RCW
35 21.20.010;
- 36 (w) Promoting pornography, as defined in RCW 9.68.140;
- 37 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,
38 9.68A.050, and 9.68A.060;

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

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

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

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

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

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

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

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

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

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

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

15 (jj) Improperly obtaining financial information, as defined in RCW
16 9.35.010;

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

18 (ll) ~~((Unlawful shipment of cigarettes in violation of RCW
19 70.155.105(6) (a) or (b));~~

20 ~~(mm))~~ Unlawful shipment of cigarettes in violation of RCW
21 82.24.110(2);

22 ~~((nn))~~ (mm) Unauthorized sale or procurement of telephone records
23 in violation of RCW 9.26A.140;

24 ~~((oo))~~ (nn) Theft with the intent to resell, as defined in RCW
25 9A.56.340;

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

27 ~~((or~~

28 ~~(qq))~~ (pp) Mortgage fraud, as defined in RCW 19.144.080; or
29 (qq) A violation of chapter 9A.-- RCW (sections 1 through 3 of this
30 act).

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

33 (6) "Debtor" means a person to whom an extension of credit is made
34 or a person who guarantees the repayment of an extension of credit or
35 in any manner undertakes to indemnify the creditor against loss
36 resulting from the failure of a person to whom an extension is made to
37 repay the same.

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

6 (8) "Enterprise" includes any individual, sole proprietorship,
7 partnership, corporation, business trust, or other profit or nonprofit
8 legal entity, and includes any union, association, or group of
9 individuals associated in fact although not a legal entity, and both
10 illicit and licit enterprises and governmental and nongovernmental
11 entities.

12 (9) "Extortionate extension of credit" means an extension of credit
13 with respect to which it is the understanding of the creditor and the
14 debtor at the time the extension is made that delay in making repayment
15 or failure to make repayment could result in the use of violence or
16 other criminal means to cause harm to the person, reputation, or
17 property of any person.

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

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

25 (12) "Pattern of criminal profiteering activity" means engaging in
26 at least three acts of criminal profiteering, one of which occurred
27 after July 1, 1985, and the last of which occurred within five years,
28 excluding any period of imprisonment, after the commission of the
29 earliest act of criminal profiteering. In order to constitute a
30 pattern, the three acts must have the same or similar intent, results,
31 accomplices, principals, victims, or methods of commission, or be
32 otherwise interrelated by distinguishing characteristics including a
33 nexus to the same enterprise, and must not be isolated events.
34 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
35 any person other than the attorney general or county prosecuting
36 attorney in which one or more acts of fraud in the purchase or sale of
37 securities are asserted as acts of criminal profiteering activity, it
38 is a condition to civil liability under RCW 9A.82.100 that the

1 defendant has been convicted in a criminal proceeding of fraud in the
2 purchase or sale of securities under RCW 21.20.400 or under the laws of
3 another state or of the United States requiring the same elements of
4 proof, but such conviction need not relate to any act or acts asserted
5 as acts of criminal profiteering activity in such civil action under
6 RCW 9A.82.100.

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

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

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

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

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

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

24 (19) "Traffic" means to sell, transfer, distribute, dispense, or
25 otherwise dispose of stolen property to another person, or to buy,
26 receive, possess, or obtain control of stolen property, with intent to
27 sell, transfer, distribute, dispense, or otherwise dispose of the
28 property to another person.

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

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

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

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

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

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

1 (ii) A trustee of any testamentary trust;

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

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

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

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

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

11 (ii) Chapter 9.46 RCW relating to gambling;

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

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

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

18 During the pendency of any criminal case charging a violation of
19 RCW 9A.82.060 or 9A.82.080, (~~(or)~~) an offense defined in RCW 9A.40.100,
20 or an offense, including an anticipatory or completed offense, or a
21 lawfully obtained and otherwise admissible confession to have completed
22 an offense, that is defined in chapter 9A.-- RCW (sections 1 through 3
23 of this act), whether or not committed for financial gain, the superior
24 court may, in addition to its other powers, issue an order pursuant to
25 RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation
26 of RCW 9A.82.060 or 9A.82.080, (~~(or)~~) an offense defined in RCW
27 9A.40.100, or an offense, including an anticipatory or completed
28 offense, or a lawfully obtained and otherwise admissible confession to
29 have completed an offense, that is defined in chapter 9A.-- RCW
30 (sections 1 through 3 of this act), whether or not committed for
31 financial gain, the superior court may, in addition to its other powers
32 of disposition, issue an order pursuant to RCW 9A.82.100.

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

35 (1)(a) A person who sustains injury to his or her person, business,
36 or property by an act of criminal profiteering that is part of a

1 pattern of criminal profiteering activity, or by an offense defined in
2 RCW 9A.40.100, or an offense, including an anticipatory or completed
3 offense, or a lawfully obtained and otherwise admissible confession to
4 have completed an offense, that is defined in chapter 9A.-- RCW
5 (sections 1 through 3 of this act), whether or not committed for
6 financial gain, or by a violation of RCW 9A.82.060 or 9A.82.080 may
7 file an action in superior court for the recovery of damages and the
8 costs of the suit, including reasonable investigative and attorney's
9 fees.

10 (b) The attorney general or county prosecuting attorney may file an
11 action: (i) On behalf of those persons injured or, respectively, on
12 behalf of the state or county if the entity has sustained damages, or
13 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering
14 activity, or an offense defined in RCW 9A.40.100, or an offense,
15 including an anticipatory or completed offense, or a lawfully obtained
16 and otherwise admissible confession to have completed an offense, that
17 is defined in chapter 9A.-- RCW (sections 1 through 3 of this act),
18 whether or not committed for financial gain, or a violation of RCW
19 9A.82.060 or 9A.82.080.

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

24 (d) In an action filed to prevent, restrain, or remedy a pattern of
25 criminal profiteering activity, or an offense defined in RCW 9A.40.100,
26 or an offense, including an anticipatory or completed offense, or a
27 lawfully obtained and otherwise admissible confession to have completed
28 an offense, that is defined in chapter 9A.-- RCW (sections 1 through 3
29 of this act), whether or not committed for financial gain, or a
30 violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the
31 violation, may impose a civil penalty not exceeding two hundred fifty
32 thousand dollars, in addition to awarding the cost of the suit,
33 including reasonable investigative and attorney's fees.

34 (2) The superior court has jurisdiction to prevent, restrain, and
35 remedy a pattern of criminal profiteering, or an offense defined in RCW
36 9A.40.100, or an offense, including an anticipatory or completed
37 offense, or a lawfully obtained and otherwise admissible confession to
38 have completed an offense, that is defined in chapter 9A.-- RCW

1 (sections 1 through 3 of this act), whether or not committed for
2 financial gain, or a violation of RCW 9A.82.060 or 9A.82.080 after
3 making provision for the rights of all innocent persons affected by the
4 violation and after hearing or trial, as appropriate, by issuing
5 appropriate orders.

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

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

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

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

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

31 (d) Ordering the payment of actual damages sustained to those
32 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an
33 offense defined in RCW 9A.40.100, or an offense, including an
34 anticipatory or completed offense, or a lawfully obtained and otherwise
35 admissible confession to have completed an offense, that is defined in
36 chapter 9A.-- RCW (sections 1 through 3 of this act), whether or not
37 committed for financial gain, or an act of criminal profiteering that

1 is part of a pattern of criminal profiteering, and in the court's
2 discretion, increasing the payment to an amount not exceeding three
3 times the actual damages sustained.

4 (e) Ordering the payment of all costs and expenses of the
5 prosecution and investigation of a pattern of criminal profiteering, or
6 an offense defined in RCW 9A.40.100, or an offense, including an
7 anticipatory or completed offense, or a lawfully obtained and otherwise
8 admissible confession to have completed an offense, that is defined in
9 chapter 9A.-- RCW (sections 1 through 3 of this act), whether or not
10 committed for financial gain, activity or a violation of RCW 9A.82.060
11 or 9A.82.080, civil and criminal, incurred by the state or county,
12 including any costs of defense provided at public expense, as
13 appropriate to the state general fund or the antiprofitteering revolving
14 fund of the county.

15 (f) Ordering forfeiture first as restitution to any person damaged
16 by an act of criminal profiteering that is part of a pattern of
17 criminal profiteering, or by an offense defined in RCW 9A.40.100, or an
18 offense, including an anticipatory or completed offense, or a lawfully
19 obtained and otherwise admissible confession to have completed an
20 offense, that is defined in chapter 9A.-- RCW (sections 1 through 3 of
21 this act), whether or not committed for financial gain, then to the
22 state general fund or antiprofitteering revolving fund of the county, as
23 appropriate, to the extent not already ordered to be paid in other
24 damages, of the following:

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

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

33 (iii) All proceeds traceable to or derived from an offense included
34 in the pattern of criminal profiteering activity, or an offense defined
35 in RCW 9A.40.100, or an offense, including an anticipatory or completed
36 offense, or a lawfully obtained and otherwise admissible confession to
37 have completed an offense, that is defined in chapter 9A.-- RCW
38 (sections 1 through 3 of this act), whether or not committed for

1 financial gain, and all moneys, negotiable instruments, securities, and
2 other things of value significantly used or intended to be used
3 significantly to facilitate commission of the offense.

4 (g) Ordering payment to the state general fund or antiprofitteering
5 revolving fund of the county, as appropriate, of an amount equal to the
6 gain a person has acquired or maintained through an offense included in
7 the definition of criminal profiteering.

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

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

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

21 (c) All proceeds traceable to or derived from an offense included
22 in the pattern of criminal profiteering activity, or an offense defined
23 in RCW 9A.40.100, or an offense, including an anticipatory or completed
24 offense, or a lawfully obtained and otherwise admissible confession to
25 have completed an offense, that is defined in chapter 9A.-- RCW
26 (sections 1 through 3 of this act), whether or not committed for
27 financial gain, and all moneys, negotiable instruments, securities, and
28 other things of value significantly used or intended to be used
29 significantly to facilitate the commission of the offense.

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

1 (7) The initiation of civil proceedings under this section shall be
2 commenced within three years after discovery of the pattern of criminal
3 profiteering activity or after the pattern should reasonably have been
4 discovered or, in the case of an offense that is defined in RCW
5 9A.40.100 or chapter 9A.-- RCW (sections 1 through 3 of this act),
6 within three years after the final disposition of any criminal charges
7 relating to the offense, whichever is later.

8 (8) The attorney general or county prosecuting attorney may, in a
9 civil action brought pursuant to this section, file with the clerk of
10 the superior court a certificate stating that the case is of special
11 public importance. A copy of that certificate shall be furnished
12 immediately by the clerk to the presiding chief judge of the superior
13 court in which the action is pending and, upon receipt of the copy, the
14 judge shall immediately designate a judge to hear and determine the
15 action. The judge so designated shall promptly assign the action for
16 hearing, participate in the hearings and determination, and cause the
17 action to be expedited.

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

20 (10) A person other than the attorney general or county prosecuting
21 attorney who files an action under this section shall serve notice and
22 one copy of the pleading on the attorney general within thirty days
23 after the action is filed with the superior court. The notice shall
24 identify the action, the person, and the person's attorney. Service of
25 the notice does not limit or otherwise affect the right of the state to
26 maintain an action under this section or intervene in a pending action
27 nor does it authorize the person to name the state or the attorney
28 general as a party to the action.

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

36 (12) In addition to the attorney general's right to intervene as a
37 party in any action under this section, the attorney general may appear

1 as amicus curiae in any proceeding in which a claim under this section
2 has been asserted or in which a court is interpreting RCW 9A.82.010,
3 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

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

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

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

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

26 (1) The state, upon filing a criminal action under RCW 9A.82.060 or
27 9A.82.080 or for an offense defined in RCW 9A.40.100, or an offense,
28 including an anticipatory or completed offense, or a lawfully obtained
29 and otherwise admissible confession to have completed an offense, that
30 is defined in chapter 9A.-- RCW (sections 1 through 3 of this act),
31 whether or not committed for financial gain, or a civil action under
32 RCW 9A.82.100, may file in accordance with this section a criminal
33 profiteering lien. A filing fee or other charge is not required for
34 filing a criminal profiteering lien.

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

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

3 (b) In the discretion of the attorney general or county prosecuting
4 attorney filing the lien, any aliases or fictitious names of the
5 defendant named in the lien;

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

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

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

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

16 (g) The amount that the state claims in the action or, with respect
17 to property or other interests that the state has requested forfeiture
18 to the state or county, a description of the property or interests
19 sought to be paid or forfeited;

20 (h) If known to the attorney general or county prosecuting attorney
21 filing the lien, a description of property that is subject to
22 forfeiture to the state or property in which the defendant has an
23 interest that is available to satisfy a judgment entered in favor of
24 the state; and

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

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

31 (4) The attorney general or the county prosecuting attorney filing
32 the lien shall, as soon as practical after filing a criminal
33 profiteering lien, furnish to any person named in the lien a notice of
34 the filing of the lien. Failure to furnish notice under this
35 subsection does not invalidate or otherwise affect a criminal
36 profiteering lien filed in accordance with this section.

37 (5)(a) A criminal profiteering lien is perfected against interests
38 in personal property in the same manner as a security interest in like

1 property pursuant to RCW 62A.9A-301 through 62A.9A-316 or as otherwise
2 required to perfect a security interest in like property under
3 applicable law. In the case of perfection by filing, the state shall
4 file, in lieu of a financing statement in the form prescribed by RCW
5 62A.9A-502, a notice of lien in substantially the following form:

6 NOTICE OF LIEN

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

10 Name:
11 Address:
12

13 State of Washington

14
15 By (authorized signature)

16 On receipt of such a notice from the state, a filing officer shall,
17 without payment of filing fee, file and index the notice as if it were
18 a financing statement naming the state as secured party and the
19 defendant as debtor.

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

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

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

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

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

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

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

20 (9) Upon the entry of a final judgment in favor of the state
21 providing for forfeiture of property to the state, the title of the
22 state to the property:

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

27 (b) In the case of personal property or a beneficial interest in
28 personal property, relates back to the date the personal property was
29 seized by the state, or the date of filing of a criminal profiteering
30 lien in accordance with this section, whichever is earlier, but if the
31 property was not seized and no criminal profiteering lien was filed
32 then to the date the final judgment was filed with the department of
33 licensing and, if the personal property is an aircraft, with the
34 federal aviation administration.

35 (10) This section does not limit the right of the state to obtain
36 any order or injunction, receivership, writ, attachment, garnishment,
37 or other remedy authorized under RCW 9A.82.100 or appropriate to

1 protect the interests of the state or available under other applicable
2 law.

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

9 **Sec. 8.** RCW 9.94A.515 and 2008 c 108 s 23 and 2008 c 38 s 1 are
10 each reenacted and amended to read as follows:

11
12 TABLE 2

13 CRIMES INCLUDED WITHIN
14 EACH SERIOUSNESS LEVEL

- 15 XVI Aggravated Murder 1 (RCW
16 10.95.020)
- 17 XV Homicide by abuse (RCW 9A.32.055)
18 Malicious explosion 1 (RCW
19 70.74.280(1))
20 Murder 1 (RCW 9A.32.030)
- 21 XIV Murder 2 (RCW 9A.32.050)
22 Trafficking 1 (RCW 9A.40.100(1))
- 23 XIII Malicious explosion 2 (RCW
24 70.74.280(2))
25 Malicious placement of an explosive 1
26 (RCW 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
30 device 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 Trafficking 2 (RCW 9A.40.100(2))
- 34 XI Manslaughter 1 (RCW 9A.32.060)
35 Rape 2 (RCW 9A.44.050)
36 Rape of a Child 2 (RCW 9A.44.076)

1 X Child Molestation 1 (RCW 9A.44.083)
2 Criminal Mistreatment 1 (RCW
3 9A.42.020)
4 Indecent Liberties (with forcible
5 compulsion) (RCW
6 9A.44.100(1)(a))
7 Kidnapping 1 (RCW 9A.40.020)
8 Leading Organized Crime (RCW
9 9A.82.060(1)(a))
10 Malicious explosion 3 (RCW
11 70.74.280(3))
12 Sexually Violent Predator Escape
13 (RCW 9A.76.115)
14 IX Abandonment of Dependent Person 1
15 (RCW 9A.42.060)
16 Assault of a Child 2 (RCW 9A.36.130)
17 Explosive devices prohibited (RCW
18 70.74.180)
19 Hit and Run--Death (RCW
20 46.52.020(4)(a))
21 Homicide by Watercraft, by being
22 under the influence of intoxicating
23 liquor or any drug (RCW
24 79A.60.050)
25 Inciting Criminal Profiteering (RCW
26 9A.82.060(1)(b))
27 Malicious placement of an explosive 2
28 (RCW 70.74.270(2))
29 Robbery 1 (RCW 9A.56.200)
30 Sexual Exploitation (RCW 9.68A.040)
31 Vehicular Homicide, by being under
32 the influence of intoxicating liquor
33 or any drug (RCW 46.61.520)
34 VIII Arson 1 (RCW 9A.48.020)

1 Homicide by Watercraft, by the
2 operation of any vessel in a
3 reckless manner (RCW
4 79A.60.050)
5 Manslaughter 2 (RCW 9A.32.070)
6 Promoting Commercial Sexual Abuse
7 of a Minor (RCW 9.68A.101)
8 Promoting Prostitution 1 (RCW
9 9A.88.070)
10 Theft of Ammonia (RCW 69.55.010)
11 Vehicular Homicide, by the operation
12 of any vehicle in a reckless manner
13 (RCW 46.61.520)
14 VII Burglary 1 (RCW 9A.52.020)
15 Child Molestation 2 (RCW 9A.44.086)
16 Civil Disorder Training (RCW
17 9A.48.120)
18 Dealing in depictions of minor engaged
19 in sexually explicit conduct (RCW
20 9.68A.050)
21 Drive-by Shooting (RCW 9A.36.045)
22 Homicide by Watercraft, by disregard
23 for the safety of others (RCW
24 79A.60.050)
25 Indecent Liberties (without forcible
26 compulsion) (RCW 9A.44.100(1)
27 (b) and (c))
28 Introducing Contraband 1 (RCW
29 9A.76.140)
30 Malicious placement of an explosive 3
31 (RCW 70.74.270(3))
32 Negligently Causing Death By Use of a
33 Signal Preemption Device (RCW
34 46.37.675)
35 Sending, bringing into state depictions
36 of minor engaged in sexually
37 explicit conduct (RCW 9.68A.060)

1 Unlawful Possession of a Firearm in
2 the first degree (RCW 9.41.040(1))
3 Use of a Machine Gun in Commission
4 of a Felony (RCW 9.41.225)
5 Vehicular Homicide, by disregard for
6 the safety of others (RCW
7 46.61.520)
8 VI Animal or Ecological Terrorism,
9 Resulting in Bodily Harm (section
10 3(3) of this act)
11 Bail Jumping with Murder 1 (RCW
12 9A.76.170(3)(a))
13 Bribery (RCW 9A.68.010)
14 Incest 1 (RCW 9A.64.020(1))
15 Intimidating a Judge (RCW 9A.72.160)
16 Intimidating a Juror/Witness (RCW
17 9A.72.110, 9A.72.130)
18 Malicious placement of an imitation
19 device 2 (RCW 70.74.272(1)(b))
20 Possession of Depictions of a Minor
21 Engaged in Sexually Explicit
22 Conduct (RCW 9.68A.070)
23 Rape of a Child 3 (RCW 9A.44.079)
24 Theft of a Firearm (RCW 9A.56.300)
25 Unlawful Storage of Ammonia (RCW
26 69.55.020)
27 V Abandonment of Dependent Person 2
28 (RCW 9A.42.070)
29 Advancing money or property for
30 extortionate extension of credit
31 (RCW 9A.82.030)
32 Bail Jumping with class A Felony
33 (RCW 9A.76.170(3)(b))
34 Child Molestation 3 (RCW 9A.44.089)
35 Criminal Mistreatment 2 (RCW
36 9A.42.030)

1 Custodial Sexual Misconduct 1 (RCW
2 9A.44.160)
3 Domestic Violence Court Order
4 Violation (RCW 10.99.040,
5 10.99.050, 26.09.300, 26.10.220,
6 26.26.138, 26.50.110, 26.52.070,
7 or 74.34.145)
8 Driving While Under the Influence
9 (RCW 46.61.502(6))
10 Extortion 1 (RCW 9A.56.120)
11 Extortionate Extension of Credit (RCW
12 9A.82.020)
13 Extortionate Means to Collect
14 Extensions of Credit (RCW
15 9A.82.040)
16 Incest 2 (RCW 9A.64.020(2))
17 Kidnapping 2 (RCW 9A.40.030)
18 Perjury 1 (RCW 9A.72.020)
19 Persistent prison misbehavior (RCW
20 9.94.070)
21 Physical Control of a Vehicle While
22 Under the Influence (RCW
23 46.61.504(6))
24 Possession of a Stolen Firearm (RCW
25 9A.56.310)
26 Rape 3 (RCW 9A.44.060)
27 Rendering Criminal Assistance 1
28 (RCW 9A.76.070)
29 Sexual Misconduct with a Minor 1
30 (RCW 9A.44.093)
31 Sexually Violating Human Remains
32 (RCW 9A.44.105)
33 Stalking (RCW 9A.46.110)
34 Taking Motor Vehicle Without
35 Permission 1 (RCW 9A.56.070)
36 IV Arson 2 (RCW 9A.48.030)
37 Assault 2 (RCW 9A.36.021)

1 Assault 3 (of a Peace Officer with a
2 Projectile Stun Gun) (RCW
3 9A.36.031(1)(h))
4 Assault by Watercraft (RCW
5 79A.60.060)
6 Bribing a Witness/Bribe Received by
7 Witness (RCW 9A.72.090,
8 9A.72.100)
9 Cheating 1 (RCW 9.46.1961)
10 Commercial Bribery (RCW 9A.68.060)
11 Counterfeiting (RCW 9.16.035(4))
12 Endangerment with a Controlled
13 Substance (RCW 9A.42.100)
14 Escape 1 (RCW 9A.76.110)
15 Hit and Run--Injury (RCW
16 46.52.020(4)(b))
17 Hit and Run with Vessel--Injury
18 Accident (RCW 79A.60.200(3))
19 Identity Theft 1 (RCW 9.35.020(2))
20 Indecent Exposure to Person Under
21 Age Fourteen (subsequent sex
22 offense) (RCW 9A.88.010)
23 Influencing Outcome of Sporting Event
24 (RCW 9A.82.070)
25 Malicious Harassment (RCW
26 9A.36.080)
27 Residential Burglary (RCW
28 9A.52.025)
29 Robbery 2 (RCW 9A.56.210)
30 Theft of Livestock 1 (RCW 9A.56.080)
31 Threats to Bomb (RCW 9.61.160)
32 Trafficking in Stolen Property 1 (RCW
33 9A.82.050)
34 Unlawful factoring of a credit card or
35 payment card transaction (RCW
36 9A.56.290(4)(b))

1 Unlawful transaction of health
2 coverage as a health care service
3 contractor (RCW 48.44.016(3))
4 Unlawful transaction of health
5 coverage as a health maintenance
6 organization (RCW 48.46.033(3))
7 Unlawful transaction of insurance
8 business (RCW 48.15.023(3))
9 Unlicensed practice as an insurance
10 professional (RCW
11 48.17.063(~~(3)~~)(2))
12 Use of Proceeds of Criminal
13 Profiteering (RCW 9A.82.080 (1)
14 and (2))
15 Vehicular Assault, by being under the
16 influence of intoxicating liquor or
17 any drug, or by the operation or
18 driving of a vehicle in a reckless
19 manner (RCW 46.61.522)
20 Willful Failure to Return from
21 Furlough (RCW 72.66.060)
22 III Animal Cruelty 1 (Sexual Conduct or
23 Contact) (RCW 16.52.205(3))
24 Assault 3 (Except Assault 3 of a Peace
25 Officer With a Projectile Stun
26 Gun) (RCW 9A.36.031 except
27 subsection (1)(h))
28 Assault of a Child 3 (RCW 9A.36.140)
29 Bail Jumping with class B or C Felony
30 (RCW 9A.76.170(3)(c))
31 Burglary 2 (RCW 9A.52.030)
32 Commercial Sexual Abuse of a Minor
33 (RCW 9.68A.100)
34 Communication with a Minor for
35 Immoral Purposes (RCW
36 9.68A.090)

1 Criminal Gang Intimidation (RCW
2 9A.46.120)
3 Custodial Assault (RCW 9A.36.100)
4 Cyberstalking (subsequent conviction
5 or threat of death) (RCW
6 9.61.260(3))
7 Escape 2 (RCW 9A.76.120)
8 Extortion 2 (RCW 9A.56.130)
9 Harassment (RCW 9A.46.020)
10 Intimidating a Public Servant (RCW
11 9A.76.180)
12 Introducing Contraband 2 (RCW
13 9A.76.150)
14 Malicious Injury to Railroad Property
15 (RCW 81.60.070)
16 Mortgage Fraud (RCW 19.144.080)
17 Negligently Causing Substantial Bodily
18 Harm By Use of a Signal
19 Preemption Device (RCW
20 46.37.674)
21 Organized Retail Theft 1 (RCW
22 9A.56.350(2))
23 Perjury 2 (RCW 9A.72.030)
24 Possession of Incendiary Device (RCW
25 9.40.120)
26 Possession of Machine Gun or Short-
27 Barreled Shotgun or Rifle (RCW
28 9.41.190)
29 Promoting Prostitution 2 (RCW
30 9A.88.080)
31 Retail Theft with Extenuating
32 Circumstances 1 (RCW
33 9A.56.360(2))
34 Securities Act violation (RCW
35 21.20.400)
36 Tampering with a Witness (RCW
37 9A.72.120)

1 Telephone Harassment (subsequent
2 conviction or threat of death)
3 (RCW 9.61.230(2))
4 Theft of Livestock 2 (RCW 9A.56.083)
5 Theft with the Intent to Resell 1 (RCW
6 9A.56.340(2))
7 Trafficking in Stolen Property 2 (RCW
8 9A.82.055)
9 Unlawful Imprisonment (RCW
10 9A.40.040)
11 Unlawful possession of firearm in the
12 second degree (RCW 9.41.040(2))
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
18 Release (RCW 72.65.070)
19 II Computer Trespass 1 (RCW
20 9A.52.110)
21 Counterfeiting (RCW 9.16.035(3))
22 Escape from Community Custody
23 (RCW 72.09.310)
24 Failure to Register as a Sex Offender
25 (second or subsequent offense)
26 (RCW 9A.44.130(11)(a))
27 Health Care False Claims (RCW
28 48.80.030)
29 Identity Theft 2 (RCW 9.35.020(3))
30 Improperly Obtaining Financial
31 Information (RCW 9.35.010)
32 Malicious Mischief 1 (RCW
33 9A.48.070)
34 Organized Retail Theft 2 (RCW
35 9A.56.350(3))
36 Possession of Stolen Property 1 (RCW
37 9A.56.150)

1 Possession of a Stolen Vehicle (RCW
2 9A.56.068)
3 Retail Theft with Extenuating
4 Circumstances 2 (RCW
5 9A.56.360(3))
6 Theft 1 (RCW 9A.56.030)
7 Theft of a Motor Vehicle (RCW
8 9A.56.065)
9 Theft of Rental, Leased, or Lease-
10 purchased Property (valued at one
11 thousand five hundred dollars or
12 more) (RCW 9A.56.096(5)(a))
13 Theft with the Intent to Resell 2 (RCW
14 9A.56.340(3))
15 Trafficking in Insurance Claims (RCW
16 48.30A.015)
17 Unlawful factoring of a credit card or
18 payment card transaction (RCW
19 9A.56.290(4)(a))
20 Unlawful Practice of Law (RCW
21 2.48.180)
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Voyeurism (RCW 9A.44.115)
25 I Attempting to Elude a Pursuing Police
26 Vehicle (RCW 46.61.024)
27 False Verification for Welfare (RCW
28 74.08.055)
29 Forgery (RCW 9A.60.020)
30 Fraudulent Creation or Revocation of a
31 Mental Health Advance Directive
32 (RCW 9A.60.060)
33 Malicious Mischief 2 (RCW
34 9A.48.080)
35 Mineral Trespass (RCW 78.44.330)
36 Possession of Stolen Property 2 (RCW
37 9A.56.160)

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

32 **Sec. 9.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
33 each reenacted and amended to read as follows:

34 The court may impose a sentence outside the standard sentence range
35 for an offense if it finds, considering the purpose of this chapter,
36 that there are substantial and compelling reasons justifying an

1 exceptional sentence. Facts supporting aggravated sentences, other
2 than the fact of a prior conviction, shall be determined pursuant to
3 the provisions of RCW 9.94A.537.

4 Whenever a sentence outside the standard sentence range is imposed,
5 the court shall set forth the reasons for its decision in written
6 findings of fact and conclusions of law. A sentence outside the
7 standard sentence range shall be a determinate sentence.

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

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

16 (1) Mitigating Circumstances - Court to Consider

17 The court may impose an exceptional sentence below the standard
18 range if it finds that mitigating circumstances are established by a
19 preponderance of the evidence. The following are illustrative only and
20 are not intended to be exclusive reasons for exceptional sentences.

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

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

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

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

31 (e) The defendant's capacity to appreciate the wrongfulness of his
32 or her conduct, or to conform his or her conduct to the requirements of
33 the law, was significantly impaired. Voluntary use of drugs or alcohol
34 is excluded.

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

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

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

7 (2) Aggravating Circumstances - Considered and Imposed by the Court

8 The trial court may impose an aggravated exceptional sentence
9 without a finding of fact by a jury under the following circumstances:

10 (a) The defendant and the state both stipulate that justice is best
11 served by the imposition of an exceptional sentence outside the
12 standard range, and the court finds the exceptional sentence to be
13 consistent with and in furtherance of the interests of justice and the
14 purposes of the sentencing reform act.

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

19 (c) The defendant has committed multiple current offenses and the
20 defendant's high offender score results in some of the current offenses
21 going unpunished.

22 (d) The failure to consider the defendant's prior criminal history
23 which was omitted from the offender score calculation pursuant to RCW
24 9.94A.525 results in a presumptive sentence that is clearly too
25 lenient.

26 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
27 the Court

28 Except for circumstances listed in subsection (2) of this section,
29 the following circumstances are an exclusive list of factors that can
30 support a sentence above the standard range. Such facts should be
31 determined by procedures specified in RCW 9.94A.537.

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

34 (b) The defendant knew or should have known that the victim of the
35 current offense was particularly vulnerable or incapable of resistance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (g) The offense was part of an ongoing pattern of sexual abuse of

1 the same victim under the age of eighteen years manifested by multiple
2 incidents over a prolonged period of time.

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

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

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

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

12 (i) The offense resulted in the pregnancy of a child victim of
13 rape.

14 (j) The defendant knew that the victim of the current offense was
15 a youth who was not residing with a legal custodian and the defendant
16 established or promoted the relationship for the primary purpose of
17 victimization.

18 (k) The offense was committed with the intent to obstruct or impair
19 human or animal health care or agricultural or forestry research or
20 commercial production.

21 (l) The current offense is trafficking in the first degree or
22 trafficking in the second degree and any victim was a minor at the time
23 of the offense.

24 (m) The offense involved a high degree of sophistication or
25 planning.

26 (n) The defendant used his or her position of trust, confidence, or
27 fiduciary responsibility to facilitate the commission of the current
28 offense.

29 (o) The defendant committed a current sex offense, has a history of
30 sex offenses, and is not amenable to treatment.

31 (p) The offense involved an invasion of the victim's privacy.

32 (q) The defendant demonstrated or displayed an egregious lack of
33 remorse.

34 (r) The offense involved a destructive and foreseeable impact on
35 persons other than the victim.

36 (s) The defendant committed the offense to obtain or maintain his
37 or her membership or to advance his or her position in the hierarchy of
38 an organization, association, or identifiable group.

1 (t) The defendant committed the current offense shortly after being
2 released from incarceration.

3 (u) The current offense is a burglary and the victim of the
4 burglary was present in the building or residence when the crime was
5 committed.

6 (v) The offense was committed against a law enforcement officer who
7 was performing his or her official duties at the time of the offense,
8 the offender knew that the victim was a law enforcement officer, and
9 the victim's status as a law enforcement officer is not an element of
10 the offense.

11 (w) The defendant committed the offense against a victim who was
12 acting as a good samaritan.

13 (x) The defendant committed the offense against a public official
14 or officer of the court in retaliation of the public official's
15 performance of his or her duty to the criminal justice system.

16 (y) The victim's injuries substantially exceed the level of bodily
17 harm necessary to satisfy the elements of the offense. This aggravator
18 is not an exception to RCW 9.94A.530(2).

19 (z)(i)(A) The current offense is theft in the first degree, theft
20 in the second degree, possession of stolen property in the first
21 degree, or possession of stolen property in the second degree; (B) the
22 stolen property involved is metal property; and (C) the property damage
23 to the victim caused in the course of the theft of metal property is
24 more than three times the value of the stolen metal property, or the
25 theft of the metal property creates a public hazard.

26 (ii) For purposes of this subsection, "metal property" means
27 commercial metal property, private metal property, or nonferrous metal
28 property, as defined in RCW 19.290.010.

29 (aa) The defendant committed the offense with the intent to
30 directly or indirectly cause any benefit, aggrandizement, gain, profit,
31 or other advantage to or for a criminal street gang as defined in RCW
32 9.94A.030, its reputation, influence, or membership.

33 (bb) The offense was committed in violation of chapter 9A.-- RCW
34 (sections 1 through 3 of this act) and resulted in the death of a human
35 or the death or destruction of an animal.

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

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