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

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

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

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

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

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

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

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

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

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

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

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

(a) Induced by force or threat;

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

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

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

(8) "Natural resource" means a material source of wealth, such as timber, fresh water, or a mineral deposit, that occurs in a natural state and has economic value.
NEW SECTION. Sec. 2. (1) It is unlawful for an animal or ecological terrorist organization or any person acting on its behalf or at its request or for its benefit or any individual to intentionally:

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

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

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

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

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

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

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

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

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

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

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

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

(B) Received notice to depart but failed to do so; or
(c) Participate in or support animal or ecological terrorism, including raising, soliciting, collecting, or providing any person with material, financial support, or other resources such as lodging, training, safe houses, false documentation, or identification, communications, equipment, or transportation that will be used in whole or in part to encourage, plan, prepare, carry out, publicize, promote, or aid an act of animal or ecological terrorism, the concealment of, or an escape from an act of animal or ecological terrorism.

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

(a) A government agency or an employee of a government agency acting in the course and scope of his or her employment;
(b) An employee of a financial institution or other secured party acting in the course and scope of his or her employment;
(c) An employee of an animal control authority or a recognized animal shelter or humane society acting in the course and scope of his or her employment;
(d) An employee or employee organization participating in a strike, work slowdown, or stoppage of any kind, or other labor-related dispute, lawfully picketing, or providing the public with truthful information regarding the existence of a dispute with the employer.

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

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

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

(4) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the defendant may be prosecuted under either law or both laws.
Sec. 4. RCW 9A.82.010 and 2008 c 108 s 24 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, 9A.56.080, and 9A.56.083;
(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;
(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
(h) Child selling or child buying, as defined in RCW 9A.64.030;
(i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;
(j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
(k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
(l) Unlawful production of payment instruments, unlawful possession of payment instruments, unlawful possession of a personal identification device, unlawful possession of fictitious identification, or unlawful possession of instruments of financial fraud, as defined in RCW 9A.56.320;
(m) Extortionate extension of credit, as defined in RCW 9A.82.020;
(n) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;
(o) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;
(p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
(q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;
(r) Trafficking in stolen property, as defined in RCW 9A.82.050;
(s) Leading organized crime, as defined in RCW 9A.82.060;
(t) Money laundering, as defined in RCW 9A.83.020;
(u) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;
(v) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;
(w) Promoting pornography, as defined in RCW 9.68.140;
(x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
(y) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;
(z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
(aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
(bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
(cc) A pattern of equity skimming, as defined in RCW 61.34.020;
(dd) Commercial telephone solicitation in violation of RCW 19.158.040(1);
(ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;
(ff) Unlawful practice of law, as defined in RCW 2.48.180;
(gg) Commercial bribery, as defined in RCW 9A.68.060;
(hh) Health care false claims, as defined in RCW 48.80.030;
(ii) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);
(jj) Improperly obtaining financial information, as defined in RCW 9.35.010;
(kk) Identity theft, as defined in RCW 9.35.020;
(ll) (Unlawful shipment of cigarettes in violation of RCW 70.155.105(6) (a) or (b));
(mm) Unauthorized sale or procurement of telephone records in violation of RCW 9.26A.140;
(nn) Theft with the intent to resell, as defined in RCW 9A.56.340;
(oo) Organized retail theft, as defined in RCW 9A.56.350;
(pp) Mortgage fraud, as defined in RCW 19.144.080; or
(qq) A violation of chapter 9A.-- RCW (sections 1 through 3 of this act).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20)(a) "Trustee" means:

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

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

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

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

(i) A personal representative under Title 11 RCW;
(ii) A trustee of any testamentary trust;
(iii) A trustee of any indenture of trust under which a bond is issued; or
(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:
(a) In violation of any one of the following:
(i) Chapter 67.16 RCW relating to horse racing;
(ii) Chapter 9.46 RCW relating to gambling;
(b) In a gambling activity in violation of federal law; or
(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

Sec. 5. RCW 9A.82.090 and 2003 c 267 s 5 are each amended to read as follows:
During the pendency of any criminal case charging a violation of RCW 9A.82.060 or 9A.82.080, ((e)) an offense defined in RCW 9A.40.100, or an offense, including an anticipatory or completed offense, or a lawfully obtained and otherwise admissible confession to have completed an offense, that is defined in chapter 9A.-- RCW (sections 1 through 3 of this act), whether or not committed for financial gain, the superior court may, in addition to its other powers, issue an order pursuant to RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation of RCW 9A.82.060 or 9A.82.080, ((e)) an offense defined in RCW 9A.40.100, or an offense, including an anticipatory or completed offense, or a lawfully obtained and otherwise admissible confession to have completed an offense, that is defined in chapter 9A.-- RCW (sections 1 through 3 of this act), whether or not committed for financial gain, the superior court may, in addition to its other powers of disposition, issue an order pursuant to RCW 9A.82.100.

Sec. 6. RCW 9A.82.100 and 2003 c 267 s 6 are each amended to read as follows:
(1)(a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a
pattern of criminal profiteering activity, or by an offense defined in RCW 9A.40.100, or an offense, including an anticipatory or completed offense, or a lawfully obtained and otherwise admissible confession to have completed an offense, that is defined in chapter 9A.-- RCW (sections 1 through 3 of this act), whether or not committed for financial gain, or by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

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

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

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

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering, or an offense defined in RCW 9A.40.100, or an offense, including an anticipatory or completed offense, or a lawfully obtained and otherwise admissible confession to have completed an offense, that is defined in chapter 9A.-- RCW
(sections 1 through 3 of this act), whether or not committed for financial gain, or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

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

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

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

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

(c) Ordering dissolution or reorganization of any enterprise.

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

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

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

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

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

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, or an offense, including an anticipatory or completed offense, or a lawfully obtained and otherwise admissible confession to have completed an offense, that is defined in chapter 9A.-- RCW (sections 1 through 3 of this act), whether or not committed for financial gain, then to the state general fund or antiprofiteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:
financial gain, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

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

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

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

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

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

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.
(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered or, in the case of an offense that is defined in RCW 9A.40.100 or chapter 9A.-- RCW (sections 1 through 3 of this act), within three years after the final disposition of any criminal charges relating to the offense, whichever is later.

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

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

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

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

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

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

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

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

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

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

(2) A criminal profiteering lien shall be signed by the attorney general or the county prosecuting attorney representing the state in the action and shall set forth the following information:
(a) The name of the defendant whose property or other interests are
to be subject to the lien;
(b) In the discretion of the attorney general or county prosecuting
attorney filing the lien, any aliases or fictitious names of the
defendant named in the lien;
(c) If known to the attorney general or county prosecuting attorney
filing the lien, the present residence or principal place of business
of the person named in the lien;
(d) A reference to the proceeding pursuant to which the lien is
filed, including the name of the court, the title of the action, and
the court's file number for the proceeding;
(e) The name and address of the attorney representing the state in
the proceeding pursuant to which the lien is filed;
(f) A statement that the notice is being filed pursuant to this
section;
(g) The amount that the state claims in the action or, with respect
to property or other interests that the state has requested forfeiture
to the state or county, a description of the property or interests
sought to be paid or forfeited;
(h) If known to the attorney general or county prosecuting attorney
filing the lien, a description of property that is subject to
forfeiture to the state or property in which the defendant has an
interest that is available to satisfy a judgment entered in favor of
the state; and
(i) Such other information as the attorney general or county
prosecuting attorney filing the lien deems appropriate.
(3) The attorney general or the county prosecuting attorney filing
the lien may amend a lien filed under this section at any time by
filing an amended criminal profiteering lien in accordance with this
section that identifies the prior lien amended.
(4) The attorney general or the county prosecuting attorney filing
the lien shall, as soon as practical after filing a criminal
profiteering lien, furnish to any person named in the lien a notice of
the filing of the lien. Failure to furnish notice under this
subsection does not invalidate or otherwise affect a criminal
profiteering lien filed in accordance with this section.
(5)(a) A criminal profiteering lien is perfected against interests
in personal property in the same manner as a security interest in like
property pursuant to RCW 62A.9A-301 through 62A.9A-316 or as otherwise
required to perfect a security interest in like property under
applicable law. In the case of perfection by filing, the state shall
file, in lieu of a financing statement in the form prescribed by RCW
62A.9A-502, a notice of lien in substantially the following form:

NOTICE OF LIEN

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

Name: ........................
Address: ........................

.................................
State of Washington

.................................
By (authorized signature)

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

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

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

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

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

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

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

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>TABLE 2</th>
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<tbody>
<tr>
<td>CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL</td>
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<tr>
<td>XI</td>
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</tbody>
</table>
Child Molestation 1 (RCW 9A.44.083)
Criminal Mistreatment 1 (RCW 9A.42.020)
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Kidnapping 1 (RCW 9A.40.020)
Leading Organized Crime (RCW 9A.82.060(1)(a))
Malicious explosion 3 (RCW 70.74.280(3))
Sexually Violent Predator Escape (RCW 9A.76.115)
Abandonment of Dependent Person 1 (RCW 9A.42.060)
Assault of a Child 2 (RCW 9A.36.130)
Explosive devices prohibited (RCW 70.74.180)
Hit and Run--Death (RCW 46.52.020(4)(a))
Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
Malicious placement of an explosive 2 (RCW 70.74.270(2))
Robbery 1 (RCW 9A.56.200)
Sexual Exploitation (RCW 9.68A.040)
Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
Arson 1 (RCW 9A.48.020)
Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)

Manslaughter 2 (RCW 9A.32.070)

Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)

Promoting Prostitution 1 (RCW 9A.88.070)

Theft of Ammonia (RCW 69.55.010)

Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)

VII Burglary 1 (RCW 9A.52.020)

Child Molestation 2 (RCW 9A.44.086)

Civil Disorder Training (RCW 9A.48.120)

Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)

Drive-by Shooting (RCW 9A.36.045)

Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)

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

Introducing Contraband 1 (RCW 9A.76.140)

Malicious placement of an explosive 3 (RCW 70.74.270(3))

Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)

Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)

VI Animal or Ecological Terrorism.
   Resulting in Bodily Harm (section 3(3) of this act)
Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
Bribery (RCW 9A.68.010)
Incest 1 (RCW 9A.64.020(1))
Intimidating a Judge (RCW 9A.72.160)
Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.070)
Rape of a Child 3 (RCW 9A.44.079)
Theft of a Firearm (RCW 9A.56.300)
Unlawful Storage of Ammonia (RCW 69.55.020)

V Abandonment of Dependent Person 2 (RCW 9A.42.070)
Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
Child Molestation 3 (RCW 9A.44.089)
Criminal Mistreatment 2 (RCW 9A.42.030)
Custodial Sexual Misconduct 1 (RCW 9A.44.160)

Domestic Violence Court Order


Driving While Under the Influence (RCW 46.61.502(6))

Extortion 1 (RCW 9A.56.120)

Extortionate Extension of Credit (RCW 9A.82.020)

Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)

Incest 2 (RCW 9A.64.020(2))

Kidnapping 2 (RCW 9A.40.030)

Perjury 1 (RCW 9A.72.020)

Persistent prison misbehavior (RCW 9.94.070)

Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))

Possession of a Stolen Firearm (RCW 9A.56.310)

Rape 3 (RCW 9A.44.060)

Rendering Criminal Assistance 1 (RCW 9A.76.070)

Sexual Misconduct with a Minor 1 (RCW 9A.44.093)

Sexually Violating Human Remains (RCW 9A.44.105)

Stalking (RCW 9A.46.110)

Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)

Arson 2 (RCW 9A.48.030)

Assault 2 (RCW 9A.36.021)
Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))

Assault by Watercraft (RCW 79A.60.060)

Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)

Cheating 1 (RCW 9.46.1961)

Commercial Bribery (RCW 9A.68.060)

Counterfeiting (RCW 9.16.035(4))

Endangerment with a Controlled Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)

Hit and Run--Injury (RCW 46.52.020(4)(b))

Hit and Run with Vessel--Injury Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2))

Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)

Influencing Outcome of Sporting Event (RCW 9A.82.070)

Malicious Harassment (RCW 9A.36.080)

Residential Burglary (RCW 9A.52.025)

Robbery 2 (RCW 9A.56.210)

Theft of Livestock 1 (RCW 9A.56.080)

Threats to Bomb (RCW 9.61.160)

Trafficking in Stolen Property 1 (RCW 9A.82.050)

Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
Unlawful transaction of health
coverage as a health care service
to contractor (RCW 48.44.016(3))

Unlawful transaction of health
coverage as a health maintenance
organization (RCW 48.46.033(3))

Unlawful transaction of insurance
business (RCW 48.15.023(3))

Unlicensed practice as an insurance
professional (RCW 48.17.063(((3)(2))))

Use of Proceeds of Criminal
Profiteering (RCW 9A.82.080 (1)
and (2))

Vehicular Assault, by being under the
influence of intoxicating liquor or
any drug, or by the operation or
driving of a vehicle in a reckless
manner (RCW 46.61.522)

Willful Failure to Return from
Furlough (RCW 72.66.060)

III Animal Cruelty 1 (Sexual Conduct or
Contact) (RCW 16.52.205(3))

Assault 3 (Except Assault 3 of a Peace
Officer With a Projectile Stun
Gun) (RCW 9A.36.031 except
subsection (1)(h))

Assault of a Child 3 (RCW 9A.36.140)

Bail Jumping with class B or C Felony
(RCW 9A.76.170(3)(c))

Burglary 2 (RCW 9A.52.030)

Commercial Sexual Abuse of a Minor
(RCW 9.68A.100)

Communication with a Minor for
Immoral Purposes (RCW 9.68A.090)
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<tbody>
<tr>
<td>1</td>
<td>Criminal Gang Intimidation (RCW 9A.46.120)</td>
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<td>2</td>
<td>Custodial Assault (RCW 9A.36.100)</td>
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<td>3</td>
<td>Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))</td>
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<td>4</td>
<td>Escape 2 (RCW 9A.76.120)</td>
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<td>5</td>
<td>Extortion 2 (RCW 9A.56.130)</td>
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<td>6</td>
<td>Harassment (RCW 9A.46.020)</td>
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<td>7</td>
<td>Intimidating a Public Servant (RCW 9A.76.180)</td>
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<td>8</td>
<td>Introducing Contraband 2 (RCW 9A.76.150)</td>
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<td>9</td>
<td>Malicious Injury to Railroad Property (RCW 81.60.070)</td>
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<td>10</td>
<td>Mortgage Fraud (RCW 19.144.080)</td>
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<td>11</td>
<td>Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)</td>
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<td>12</td>
<td>Organized Retail Theft 1 (RCW 9A.56.350(2))</td>
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<td>13</td>
<td>Perjury 2 (RCW 9A.72.030)</td>
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<td>14</td>
<td>Possession of Incendiary Device (RCW 9.40.120)</td>
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<td>15</td>
<td>Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)</td>
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<td>16</td>
<td>Promoting Prostitution 2 (RCW 9A.88.080)</td>
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<td>17</td>
<td>Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))</td>
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<td>18</td>
<td>Securities Act violation (RCW 21.20.400)</td>
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<tr>
<td>19</td>
<td>Tampering with a Witness (RCW 9A.72.120)</td>
<td></td>
</tr>
</tbody>
</table>
1 Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))

2 Theft of Livestock 2 (RCW 9A.56.083)

3 Theft with the Intent to Resell 1 (RCW 9A.56.340(2))

4 Trafficking in Stolen Property 2 (RCW 9A.82.055)

5 Unlawful Imprisonment (RCW 9A.40.040)

6 Unlawful possession of firearm in the second degree (RCW 9.41.040(2))

7 Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)

8 Willful Failure to Return from Work Release (RCW 72.65.070)

II Computer Trespass 1 (RCW 9A.52.110)

9 Counterfeiting (RCW 9.16.035(3))

10 Escape from Community Custody (RCW 72.09.310)

11 Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130(11)(a))

12 Health Care False Claims (RCW 48.80.030)

13 Identity Theft 2 (RCW 9.35.020(3))

14 Improperly Obtaining Financial Information (RCW 9.35.010)

15 Malicious Mischief 1 (RCW 9A.48.070)

16 Organized Retail Theft 2 (RCW 9A.56.350(3))

17 Possession of Stolen Property 1 (RCW 9A.56.150)
Possession of a Stolen Vehicle (RCW 9A.56.068)
Retail Theft with Extenuating Circumstances 2 (RCW 9A.56.360(3))
Theft 1 (RCW 9A.56.030)
Theft of a Motor Vehicle (RCW 9A.56.065)
Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
Trafficking in Insurance Claims (RCW 48.30A.015)
Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
Unlawful Practice of Law (RCW 2.48.180)
Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
Voyeurism (RCW 9A.44.115)

I. Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
False Verification for Welfare (RCW 74.08.055)
Forgery (RCW 9A.60.020)
Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
Malicious Mischief 2 (RCW 9A.48.080)
Mineral Trespass (RCW 78.44.330)
Possession of Stolen Property 2 (RCW 9A.56.160)
Reckless Burning 1 (RCW 9A.48.040)
Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
Theft 2 (RCW 9A.56.040)
Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
Transaction of insurance business beyond the scope of licensure (RCW 48.17.063((4)))
Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
Unlawful Possession of Payment Instruments (RCW 9A.56.320)
Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
Unlawful Production of Payment Instruments (RCW 9A.56.320)
Unlawful Trafficking in Food Stamps (RCW 9.91.142)
Unlawful Use of Food Stamps (RCW 9.91.144)
Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 9. RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are each reenacted and amended to read as follows:
The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an
exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

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

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

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

(1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.
(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

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

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

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

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

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

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

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

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

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

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

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

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.
(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:
   (i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;
   (ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or
   (iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.
   (i) The offense resulted in the pregnancy of a child victim of rape.
   (j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.
   (k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.
   (l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.
   (m) The offense involved a high degree of sophistication or planning.
   (n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.
   (o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.
   (p) The offense involved an invasion of the victim's privacy.
   (q) The defendant demonstrated or displayed an egregious lack of remorse.
   (r) The offense involved a destructive and foreseeable impact on persons other than the victim.
   (s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.
(t) The defendant committed the current offense shortly after being released from incarceration.

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

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

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

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

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

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

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

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

(bb) The offense was committed in violation of chapter 9A.-- RCW (sections 1 through 3 of this act) and resulted in the death of a human or the death or destruction of an animal.
NEW SECTION.  Sec. 10. Sections 1 through 3 of this act constitute a new chapter in Title 9A RCW.

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