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ENGROSSED SUBSTITUTE SENATE BILL 6704

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State of Washington 57th Legislature

2002 Regular Session

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

READ FIRST TIME 02/08/2002.

1 AN ACT Relating to the state's measured response to terrorism;  
2 amending RCW 9.94A.535, 10.95.040, 9A.04.080, 9A.20.021, 70.74.285,  
3 9A.82.090, 9A.82.100, and 9A.82.120; reenacting and amending RCW  
4 9.94A.030, 9.94A.515, and 9A.82.010; adding new sections to chapter  
5 10.95 RCW; adding a new section to chapter 9A.82 RCW; adding a new  
6 section to chapter 9A.20 RCW; adding a new chapter to Title 9A RCW;  
7 creating a new section; and prescribing penalties.

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

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

15 NEW SECTION. **Sec. 2.** For the purposes of this chapter, "terrorist  
16 intent" means the intent to significantly disrupt the general civilian  
17 population or the conduct of government by committing an act which:  
18 (1) Manifests an extreme indifference to human life; or (2) causes or

1 is intended to cause permanent or protracted loss of use of private or  
2 public property.

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

5 (a) Claims to have committed a felony with terrorist intent; or

6 (b) Makes any statement or takes any other action that causes or is  
7 intended to cause a reasonable belief that a felony with terrorist  
8 intent has been or will be committed.

9 (2) A hoax terrorist act is a class A felony.

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

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

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

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

32 The following are illustrative factors which the court may consider  
33 in the exercise of its discretion to impose an exceptional sentence.  
34 The following are illustrative only and are not intended to be  
35 exclusive reasons for exceptional sentences.

36 (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

24 (2) Aggravating Circumstances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (k) The offense resulted in the pregnancy of a child victim of  
11 rape.

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

16 (m) The current offense was committed with terrorist intent as  
17 defined in section 2 of this act. This subsection (2)(m) does not  
18 apply to crimes committed under chapter 70.74 RCW or committed under  
19 section 10 or 11 of this act.

20 **Sec. 5.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s  
21 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

22 Unless the context clearly requires otherwise, the definitions in  
23 this section apply throughout this chapter.

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

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

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

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

1 (5) "Community custody" means that portion of an offender's  
2 sentence of confinement in lieu of earned release time or imposed  
3 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
4 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
5 community subject to controls placed on the offender's movement and  
6 activities by the department. For offenders placed on community  
7 custody for crimes committed on or after July 1, 2000, the department  
8 shall assess the offender's risk of reoffense and may establish and  
9 modify conditions of community custody, in addition to those imposed by  
10 the court, based upon the risk to community safety.

11 (6) "Community custody range" means the minimum and maximum period  
12 of community custody included as part of a sentence under RCW  
13 9.94A.715, as established by the commission or the legislature under  
14 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

22 (8) "Community service" means compulsory service, without  
23 compensation, performed for the benefit of the community by the  
24 offender.

25 (9) "Community supervision" means a period of time during which a  
26 convicted offender is subject to crime-related prohibitions and other  
27 sentence conditions imposed by a court pursuant to this chapter or RCW  
28 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
29 a chemical dependency that has contributed to his or her offense, the  
30 conditions of supervision may, subject to available resources, include  
31 treatment. For purposes of the interstate compact for out-of-state  
32 supervision of parolees and probationers, RCW 9.95.270, community  
33 supervision is the functional equivalent of probation and should be  
34 considered the same as probation by other states.

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

36 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
37 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
38 acceptance of a plea of guilty.

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

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

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

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

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

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

32 (18) "Disposable earnings" means that part of the earnings of an  
33 offender remaining after the deduction from those earnings of any  
34 amount required by law to be withheld. For the purposes of this  
35 definition, "earnings" means compensation paid or payable for personal  
36 services, whether denominated as wages, salary, commission, bonuses, or  
37 otherwise, and, notwithstanding any other provision of law making the  
38 payments exempt from garnishment, attachment, or other process to  
39 satisfy a court-ordered legal financial obligation, specifically

1 includes periodic payments pursuant to pension or retirement programs,  
2 or insurance policies of any type, but does not include payments made  
3 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
4 or Title 74 RCW.

5 (19) "Drug offender sentencing alternative" is a sentencing option  
6 available to persons convicted of a felony offense other than a violent  
7 offense or a sex offense and who are eligible for the option under RCW  
8 9.94A.660.

9 (20) "Drug offense" means:

10 (a) Any felony violation of chapter 69.50 RCW except possession of  
11 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
12 controlled substance (RCW 69.50.403);

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

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

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

21 (22) "Escape" means:

22 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
23 first degree (RCW 9A.76.110), escape in the second degree (RCW  
24 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
25 willful failure to return from work release (RCW 72.65.070), or willful  
26 failure to be available for supervision by the department while in  
27 community custody (RCW 72.09.310); or

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

31 (23) "Felony traffic offense" means:

32 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
33 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
34 and-run injury-accident (RCW 46.52.020(4)); or

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



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

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

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

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

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

26 (a) Any felony defined under any law as a class A felony or  
27 criminal solicitation of or criminal conspiracy to commit a class A  
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

39 (l) Manslaughter in the second degree;

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

1 jurisdiction under RCW 13.04.030 or has been transferred by the  
2 appropriate juvenile court to a criminal court pursuant to RCW  
3 13.40.110. Throughout this chapter, the terms "offender" and  
4 "defendant" are used interchangeably.

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

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

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

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

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

34 (ii) Has, before the commission of the offense under (b)(i) of this  
35 subsection, been convicted as an offender on at least one occasion,  
36 whether in this state or elsewhere, of an offense listed in (b)(i) of  
37 this subsection or any federal or out-of-state offense or offense under  
38 prior Washington law that is comparable to the offenses listed in  
39 (b)(i) of this subsection. A conviction for rape of a child in the

1 first degree constitutes a conviction under (b)(i) of this subsection  
2 only when the offender was sixteen years of age or older when the  
3 offender committed the offense. A conviction for rape of a child in  
4 the second degree constitutes a conviction under (b)(i) of this  
5 subsection only when the offender was eighteen years of age or older  
6 when the offender committed the offense.

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

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

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

21 (36) "Serious traffic offense" means:

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

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

30 (37) "Serious violent offense" is a subcategory of violent offense  
31 and means:

- 32 (a)(i) Murder in the first degree;
- 33 (ii) Homicide by abuse;
- 34 (iii) Murder in the second degree;
- 35 (iv) Manslaughter in the first degree;
- 36 (v) Assault in the first degree;
- 37 (vi) Kidnapping in the first degree;
- 38 (vii) Rape in the first degree;
- 39 (viii) Assault of a child in the first degree; ((or))

1        (ix) Possession of radioactive material for terrorist purposes;  
2        (x) Releasing radioactive material;  
3        (xi) Possession of agents for terrorist purposes;  
4        (xii) Unlawful use of agents for terrorist purposes; or  
5        (xiii) An attempt, criminal solicitation, or criminal conspiracy to  
6 commit one of these felonies; or

7        (b) Any federal or out-of-state conviction for an offense that  
8 under the laws of this state would be a felony classified as a serious  
9 violent offense under (a) of this subsection.

10        (38) "Sex offense" means:

11        (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
12 RCW 9A.44.130(11);

13        (ii) A violation of RCW 9A.64.020;

14        (iii) A felony that is a violation of chapter 9.68A RCW other than  
15 RCW 9.68A.070 or 9.68A.080; or

16        (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
17 criminal solicitation, or criminal conspiracy to commit such crimes;

18        (b) Any conviction for a felony offense in effect at any time prior  
19 to July 1, 1976, that is comparable to a felony classified as a sex  
20 offense in (a) of this subsection;

21        (c) A felony with a finding of sexual motivation under RCW  
22 9.94A.835 or 13.40.135; or

23        (d) Any federal or out-of-state conviction for an offense that  
24 under the laws of this state would be a felony classified as a sex  
25 offense under (a) of this subsection.

26        (39) "Sexual motivation" means that one of the purposes for which  
27 the defendant committed the crime was for the purpose of his or her  
28 sexual gratification.

29        (40) "Standard sentence range" means the sentencing court's  
30 discretionary range in imposing a nonappealable sentence.

31        (41) "Statutory maximum sentence" means the maximum length of time  
32 for which an offender may be confined as punishment for a crime as  
33 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
34 crime, or other statute defining the maximum penalty for a crime.

35        (42) "Total confinement" means confinement inside the physical  
36 boundaries of a facility or institution operated or utilized under  
37 contract by the state or any other unit of government for twenty-four  
38 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

7 (44) "Victim" means any person who has sustained emotional,  
8 psychological, physical, or financial injury to person or property as  
9 a direct result of the crime charged.

10 (45) "Violent offense" means:

11 (a) Any of the following felonies:

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

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

16 (iii) Manslaughter in the first degree;

17 (iv) Manslaughter in the second degree;

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

19 (vi) Kidnapping in the second degree;

20 (vii) Arson in the second degree;

21 (viii) Assault in the second degree;

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

23 (x) Extortion in the first degree;

24 (xi) Robbery in the second degree;

25 (xii) Drive-by shooting;

26 (xiii) Vehicular assault, when caused by the operation or driving  
27 of a vehicle by a person while under the influence of intoxicating  
28 liquor or any drug or by the operation or driving of a vehicle in a  
29 reckless manner; and

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

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

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

1 (46) "Work crew" means a program of partial confinement consisting  
2 of civic improvement tasks for the benefit of the community that  
3 complies with RCW 9.94A.725.

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

11 (48) "Work release" means a program of partial confinement  
12 available to offenders who are employed or engaged as a student in a  
13 regular course of study at school.

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

16 A person is guilty of aggravated murder in the first degree if he  
17 or she is a terrorist offender and shall be punished in accordance with  
18 the provisions of this chapter. For the purposes of this section,  
19 "terrorist offender" means an offender who commits a felony that  
20 results in the death of one or more persons and for which a special  
21 allegation of terrorist intent has been filed and proven beyond a  
22 reasonable doubt under section 13 of this act.

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

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

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

1 proceeding, the defendant may not tender a plea of guilty to the charge  
2 of aggravated first degree murder nor may the court accept a plea of  
3 guilty to the charge of aggravated first degree murder or any lesser  
4 included offense.

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

8 **Sec. 8.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s  
9 4, 2001 c 217 s 12, and 2001 c 17 s 1 are each reenacted and amended to  
10 read as follows:

11 TABLE 2

12 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

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



1 XI Manslaughter 1 (RCW 9A.32.060)  
2 Rape 2 (RCW 9A.44.050)  
3 Rape of a Child 2 (RCW 9A.44.076)  
4 X Child Molestation 1 (RCW 9A.44.083)  
5 Indecent Liberties (with forcible  
6 compulsion) (RCW 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 70.74.280(3))  
11 Manufacture of methamphetamine (RCW  
12 69.50.401(a)(1)(ii))  
13 Over 18 and deliver heroin,  
14 methamphetamine, a narcotic from  
15 Schedule I or II, or flunitrazepam  
16 from Schedule IV to someone under 18  
17 (RCW 69.50.406)  
18 Sexually Violent Predator Escape (RCW  
19 9A.76.115)  
20 IX Assault of a Child 2 (RCW 9A.36.130)  
21 Controlled Substance Homicide (RCW  
22 69.50.415)  
23 Explosive devices prohibited (RCW  
24 70.74.180)  
25 Hit and Run--Death (RCW 46.52.020(4)(a))  
26 Hoax terrorist act (section 3 of this act)  
27 Homicide by Watercraft, by being under the  
28 influence of intoxicating liquor or  
29 any drug (RCW 79A.60.050)  
30 Inciting Criminal Profiteering (RCW  
31 9A.82.060(1)(b))  
32 Malicious placement of an explosive 2 (RCW  
33 70.74.270(2))  
34 Over 18 and deliver narcotic from Schedule  
35 III, IV, or V or a nonnarcotic, except  
36 flunitrazepam or methamphetamine, from  
37 Schedule I-V to someone under 18 and 3  
38 years junior (RCW 69.50.406)

1 Robbery 1 (RCW 9A.56.200)  
2 Sexual Exploitation (RCW 9.68A.040)  
3 Vehicular Homicide, by being under the  
4 influence of intoxicating liquor or  
5 any drug (RCW 46.61.520)

6 VIII Arson 1 (RCW 9A.48.020)  
7 Deliver or possess with intent to deliver  
8 methamphetamine (RCW  
9 69.50.401(a)(1)(ii))  
10 Homicide by Watercraft, by the operation of  
11 any vessel in a reckless manner (RCW  
12 79A.60.050)  
13 Manslaughter 2 (RCW 9A.32.070)  
14 Manufacture, deliver, or possess with  
15 intent to deliver amphetamine (RCW  
16 69.50.401(a)(1)(ii))  
17 Manufacture, deliver, or possess with  
18 intent to deliver heroin or cocaine  
19 (RCW 69.50.401(a)(1)(i))  
20 Possession of Ephedrine, Pseudoephedrine,  
21 or Anhydrous Ammonia with intent to  
22 manufacture methamphetamine (RCW  
23 69.50.440)  
24 Promoting Prostitution 1 (RCW 9A.88.070)  
25 Selling for profit (controlled or  
26 counterfeit) any controlled substance  
27 (RCW 69.50.410)  
28 Theft of Anhydrous Ammonia (RCW 69.55.010)  
29 Vehicular Homicide, by the operation of any  
30 vehicle in a reckless manner (RCW  
31 46.61.520)

32 VII Burglary 1 (RCW 9A.52.020)  
33 Child Molestation 2 (RCW 9A.44.086)  
34 Dealing in depictions of minor engaged in  
35 sexually explicit conduct (RCW  
36 9.68A.050)  
37 Drive-by Shooting (RCW 9A.36.045)

1 Homicide by Watercraft, by disregard for  
2 the safety of others (RCW 79A.60.050)  
3 Indecent Liberties (without forcible  
4 compulsion) (RCW 9A.44.100(1) (b) and  
5 (c))  
6 Introducing Contraband 1 (RCW 9A.76.140)  
7 Involving a minor in drug dealing (RCW  
8 69.50.401(f))  
9 Malicious placement of an explosive 3 (RCW  
10 70.74.270(3))  
11 Sending, bringing into state depictions of  
12 minor engaged in sexually explicit  
13 conduct (RCW 9.68A.060)  
14 Unlawful Possession of a Firearm in the  
15 first degree (RCW 9.41.040(1)(a))  
16 Use of a Machine Gun in Commission of a  
17 Felony (RCW 9.41.225)  
18 Vehicular Homicide, by disregard for the  
19 safety of others (RCW 46.61.520)

20 VI Bail Jumping with Murder 1 (RCW  
21 9A.76.170(3)(a))  
22 Bribery (RCW 9A.68.010)  
23 Incest 1 (RCW 9A.64.020(1))  
24 Intimidating a Judge (RCW 9A.72.160)  
25 Intimidating a Juror/Witness (RCW  
26 9A.72.110, 9A.72.130)  
27 Malicious placement of an imitation device  
28 2 (RCW 70.74.272(1)(b))  
29 Manufacture, deliver, or possess with  
30 intent to deliver narcotics from  
31 Schedule I or II (except heroin or  
32 cocaine) or flunitrazepam from  
33 Schedule IV (RCW 69.50.401(a)(1)(i))  
34 Rape of a Child 3 (RCW 9A.44.079)  
35 Theft of a Firearm (RCW 9A.56.300)  
36 Unlawful Storage of Anhydrous Ammonia (RCW  
37 69.55.020)

1 V Abandonment of dependent person 1 (RCW  
2 9A.42.060)  
3 Advancing money or property for  
4 extortionate extension of credit (RCW  
5 9A.82.030)  
6 Bail Jumping with class A Felony (RCW  
7 9A.76.170(3)(b))  
8 Child Molestation 3 (RCW 9A.44.089)  
9 Criminal Mistreatment 1 (RCW 9A.42.020)  
10 Custodial Sexual Misconduct 1 (RCW  
11 9A.44.160)  
12 Delivery of imitation controlled substance  
13 by person eighteen or over to person  
14 under eighteen (RCW 69.52.030(2))  
15 Domestic Violence Court Order Violation  
16 (RCW 10.99.040, 10.99.050, 26.09.300,  
17 26.10.220, 26.26.138, 26.50.110,  
18 26.52.070, or 74.34.145)  
19 Extortion 1 (RCW 9A.56.120)  
20 Extortionate Extension of Credit (RCW  
21 9A.82.020)  
22 Extortionate Means to Collect Extensions of  
23 Credit (RCW 9A.82.040)  
24 Incest 2 (RCW 9A.64.020(2))  
25 Kidnapping 2 (RCW 9A.40.030)  
26 Perjury 1 (RCW 9A.72.020)  
27 Persistent prison misbehavior (RCW  
28 9.94.070)  
29 Possession of a Stolen Firearm (RCW  
30 9A.56.310)  
31 Rape 3 (RCW 9A.44.060)  
32 Rendering Criminal Assistance 1 (RCW  
33 9A.76.070)  
34 Sexual Misconduct with a Minor 1 (RCW  
35 9A.44.093)  
36 Sexually Violating Human Remains (RCW  
37 9A.44.105)  
38 Stalking (RCW 9A.46.110)  
39 IV Arson 2 (RCW 9A.48.030)

1 Assault 2 (RCW 9A.36.021)  
2 Assault by Watercraft (RCW 79A.60.060)  
3 Bribing a Witness/Bribe Received by Witness  
4 (RCW 9A.72.090, 9A.72.100)  
5 Commercial Bribery (RCW 9A.68.060)  
6 Counterfeiting (RCW 9.16.035(4))  
7 Escape 1 (RCW 9A.76.110)  
8 Hit and Run--Injury (RCW 46.52.020(4)(b))  
9 Hit and Run with Vessel--Injury Accident  
10 (RCW 79A.60.200(3))  
11 Identity Theft 1 (RCW 9.35.020(2)(a))  
12 Indecent Exposure to Person Under Age  
13 Fourteen (subsequent sex offense) (RCW  
14 9A.88.010)  
15 Influencing Outcome of Sporting Event (RCW  
16 9A.82.070)  
17 Knowingly Trafficking in Stolen Property  
18 (RCW 9A.82.050(2))  
19 Malicious Harassment (RCW 9A.36.080)  
20 Manufacture, deliver, or possess with  
21 intent to deliver narcotics from  
22 Schedule III, IV, or V or nonnarcotics  
23 from Schedule I-V (except marijuana,  
24 amphetamine, methamphetamines, or  
25 flunitrazepam) (RCW 69.50.401(a)(1)  
26 (iii) through (v))  
27 Residential Burglary (RCW 9A.52.025)  
28 Robbery 2 (RCW 9A.56.210)  
29 Theft of Livestock 1 (RCW 9A.56.080)  
30 Threats to Bomb (RCW 9.61.160)  
31 Use of Proceeds of Criminal Profiteering  
32 (RCW 9A.82.080 (1) and (2))  
33 Vehicular Assault, by being under the  
34 influence of intoxicating liquor or  
35 any drug, or by the operation or  
36 driving of a vehicle in a reckless  
37 manner (RCW 46.61.522)  
38 Willful Failure to Return from Furlough  
39 (RCW 72.66.060)

1 III Abandonment of dependent person 2 (RCW  
2 9A.42.070)  
3 Assault 3 (RCW 9A.36.031)  
4 Assault of a Child 3 (RCW 9A.36.140)  
5 Bail Jumping with class B or C Felony (RCW  
6 9A.76.170(3)(c))  
7 Burglary 2 (RCW 9A.52.030)  
8 Communication with a Minor for Immoral  
9 Purposes (RCW 9.68A.090)  
10 Criminal Gang Intimidation (RCW 9A.46.120)  
11 Criminal Mistreatment 2 (RCW 9A.42.030)  
12 Custodial Assault (RCW 9A.36.100)  
13 Delivery of a material in lieu of a  
14 controlled substance (RCW  
15 69.50.401(c))  
16 Escape 2 (RCW 9A.76.120)  
17 Extortion 2 (RCW 9A.56.130)  
18 Harassment (RCW 9A.46.020)  
19 Intimidating a Public Servant (RCW  
20 9A.76.180)  
21 Introducing Contraband 2 (RCW 9A.76.150)  
22 Maintaining a Dwelling or Place for  
23 Controlled Substances (RCW  
24 69.50.402(a)(6))  
25 Malicious Injury to Railroad Property (RCW  
26 81.60.070)  
27 Manufacture, deliver, or possess with  
28 intent to deliver marijuana (RCW  
29 69.50.401(a)(1)(iii))  
30 Manufacture, distribute, or possess with  
31 intent to distribute an imitation  
32 controlled substance (RCW  
33 69.52.030(1))  
34 Patronizing a Juvenile Prostitute (RCW  
35 9.68A.100)  
36 Perjury 2 (RCW 9A.72.030)  
37 Possession of Incendiary Device (RCW  
38 9.40.120)

1 Possession of Machine Gun or Short-Barreled  
2 Shotgun or Rifle (RCW 9.41.190)  
3 Promoting Prostitution 2 (RCW 9A.88.080)  
4 Recklessly Trafficking in Stolen Property  
5 (RCW 9A.82.050(1))  
6 Securities Act violation (RCW 21.20.400)  
7 Tampering with a Witness (RCW 9A.72.120)  
8 Telephone Harassment (subsequent conviction  
9 or threat of death) (RCW 9.61.230)  
10 Theft of Livestock 2 (RCW 9A.56.080)  
11 Unlawful Imprisonment (RCW 9A.40.040)  
12 Unlawful possession of firearm in the  
13 second degree (RCW 9.41.040(1)(b))  
14 Unlawful Use of Building for Drug Purposes  
15 (RCW 69.53.010)  
16 Vehicular Assault, by the operation or  
17 driving of a vehicle with disregard  
18 for the safety of others (RCW  
19 46.61.522)  
20 Willful Failure to Return from Work Release  
21 (RCW 72.65.070)

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

1 Possession of Stolen Property 1 (RCW  
2 9A.56.150)  
3 Theft 1 (RCW 9A.56.030)  
4 Theft of Rental, Leased, or Lease-purchased  
5 Property (valued at one thousand five  
6 hundred dollars or more) (RCW  
7 9A.56.096(4))  
8 Trafficking in Insurance Claims (RCW  
9 48.30A.015)  
10 Unlawful Practice of Law (RCW 2.48.180)  
11 Unlicensed Practice of a Profession or  
12 Business (RCW 18.130.190(7))  
13 I Attempting to Elude a Pursuing Police  
14 Vehicle (RCW 46.61.024)  
15 False Verification for Welfare (RCW  
16 74.08.055)  
17 Forged Prescription (RCW 69.41.020)  
18 Forged Prescription for a Controlled  
19 Substance (RCW 69.50.403)  
20 Forgery (RCW 9A.60.020)  
21 Malicious Mischief 2 (RCW 9A.48.080)  
22 Possess Controlled Substance that is a  
23 Narcotic from Schedule III, IV, or V  
24 or Non-narcotic from Schedule I-V  
25 (except phencyclidine or  
26 flunitrazepam) (RCW 69.50.401(d))  
27 Possession of Stolen Property 2 (RCW  
28 9A.56.160)  
29 Reckless Burning 1 (RCW 9A.48.040)  
30 Taking Motor Vehicle Without Permission  
31 (RCW 9A.56.070)  
32 Theft 2 (RCW 9A.56.040)  
33 Theft of Rental, Leased, or Lease-purchased  
34 Property (valued at two hundred fifty  
35 dollars or more but less than one  
36 thousand five hundred dollars) (RCW  
37 9A.56.096(4))  
38 Unlawful Issuance of Checks or Drafts (RCW  
39 9A.56.060)



1 Unlawful Use of Food Stamps (RCW 9.91.140  
2 (2) and (3))  
3 Vehicle Prowl 1 (RCW 9A.52.095)

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

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

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

10 (i) Murder;

11 (ii) Homicide by abuse;

12 (iii) Arson if a death results;

13 (iv) Vehicular homicide;

14 (v) Vehicular assault if a death results;

15 (vi) Hit-and-run injury-accident if a death results (RCW  
16 46.52.020(4));

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

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

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

24 (ii) Arson if no death results; or

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

1 (c) Violations of the following statutes shall not be prosecuted  
2 more than three years after the victim's eighteenth birthday or more  
3 than seven years after their commission, whichever is later: RCW  
4 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,  
5 9A.44.100(1)(b), or 9A.64.020.

6 (d) The following offenses shall not be prosecuted more than six  
7 years after their commission: Violations of RCW 9A.82.060 or  
8 9A.82.080.

9 (e) The following offenses shall not be prosecuted more than five  
10 years after their commission: Any class C felony under chapter 74.09,  
11 82.36, or 82.38 RCW.

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

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

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

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

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

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

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

37 NEW SECTION. **Sec. 10.** (1) A person is guilty of unlawful use of  
38 agents for terrorist purposes if the person willfully and with

1 terrorist intent uses, places, introduces, broadcasts, disseminates, or  
2 releases any biological agent, chemical agent, or toxin.

3 (2) A person is guilty of possession of agents for terrorist  
4 purposes if the person knowingly and with terrorist intent possesses  
5 any biological agent, chemical agent, or toxin.

6 (3) For the purposes of this section:

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

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

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

17 (iii) Significant deterioration of the environment.

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

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

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

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

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

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

35 (b) Unlawful possession of agents for terrorist purposes is a class  
36 A felony.

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

4        (2) A person is guilty of possession of radioactive material with  
5 terrorist intent if the person knowingly possesses a source of ionizing  
6 radiation with terrorist intent.

7        (3)(a) Releasing radioactive material with terrorist intent is a  
8 class A felony.

9        (b) Possession of radioactive material with terrorist intent is a  
10 class A felony.

11       NEW SECTION.    **Sec. 12.**    A new section is added to chapter 9A.82 RCW  
12 to read as follows:

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

19        (2) If the special allegation is filed, the state shall prove  
20 beyond a reasonable doubt that the accused committed the crime with  
21 terrorist intent, as defined in section 2 of this act. The court shall  
22 make a finding of fact of whether or not terrorist intent was present  
23 at the time of the commission of the crime, or if a jury trial is had,  
24 the jury shall, if it finds the defendant guilty, also find a special  
25 verdict as to whether or not the defendant committed the crime with  
26 terrorist intent. This finding shall not be applied to violations of  
27 the Washington state explosives act, chapter 70.74 RCW, or section 10  
28 or 11 of this act.

29        (3) The prosecuting attorney shall not withdraw the special  
30 allegation of terrorist intent without approval of the court through an  
31 order of dismissal of the special allegation. The court shall not  
32 dismiss the special allegation unless it finds that such an order is  
33 necessary to correct an error in the initial charging decision or  
34 unless there are evidentiary problems that make proving the special  
35 allegation doubtful.

36       NEW SECTION.    **Sec. 13.**    A new section is added to chapter 10.95 RCW  
37 to read as follows:

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

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

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

24 NEW SECTION. **Sec. 14.** A new section is added to chapter 9A.20 RCW  
25 to read as follows:

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

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

34 (b) For a class C felony, by confinement in a state correctional  
35 institution for a term of ten years, or by a fine in an amount fixed by  
36 the court of ten thousand dollars, or by both such confinement and  
37 fine.

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

3 **Sec. 15.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to  
4 read as follows:

5 (1) Felony. Except when section 14 of this act applies, no person  
6 convicted of a classified felony shall be punished by confinement or  
7 fine exceeding the following:

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

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

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

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

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

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

31 **Sec. 16.** RCW 70.74.285 and 1997 c 120 s 4 are each amended to read  
32 as follows:

33 For the purposes of RCW 70.74.270, 70.74.272, and 70.74.280  
34 "terrorist act" means an act (~~that is intended to:~~ (1) Intimidate or  
35 coerce a civilian population; (2) influence the policy of a branch or  
36 level of government by intimidation or coercion; (3) affect the conduct  
37 of a branch or level of government by intimidation or coercion; or (4)

1 ~~retaliate against a branch or level of government for a policy or~~  
2 ~~conduct of the government))~~ committed with the intent to significantly  
3 disrupt the general civilian population or the conduct of government by  
4 committing an act which: (1) Manifests an extreme indifference to  
5 human life; or (2) causes or is intended to cause permanent or  
6 protracted loss of use of private or public property.

7 **Sec. 17.** RCW 9A.82.010 and 2001 c 222 s 3 and 2001 c 217 s 11 are  
8 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

31 (4) "Criminal profiteering" means any act, including any  
32 anticipatory or completed offense, committed for financial gain, that  
33 is chargeable or indictable under the laws of the state in which the  
34 act occurred and, if the act occurred in a state other than this state,  
35 would be chargeable or indictable under the laws of this state had the  
36 act occurred in this state and punishable as a felony and by  
37 imprisonment for more than one year, regardless of whether the act is  
38 charged or indicted, as any of the following:

- 1 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 2 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 3 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 4 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 5 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and  
6 9A.56.080;
- 7 (f) Unlawful sale of subscription television services, as defined  
8 in RCW 9A.56.230;
- 9 (g) Theft of telecommunication services or unlawful manufacture of  
10 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- 11 (h) Child selling or child buying, as defined in RCW 9A.64.030;
- 12 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
13 9A.68.050;
- 14 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- 15 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 16 (l) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 17 (m) Advancing money for use in an extortionate extension of credit,  
18 as defined in RCW 9A.82.030;
- 19 (n) Collection of an extortionate extension of credit, as defined  
20 in RCW 9A.82.040;
- 21 (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- 22 (p) Delivery or manufacture of controlled substances or possession  
23 with intent to deliver or manufacture controlled substances under  
24 chapter 69.50 RCW;
- 25 (q) Trafficking in stolen property, as defined in RCW 9A.82.050;
- 26 (r) Leading organized crime, as defined in RCW 9A.82.060;
- 27 (s) Money laundering, as defined in RCW 9A.83.020;
- 28 (t) Obstructing criminal investigations or prosecutions in  
29 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
30 9A.76.070, or 9A.76.180;
- 31 (u) Fraud in the purchase or sale of securities, as defined in RCW  
32 21.20.010;
- 33 (v) Promoting pornography, as defined in RCW 9.68.140;
- 34 (w) Sexual exploitation of children, as defined in RCW 9.68A.040,  
35 9.68A.050, and 9.68A.060;
- 36 (x) Promoting prostitution, as defined in RCW 9A.88.070 and  
37 9A.88.080;
- 38 (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- 39 (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;



1 (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;  
2 (bb) A pattern of equity skimming, as defined in RCW 61.34.020;  
3 (cc) Commercial telephone solicitation in violation of RCW  
4 19.158.040(1);  
5 (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;  
6 (ee) Unlawful practice of law, as defined in RCW 2.48.180;  
7 (ff) Commercial bribery, as defined in RCW 9A.68.060;  
8 (gg) Health care false claims, as defined in RCW 48.80.030;  
9 (hh) Unlicensed practice of a profession or business, as defined in  
10 RCW 18.130.190(7);  
11 (ii) Improperly obtaining financial information, as defined in RCW  
12 9.35.010; (~~or~~)  
13 (jj) Identity theft, as defined in RCW 9.35.020; or  
14 (kk) Any felony or any anticipatory crime whose object is a felony,  
15 committed with terrorist intent, whether or not committed for financial  
16 gain.  
17 (5) "Dealer in property" means a person who buys and sells property  
18 as a business.  
19 (6) "Debtor" means a person to whom an extension of credit is made  
20 or a person who guarantees the repayment of an extension of credit or  
21 in any manner undertakes to indemnify the creditor against loss  
22 resulting from the failure of a person to whom an extension is made to  
23 repay the same.  
24 (7) "Documentary material" means any book, paper, document,  
25 writing, drawing, graph, chart, photograph, phonograph record, magnetic  
26 tape, computer printout, other data compilation from which information  
27 can be obtained or from which information can be translated into usable  
28 form, or other tangible item.  
29 (8) "Enterprise" includes any individual, sole proprietorship,  
30 partnership, corporation, business trust, or other profit or nonprofit  
31 legal entity, and includes any union, association, or group of  
32 individuals associated in fact although not a legal entity, and both  
33 illicit and licit enterprises and governmental and nongovernmental  
34 entities.  
35 (9) "Extortionate extension of credit" means an extension of credit  
36 with respect to which it is the understanding of the creditor and the  
37 debtor at the time the extension is made that delay in making repayment  
38 or failure to make repayment could result in the use of violence or

1 other criminal means to cause harm to the person, reputation, or  
2 property of any person.

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

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

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

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

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

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

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

3 (17) "Terrorist intent" means "terrorist intent" as defined in  
4 section 2 of this act or RCW 70.74.285 and for which a special  
5 allegation of terrorist intent has been proven under section 12 of this  
6 act.

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

9 ~~((18))~~ (19) "To extend credit" means to make or renew a loan or  
10 to enter into an agreement, tacit or express, whereby the repayment or  
11 satisfaction of a debt or claim, whether acknowledged or disputed,  
12 valid or invalid, and however arising, may or shall be deferred.

13 ~~((19))~~ (20) "Traffic" means to sell, transfer, distribute,  
14 dispense, or otherwise dispose of stolen property to another person, or  
15 to buy, receive, possess, or obtain control of stolen property, with  
16 intent to sell, transfer, distribute, dispense, or otherwise dispose of  
17 the property to another person.

18 ~~((20))~~ (21)(a) "Trustee" means:

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

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

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

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

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

28 (ii) A trustee of any testamentary trust;

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

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

32 ~~((21))~~ (22) "Unlawful debt" means any money or other thing of  
33 value constituting principal or interest of a debt that is legally  
34 unenforceable in the state in full or in part because the debt was  
35 incurred or contracted:

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

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

38 (ii) Chapter 9.46 RCW relating to gambling;

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

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

4 **Sec. 18.** RCW 9A.82.090 and 2001 c 222 s 13 are each amended to  
5 read as follows:

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

15 **Sec. 19.** RCW 9A.82.100 and 2001 c 222 s 14 are each amended to  
16 read as follows:

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

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

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

35 (d) In an action filed to prevent, restrain, or remedy a pattern of  
36 criminal profiteering activity, or any offense committed with terrorist  
37 intent whether or not committed for financial gain, or a violation of

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

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

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

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

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

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

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

36 (d) Ordering the payment of actual damages sustained to those  
37 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or any  
38 offense committed with terrorist intent whether or not committed for  
39 financial gain, or an act of criminal profiteering that is part of a

1 pattern of criminal profiteering, and in the court's discretion,  
2 increasing the payment to an amount not exceeding three times the  
3 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  
6 activity, or any offense committed with terrorist intent whether or not  
7 committed for financial gain, or a violation of RCW 9A.82.060 or  
8 9A.82.080, civil and criminal, incurred by the state or county,  
9 including any costs of defense provided at public expense, as  
10 appropriate to the state general fund or the antiprofitteering revolving  
11 fund of the county.

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

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

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

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

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

37 (5) In addition to or in lieu of an action under this section, the  
38 attorney general or county prosecuting attorney may file an action for  
39 forfeiture to the state general fund or antiprofitteering revolving fund

1 of the county, as appropriate, to the extent not already ordered paid  
2 pursuant to this section, of the following:

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

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

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

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

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

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

1 hearing, participate in the hearings and determination, and cause the  
2 action to be expedited.

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

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

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

21 (12) In addition to the attorney general's right to intervene as a  
22 party in any action under this section, the attorney general may appear  
23 as amicus curiae in any proceeding in which a claim under this section  
24 has been asserted or in which a court is interpreting RCW 9A.82.010,  
25 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

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

30 (14) Upon motion by the defendant, the court may authorize the sale  
31 or transfer of assets subject to an order or lien authorized by this  
32 chapter for the purpose of paying actual attorney's fees and costs of  
33 defense. The motion shall specify the assets for which sale or  
34 transfer is sought and shall be accompanied by the defendant's sworn  
35 statement that the defendant has no other assets available for such  
36 purposes. No order authorizing such sale or transfer may be entered  
37 unless the court finds that the assets involved are not subject to  
38 possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of  
39 the motion, the court shall notify the state of the assets sought to be



1 sold or transferred and shall hear argument on the issue of whether the  
2 assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a  
3 motion may be made from time to time and shall be heard by the court on  
4 an expedited basis.

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

7 **Sec. 20.** RCW 9A.82.120 and 2001 c 222 s 16 are each amended to  
8 read as follows:

9 (1) The state, upon filing a criminal action under RCW 9A.82.060 or  
10 9A.82.080, or alleging any offense committed with terrorist intent  
11 whether or not committed for financial gain, or a civil action under  
12 RCW 9A.82.100, may file in accordance with this section a criminal  
13 profiteering lien. A filing fee or other charge is not required for  
14 filing a criminal profiteering lien.

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

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

20 (b) In the discretion of the attorney general or county prosecuting  
21 attorney filing the lien, any aliases or fictitious names of the  
22 defendant named in the lien;

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

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

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

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

33 (g) The amount that the state claims in the action or, with respect  
34 to property or other interests that the state has requested forfeiture  
35 to the state or county, a description of the property or interests  
36 sought to be paid or forfeited;

37 (h) If known to the attorney general or county prosecuting attorney  
38 filing the lien, a description of property that is subject to

1 forfeiture to the state or property in which the defendant has an  
2 interest that is available to satisfy a judgment entered in favor of  
3 the state; and

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

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

10 (4) The attorney general or the county prosecuting attorney filing  
11 the lien shall, as soon as practical after filing a criminal  
12 profiteering lien, furnish to any person named in the lien a notice of  
13 the filing of the lien. Failure to furnish notice under this  
14 subsection does not invalidate or otherwise affect a criminal  
15 profiteering lien filed in accordance with this section.

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

24 NOTICE OF LIEN

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

27 Name: . . . . .  
28 Address: . . . . .  
30 . . . . .  
31 . . . . .

32 State of Washington  
33 . . . . .  
34 By (authorized signature)

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

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

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

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

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

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

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

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

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

38 (a) In the case of real property or a beneficial interest in real  
39 property, relates back to the date of filing the criminal profiteering

1 lien or, if no criminal profiteering lien is filed, then to the date of  
2 recording of the final judgment or the abstract thereof; or

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

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

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

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

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